

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

562H0395

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

## HB 1164 - 02/14/2002

**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 the application of the loss of chance doctrine enunciated  
5 by the South Dakota Supreme Court in *Jorgenson v. Vener*, 2000 SD 87, 616 NW2d 366  
6 improperly alters the requirements of causation. However, the Legislature also finds that the  
7 abrogation of the court's decision would leave certain patients or other individuals without a  
8 standard of care. Therefore, the Legislature adopts the substantial factor test in medical  
9 malpractice actions as set forth in the concurring opinion of Justice Amundson in *Jorgenson v.*  
10 *Vener*, 2000 SD 87, 616 NW2d 366.

