

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

562H0395

SENATE ENGROSSED NO. **HB 1164** - 02/19/2002

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

Introduced by: Representatives Van Etten, Brown (Jarvis), Eccarius, Madsen, Michels, Monroe, Murschel, and Olson (Mel) and Senators Bogue, Craddock, Everist, and Hutmacher

1 FOR AN ACT ENTITLED, An Act to abrogate the loss of chance doctrine as set forth in
2 Jorgenson v. Vener.

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

4 Section 1. The Legislature finds that in those actions founded upon an alleged want of
5 ordinary care or skill the conduct of the responsible party must be shown to have been the
6 proximate cause of the injury complained of. The Legislature also finds that the application of
7 the so called loss of chance doctrine in such cases improperly alters or eliminates the requirement
8 of proximate causation. Therefore, the rule in Jorgenson v. Vener, 2000 SD 87, 616 N.W. 2nd
9 366 (2000) is hereby abrogated.

10 Section 2. The Legislature intends only to abrogate the loss of chance doctrine expressly
11 adopted by the court, thereby returning the common law of this state to its status immediately
12 prior to the court's decision. The Legislature does not intend to affect any other rule or principle
13 of statutory or common law, including but not limited to, aggravation of preexisting injuries,
14 proximate causation, and the requirement of informed consent for all medical treatment.

