

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

319E0036

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1003 - 02/23/2001

Introduced by: Representatives Monroe, McCoy, and Slaughter and Senators Ham and Madden at the request of the Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to prohibit the use of genetic tests in the offer, sale, or
2 renewal of certain types of insurance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Genetic test," a test of human DNA, RNA, chromosomes, or genes performed in
6 order to identify the presence or absence of an inherited variation, alteration, or
7 mutation which is associated with predisposition to disease, illness, impairment, or
8 other disorder. Genetic test does not mean a routine physical measurement; a
9 chemical, blood, or urine analysis; a test for drugs or HIV infection; any test
10 commonly accepted in clinical practice; or any test performed due to the presence of
11 signs, symptoms, or other manifestations of a disease, illness, impairment, or other
12 disorder;

13 (2) "Health carrier," any person who provides health insurance in this state. The term
14 includes a licensed insurance company, a prepaid hospital or medical service plan, a

1 health maintenance organization, a multiple employer welfare arrangement, a fraternal
2 benefit contract, or any person providing a plan of health insurance subject to state
3 insurance regulation;

4 (3) "Health insurance," insurance provided pursuant to chapters 58-17 (except disability
5 income insurance), 58-17C, 58-18 (except disability income insurance), 58-18B, 58-
6 38, 58-40, and 58-41; and

7 (4) "Individual," an applicant for coverage or a person already covered by a health carrier.

8 Section 2. No health carrier, in determining eligibility for coverage, establishing premiums,
9 limiting coverage, renewing coverage, or any other underwriting decision, may, in connection
10 with the offer, sale, or renewal of health insurance:

11 (1) Require or request an individual or a blood relative of the individual to take a genetic
12 test;

13 (2) Take into consideration the fact that a genetic test was refused by an individual or a
14 blood relative of the individual; or

15 (3) Take into consideration the results of an individual's genetic test.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0270

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1045** - 02/21/2001

Introduced by: The Committee on State Affairs at the request of the Department of
Revenue

1 FOR AN ACT ENTITLED, An Act to prohibit the disclosure and use of personal information
2 contained in certain motor vehicle records.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

7 (1) "Department," the Department of Revenue;

8 (2) "Disclose," to knowingly engage in any practice or conduct to make available and
9 make known personal information contained in a motor vehicle record about a person
10 to any other person, organization, or entity, by any means of communication;

11 (3) "Express consent," consent in writing, and includes consent that is conveyed
12 electronically that bears an electronic signature;

13 (4) "Individual record," a motor vehicle record containing personal information about a
14 designated person who is the subject of the record as identified in a request;

- 1 (5) "Motor vehicle record," any record that pertains to a motor vehicle registration,
2 motor vehicle title, or document issued by the department or any other state or local
3 agency authorized to issue any such forms of credentials;
- 4 (6) "Personal information," information that identifies a person, including a social security
5 number, driver identification number, name, address (but not the five-digit zip code),
6 telephone number, and medical or disability information, but does not include
7 information on vehicular accidents, driving or equipment-related violations, or
8 registration status;
- 9 (7) "Record," includes any book, paper, photograph, photostat, card, film, tape,
10 recording, electronic data, printout, or other documentary material regardless of
11 physical form or characteristics.

12 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Notwithstanding any other provision of state law to the contrary, except as provided in
15 sections 3 to 5, inclusive, of this Act, the department and any officer, employee, agent, or
16 contractor thereof may not disclose personal information about any person obtained by the
17 department in connection with a motor vehicle record. Under no circumstances may a person's
18 social security number or medical or disability information from a motor vehicle record be
19 disclosed, except for the purposes permitted by subdivisions (1), (3), and (5) of section 5 of this
20 Act.

21 Section 3. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Personal information shall be disclosed for use in connection with matters of motor vehicle
24 or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or

1 advisories, performance monitoring of motor vehicles and dealers by motor vehicle
2 manufacturers, and removal of nonowner records from the original owner records of motor
3 vehicle manufacturers to carry out the purposes of Titles I and IV of the Anti Car Theft Act of
4 1992, 15 U.S.C. 2021 et seq., as of January 1, 2001, the Automobile Information Disclosure
5 Act, 15 U.S.C. 1231 et seq., as of January 1, 2001, and the Clean Air Act, 42 U.S.C. 7401 et
6 seq., as of January 1, 2001, chapters 301, 305, and 321-331 of Title 49, as of January 1, 2001,
7 and agency regulations enacted or adopted pursuant to the authority of, or to attain compliance
8 with, these Acts of Congress.

9 Section 4. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Personal information may be disclosed to any person who demonstrates, in such form and
12 manner as the department prescribes, that express consent of the person who is the subject of
13 the information has been obtained.

14 Section 5. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Personal information may be disclosed to any person by the department on proof of the
17 identity of the person requesting the record and representation by such person that the use of the
18 personal information will be strictly limited to the following described uses:

19 (1) For use by any government agency, including any court or law enforcement agency,
20 in carrying out its functions, or any private person or entity acting on behalf of a
21 government agency in carrying out its functions;

22 (2) For use in the normal course of business by a legitimate business or its agents,
23 employees, or contractors, but only under the following circumstances:

24 (a) To verify the accuracy of personal information submitted by the individual to

- 1 the business or its agents, employees, or contractors; and
- 2 (b) If such information as submitted is not correct or is no longer correct, to obtain
- 3 the correct information for the purposes of preventing fraud by pursuing legal
- 4 remedies against, or recovering on a debt or security interest against, the
- 5 individual;
- 6 (3) For use in connection with any civil, criminal, administrative, or arbitral proceeding
- 7 in any court or government agency or before any self-regulatory body, including the
- 8 service of process, investigation in anticipation of litigation, and the execution or
- 9 enforcement of judgments and orders, or pursuant to an order of any court;
- 10 (4) For use in research activities, and for use in producing statistical reports, so long as
- 11 the personal information is not published, redisclosed, or used to contact individuals;
- 12 (5) For use by any insurer or insurance support organization, or by a self-insured entity,
- 13 or its agents, employees, or contractors, in connection with claims investigation
- 14 activities, anti-fraud activities, rating, or underwriting;
- 15 (6) For use in providing notice to the owners or lienholders of towed or impounded
- 16 vehicles;
- 17 (7) For use by any licensed private investigative agency or licensed security service for
- 18 any purpose permitted under this section;
- 19 (8) For use in connection with the operation of private toll transportation facilities;
- 20 (9) For any other use specifically authorized under the law of the state that holds the
- 21 record, if such use is related to the operation of a motor vehicle or public safety.

22 Section 6. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as

23 follows:

24 The department may, prior to the disclosure of personal information as permitted under

1 sections 2 to 5, inclusive, of this Act, require the requesting person to meet conditions for the
2 purposes of obtaining reasonable assurance concerning the identity of such requesting person,
3 and, to the extent required, that the use will be only as authorized, or the consent of the person
4 who is the subject of the information has been obtained. Such conditions may include the making
5 and filing of a written application in such form and containing such information and certification
6 requirements as the department may prescribe.

7 Section 7. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any authorized recipient, except a recipient of an individual record under section 6 of this
10 Act, who resells or rediscloses personal information shall maintain for a period of at least five
11 years records as to the information obtained and the permitted use for which it was obtained and
12 shall make such records available for inspection by the department, upon request.

13 Section 8. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any person who requests disclosure of personal information from department records and
16 who misrepresents his or her identity or knowingly makes a false statement to the department
17 on any application required to be submitted pursuant to this Act is guilty of a Class 1
18 misdemeanor. However, if any person uses the personal information obtained pursuant to this
19 Act to commit a crime of violence as defined in § 22-1-2, the person is guilty of a Class 5 felony.

20 Section 9. That § 32-5-90.2 be repealed.

21 ~~32-5-90.2. The department may issue lists of motor vehicles and information relating to~~
22 ~~motor vehicles if issuance is necessary for the enforcement of this title or if the list or information~~
23 ~~is needed to protect the public safety and welfare. In addition, any motor vehicle title or~~
24 ~~registration list maintained by the department may be made available to the public for a~~

1 ~~reasonable fee. State agencies are exempt from payment of this fee for approved state use. The~~
2 ~~lists may not be resold. The secretary may promulgate rules pursuant to chapter 1-26 to establish~~
3 ~~criteria for the sale and to establish the fee for the sale of such lists.~~

4 Section 10. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purpose of license renewal, any person in possession of a motor vehicle title or
7 license renewal certificate provided by the state or the county may renew the vehicle's
8 registration on behalf of the owner. Presentation of the motor vehicle title or license renewal
9 certificate by anyone other than the owner is deemed consent of the vehicle owner. Any person
10 who knowingly misrepresents or makes any false statement for license renewal is guilty of a
11 Class 1 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

922E0636

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1180** - 02/08/2001

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Bradford, Duniphan, Gillespie, Hennies (Don), Hennies (Thomas), McCoy, Nachtigal, Nesselhuf, Pitts, Solum, Valandra, and Van Norman and Senators Volesky, McCracken, McIntyre, and Moore

1 FOR AN ACT ENTITLED, An Act to allow for the sale of surplus property to tribal
2 subdivisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 5-24-9.3 be amended to read as follows:

5 5-24-9.3. The commissioner of the Bureau of Administration may make sales of material,
6 machinery, equipment, or other personal property to ~~state~~ any political subdivision
7 of the state or to any political subdivision of any Indian tribe in the state if the political
8 subdivision of the Indian tribe exclusively provides governmental services of a type legally
9 provided by a political subdivision of the state. Such sales shall follow the procedures for other
10 sales, except that no notice or advertisement for bid requirements or time of sale requirements
11 ~~shall~~ apply to such ~~sale~~ sales.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0605 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1232 - 02/15/2001

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation for the implementation and
2 development of the electronic-government project and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of one hundred
5 seventy-five thousand dollars (\$175,000), or so much thereof as may be necessary, to the Bureau
6 of Information and Telecommunications to provide for the implementation and development of
7 the electronic-government project.

8 Section 2. The commissioner of the Bureau of Information and Telecommunications shall
9 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by
10 this Act.

11 Section 3. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
13 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

444E0782

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1295 - 02/24/2001

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Derby and Brown (Richard) and Senator Hutmacher

1 FOR AN ACT ENTITLED, An Act to allow certain interstate shipments of wine.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one
4 years of age may purchase and receive wine from another state as provided in this section if the
5 wine is not in distribution in this state and a reciprocal agreement exists between this state and
6 the state from which the wine is sent. The person shall place an order with a package dealer as
7 defined in § 35-1-1 on a form prescribed by the Department of Revenue. The package dealer
8 shall order the wine through a wholesaler licensed pursuant to subdivision 35-4-2(2) and the
9 wholesaler shall arrange the purchase of the wine. The package dealer shall inform the purchaser
10 of the cost of the wine, the amount of any tax that would apply to the purchase pursuant to § 35-
11 5-3, the amount of sales tax that would apply to the purchase, and the amount of any charges for
12 freight and handling. The package dealer may order the wine and shall provide the wine to the
13 purchaser on receipt of payment for the cost of the wine and the taxes and freight and handling
14 charges associated with the purchase. Wine purchased pursuant to this Act may only be delivered

1 and received by the purchaser from a package dealer as defined in § 35-1-1. If the wholesaler
2 orders ten or less cases of a particular brand of wine in one calendar year pursuant to this
3 section, no registration fee pursuant to chapter 39-13 may be imposed. No person may receive
4 more than twelve cases of wine, containing no more than nine liters per case, in any calendar year
5 for personal use from another state under this Act. No person who receives wine under this Act
6 may resell any of the wine. However, if the delivery of the wine does not result in a completed
7 sale to the person who placed the original order, the package dealer or wholesaler may sell the
8 wine in the ordinary course of business. It is a Class 2 misdemeanor for any person to receive
9 more than twelve cases of wine during a calendar year in violation of this section. It is a Class
10 2 misdemeanor for any person to resell or attempt to resell any wine obtained pursuant to this
11 section. The Department of Revenue shall promulgate rules pursuant to chapter 1-26 to provide
12 for the reporting and tracking of information related to the sale of wine under this Act and to
13 prescribe forms for the implementation of this Act.

14 Section 2. Any South Dakota licensee who holds a South Dakota license pursuant to § 35-
15 12-2 may ship no more than twelve cases of wine per shipment. A case may contain no more
16 than nine liters per case in any one shipment. Any wine sold may only be for personal use and
17 not for resale. The wine may only be sold directly to a resident of another state if the state to
18 which the wine is sent allows residents of the state to receive wine sent from outside that state.
19 The sale is considered to have occurred in this state.

20 Section 3. Any container of wine being shipped into or out of this state shall be clearly
21 labeled to indicate that it contains alcoholic beverages and that it may not be delivered to a
22 person who is not at least twenty-one years of age or to a person who is visibly intoxicated.

23 Section 4. Notwithstanding any other provision of law, any licensee who holds a valid license
24 in another state for the retail sale of wine for consumption off the licensed premise is permitted

1 to ship wine directly to any person in this state for personal use if such person purchases the wine
2 while physically present at the licensed premise and the licensee has verified that the person
3 purchasing the wine is of age. No licensee may ship more than twelve cases of wine in any
4 calendar year to a person in this state and no case may contain more than nine liters of wine. For
5 tax purposes, any sale of wine pursuant to this section is considered to have occurred in the state
6 where the licensee is located.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

907E0433

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 107 - 02/22/2001

Introduced by: Senators Munson, de Hueck, Everist, Volesky, and Whiting and
Representatives Michels, Brown (Jarvis), and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise and update certain provisions of the Uniform
2 Commercial Code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subsection (67) of subdivision (a) of § 57A-9-102 be amended to read as
5 follows:

6 (67) "Public-finance transaction" means a secured transaction in connection with which:

7 (A) Debt or other securities are issued; and

8 (B) ~~All or a portion of the securities issued have an initial stated maturity of at least~~
9 ~~20 years; and~~

10 ~~—————~~(C) The debtor, obligor, secured party, account debtor or other person obligated
11 on collateral, assignor or assignee of a secured obligation, or assignor or
12 assignee of a security interest is a State or a governmental unit of a State.

13 Section 2. That § 57A-9-109 be amended to read as follows:

14 57A-9-109. (a) Except as otherwise provided in subsections (c) and (d), this chapter applies

1 to:

2 (1) A transaction, regardless of its form, that creates a security interest in personal
3 property or fixtures by contract;

4 (2) An agricultural lien;

5 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

6 (4) A consignment;

7 (5) A security interest arising under § 57A-2-401, 57A-2-505, 57A-2-711(3), or
8 57A-2A-508(5), as provided in § 57A-9-110; and

9 (6) A security interest arising under § 57A-4-210 or 5-118.

10 (b) The application of this chapter to a security interest in a secured obligation is not affected
11 by the fact that the obligation is itself secured by a transaction or interest to which this chapter
12 does not apply.

13 (c) This chapter does not apply to the extent that:

14 (1) A statute, regulation, or treaty of the United States preempts this chapter;

15 (2) Another statute of this state expressly governs the creation, perfection, priority, or
16 enforcement of a security interest created by this state or a governmental unit of this
17 state;

18 (3) A statute of another state, a foreign country, or a governmental unit of another state
19 or a foreign country, other than a statute generally applicable to security interests,
20 expressly governs creation, perfection, priority, or enforcement of a security interest
21 created by the state, country, or governmental unit; or

22 (4) The rights of a transferee beneficiary or nominated person under a letter of credit are
23 independent and superior under § 57A-5-114.

24 (d) This chapter does not apply to:

- 1 (1) A landlord's lien, other than an agricultural lien;
- 2 (2) A lien, other than an agricultural lien, given by statute or other rule of law for services
3 or materials, but § 57A-9-333 applies with respect to priority of the lien;
- 4 (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- 5 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of
6 a sale of the business out of which they arose;
- 7 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes
8 which is for the purpose of collection only;
- 9 (6) An assignment of a right to payment under a contract to an assignee that is also
10 obligated to perform under the contract;
- 11 (7) An assignment of a single account, payment intangible, or promissory note to an
12 assignee in full or partial satisfaction of a preexisting indebtedness;
- 13 (8) A transfer of an interest in or an assignment of a claim under a policy of insurance,
14 other than an assignment by or to a health-care provider of a health-care-insurance
15 receivable and any subsequent assignment of the right to payment, but §§ 57A-9-315
16 and 57A-9-322 apply with respect to proceeds and priorities in proceeds;
- 17 (9) An assignment of a right represented by a judgment, other than a judgment taken on
18 a right to payment that was collateral;
- 19 (10) A right of recoupment or set-off, but:
 - 20 (A) Section 57A-9-340 applies with respect to the effectiveness of rights of
21 recoupment or set-off against deposit accounts; and
 - 22 (B) Section 57A-9-404 applies with respect to defenses or claims of an account
23 debtor;
- 24 (11) The creation or transfer of an interest in or lien on real property, including a lease or

1 rents thereunder, except to the extent that provision is made for:

2 (A) Liens on real property in §§ 57A-9-203 and 57A-9-308;

3 (B) Fixtures in § 57A-9-334;

4 (C) Fixture filings in §§ 57A-9-501, 57A-9-502, 57A-9-512, 57A-9-516, and
5 57A-9-519; and

6 (D) Security agreements covering personal and real property in § 57A-9-604;

7 (12) An assignment of a claim arising in tort, other than a commercial tort claim, but
8 §§ 57A-9-315 and 57A-9-322 apply with respect to proceeds and priorities in
9 proceeds;

10 (13) A transfer or security interest made or created by a state or any governmental unit;

11 (14) An assignment of a deposit account in a consumer transaction, but §§ 57A-9-315 and
12 57A-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

13 ~~(14)~~(15) The pledging or segregating of collateral for public deposits as authorized by
14 § 51-22-12, chapter 52-5, and chapter 4-6A;

15 (16) An assignment of a claim or right to receive compensation for injuries or sickness as
16 described in 26 U.S.C. § 104(a)(1) or (2), as amended to January 1, 2001; or

17 (17) An assignment of a claim or right to receive benefits under a special needs trust as
18 described in 42 U.S.C. § 1396p(d)(4), as amended to January 1, 2001.

19 Section 3. That § 57A-9-515 be amended to read as follows:

20 57A-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed
21 financing statement is effective for a period of five years after the date of filing. Financing
22 statements filed before July 1, 1997, are effective for a period of five years from the date of filing
23 and thereafter for a period of 60 days.

24 The expiration date established by a financing statement filed prior to July 1, 1997, whether

1 or not continued by a continuation statement shall remain in full force and effect and is not
2 diminished by any subsequent amendments to this chapter.

3 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement
4 filed in connection with a ~~public-finance transaction or manufactured-home transaction~~ is effective
5 for a period of 30 years after the date of filing if it indicates that it is filed in connection with a
6 ~~public-finance transaction or manufactured-home transaction~~.

7 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of
8 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection

9 (d). Upon lapse, a financing statement ceases to be effective and any security interest or
10 agricultural lien that was perfected by the financing statement becomes unperfected, unless the
11 security interest is perfected otherwise. If the security interest or agricultural lien becomes
12 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the
13 collateral for value.

14 (d) A continuation statement may be filed only within six months before the expiration of the
15 five-year period specified in subsection (a) or the 30-year period specified in subsection (b),
16 whichever is applicable.

17 However, for financing statements filed before July 1, 1997, a continuation statement may be
18 filed within six months before and 60 days after the expiration of the five-year period.

19 (e) Except as otherwise provided in § 57A-9-510, upon timely filing of a continuation
20 statement, the effectiveness of the initial financing statement continues for a period of five years
21 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial
22 financing statement continues for a period of five years and sixty days, commencing on the day
23 on which the financing statement would have become ineffective in the absence of the filing. Upon
24 the expiration of the five-year period, the financing statement lapses in the same manner as

1 provided in subsection (c), unless, before the lapse, another continuation statement is filed
2 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner
3 to continue the effectiveness of the initial financing statement.

4 (f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing
5 statement is effective until a termination statement is filed.

6 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing
7 under § 57A-9-502(c) remains effective as a financing statement filed as a fixture filing until the
8 mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real
9 property.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

445E0168

HOUSE ENGROSSED NO. **SB 228** - 02/23/2001

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person convicted of a felony and currently serving a term of imprisonment may
5 file a petition in the circuit court that entered the judgment of conviction in the person's case
6 requesting performance of forensic deoxyribonucleic acid (DNA) testing. The petition shall be
7 served on the state's attorney in the county of conviction. Any response shall be filed within sixty
8 days of the date on which the state's attorney was served with the petition.

9 Section 2. Before the court may grant the petition, the petitioner shall demonstrate that post-
10 conviction DNA analysis will:

- 11 (1) Meet the current test for scientific reliability;
- 12 (2) Show that the petitioner would be entitled to the testing and that the results would be
13 admissible if the case were being presently tried;

1 (3) Show that a favorable test result would most likely produce an acquittal in a new trial;
2 and

3 (4) Show that the testing will not impose an unreasonable burden on the state.

4 Section 3. The court, in its discretion, may order a hearing on the petition. The court may
5 appoint legal counsel for the petitioner, pursuant to chapter 23A-40, if the court determines that
6 person is indigent and that appointment is in the best interests of justice.

7 Section 4. The court may grant the petition for DNA testing if it determines that petitioner
8 has met the four factors to test set out in section 2 of this Act and that DNA testing is suitable
9 under the circumstances. If the court grants the petition for DNA testing, the court order shall
10 identify the specific evidence to be tested and the DNA technology to be used. The testing shall
11 be conducted by a laboratory mutually agreed upon by the state and the person filing the petition.
12 If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing.

13 Section 5. The result of any testing ordered under this Act shall be fully disclosed to the
14 person filing the petition and the state's attorney.

15 Section 6. Any law enforcement agency of the state shall retain any biological material
16 secured in connection with a criminal case for the period of time that any person remains
17 incarcerated in connection with that case. The agency may determine how the evidence is
18 retained. However, the evidence shall be retained in a condition suitable for further DNA testing.