

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 177** - 02/08/2002

Introduced by: Senators Hutmacher and Koskan and Representatives Juhnke and Jensen

1 FOR AN ACT ENTITLED, An Act to revise and modify certain provisions relating to the award
2 of child custody and to declare an emergency.

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

4 Section 1. That § 25-5-7 be amended to read as follows:

5 25-5-7. The father and mother of an unmarried minor child are equally entitled to the child's
6 custody, service, and earnings. If either the father or mother is dead, or refuses to ~~take the~~
7 assume custody, or ~~has abandoned~~ abandons the family, the other is entitled to the child's
8 custody, service, and earnings. If a sole surviving parent or both parents abandons the child, the
9 court may award custody of the child to a third person pursuant to section 4 of this Act.

10 Section 2. A parent's presumptive right to custody of his or her child may be rebutted by
11 clear and convincing proof that the parent is unfit, has abandoned the child, or has forfeited or
12 otherwise surrendered his or her custodial rights over the child to a third person who stands,
13 constructively or legally, in loco parentis.

14 Section 3. Nothing in section 2 of this Act creates any right on behalf of a stepparent to seek
15 custody or visitation with a stepchild who has lived with that stepparent merely because the



1 stepparent was married to or living with the child's biological parent.

2 Section 4. Any person other than the parent of the child may intervene or petition a court of
3 competent jurisdiction for custody or visitation of any child in his or her immediate care if the
4 petitioner has had the child in his or her care and control for a year or more. To prevail, the
5 petitioner must establish that the sole surviving parent or both parents:

- 6 (1) Abandoned his or her parental rights over the child during the time the child was in
7 the care and control of the petitioner; or
- 8 (2) Forfeited or surrendered his or her parental rights over the child to any third party
9 during the time the child was in the care and control of the petitioner; or
- 10 (3) Failed to persistently assert and exercise his or her parental rights over the child and
11 made good faith efforts to fulfill his or her parental duties and obligations to the child
12 during the time the child was in the care and control of the petitioner; or
- 13 (4) That awarding custody to the biological parent would cause serious detriment to the
14 child.

15 Section 5. Serious detriment to a child exists whenever there is proof of one or more of the
16 following extraordinary circumstances:

- 17 (1) The abandonment or persistent neglect of the child by the parent;
- 18 (2) The likelihood of serious physical or emotional harm to the child if placed in the
19 parent's custody;
- 20 (3) The extended, unjustifiable absence of parental custody;
- 21 (4) The abdication of parental responsibilities;
- 22 (5) The provision of the child's physical, emotional, and other needs by persons other than
23 the parent over a significant period of time;
- 24 (6) The existence of a bonded relationship between the child and the person other than

1 the parent sufficient to cause significant emotional harm to the child in the event of
2 a change in custody;

3 (7) The substantial enhancement of the child's well-being while under the care of the
4 person other than the parent;

5 (8) The extent of the parent's delay in seeking to reacquire custody of the child;

6 (9) The demonstrated quality of the parent's commitment to raising the child;

7 (10) The likely degree of stability and security in the child's future with the parent;

8 (11) The extent to which the child's right to an education would be impaired while in the
9 custody of the parent; or

10 (12) Any other circumstances that would substantially and adversely impact the welfare of
11 the child.

12 Section 6. If a court determines that a petitioner pursuant to section 4 of this Act should be
13 awarded custody or visitation, the court need not terminate either biological parent's parental
14 rights over the child. A judgment awarding the petitioner custodial rights may award the
15 biological parent with visitation rights with the child.

16 Section 7. If a court awards a third party custodial rights to a child, the court may set child
17 support in whatever amount it deems appropriate, and notwithstanding the provisions of any
18 other statute to the contrary, may waive the biological parent's duty to provide monetary or other
19 support for their child.

20 Section 8. Whereas, this Act is necessary for the immediate preservation of the public peace,
21 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
22 effect from and after its passage and approval.