State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691 **SENATE JUDICIARY COMMITTEE ENGROSSED NO.**

SB 177 - 01/25/2002

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

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

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

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

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

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

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

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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

Section 4. Any person other than the parent of the child may petition a court of competent jurisdiction for custody or visitation of any child in his or her immediate care if the petitioner has had the child in his or her care and control for a year or more. Either biological parent may rebut the petition by presenting evidence that he or she:

(1) Did not abandon his or her parental rights over the child during the time the child was in the care and control of the petitioner; or

(2) Did not forfeit or surrender his or her parental rights over the child to any third party during the time the child was in the care and control of the petitioner; or

(3) Persistently asserted and exercised his or her parental rights over the child and made good faith efforts to fulfill his or her parental duties and obligations to the child during the time the child was in the care and control of the petitioner.

Section 5. If a court determines that a petitioner pursuant to section 4 of this Act should be awarded custody or visitation, the court need not terminate either biological parent's parental rights over the child. A judgment awarding the petitioner custodial rights may award the biological parent with visitation rights with the child.

Section 6. If a court awards a third party custodial rights to a child, the court may set child support in whatever amount it deems appropriate, and notwithstanding the provisions of any other statute to the contrary, may waive the biological parent's duty to provide monetary or other support for their child.