

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0194

SENATE ENGROSSED NO. **HB 1038** - 02/04/2002

Introduced by: The Committee on Transportation at the request of the Department of
Commerce and Regulation

1 FOR AN ACT ENTITLED, An Act to authorize certain law enforcement vehicles to exceed
2 speed limits without the use of an audible siren, air horn, or flashing emergency lights under
3 certain conditions.

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

5 Section 1. That § 32-31-4 be amended to read as follows:

6 32-31-4. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to
7 any authorized emergency vehicle responding to an emergency call if the driver sounds an audible
8 siren or air horn, or both, and displays flashing, oscillating, or rotating beams of red light or
9 combinations of red, blue, or white light visible one hundred eighty degrees to the front of the
10 vehicle. The lights shall be capable of warning the public of the presence of an emergency vehicle
11 under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17,
12 inclusive, does not apply to any certified authorized emergency ~~vehicles~~ vehicle operated by any
13 law enforcement ~~officers~~ officer who ~~are~~ is measuring the speed of other vehicles by use of the
14 emergency vehicle speedometer, while any certified law enforcement officer is overtaking an
15 actual or suspected violator of the law, or while any certified law enforcement officer is



1 responding to an emergency call. Moreover, the driver of an ambulance who has been certified
2 pursuant to § 34-11-6 may operate the emergency vehicle in excess of the speed limit without
3 audible signals while operating outside the city limits of a municipality.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

876H0401

SENATE ENGROSSED NO. **HB 1170** - 02/08/2002

Introduced by: Representatives McCoy, Abdallah, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, Olson (Mel), and Van Gerpen and Senators Staggers, Volesky, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding assaults against law
2 enforcement personnel and certain emergency personnel and to provide a criminal penalty
3 therefor.

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

5 Section 1. Any person who, with the intent to assault, throws, smears, or causes human
6 blood, emesis, mucus, semen, excrement, or human waste to come in contact with a law
7 enforcement officer as defined in subdivision 22-1-2(22), a firefighter, or an emergency medical
8 technician, while performing official duties or actions, is guilty of a Class 1 misdemeanor.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

942H0416

SENATE ENGROSSED NO. **HB 1172** - 02/08/2002

Introduced by: Representatives Jensen, Bartling, Broderick, Pederson (Gordon), and Pitts and
Senators Vitter, Brown (Arnold), de Hueck, and Hagen

1 FOR AN ACT ENTITLED, An Act to modify the duration period and signing requirements for
2 vehicle weight restrictions.

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

4 Section 1. That § 32-22-24 be amended to read as follows:

5 32-22-24. The maximum axle and axle group loadings as set forth in § 32-22-16 shall be
6 reduced during the period of each year from February fifteenth to April thirtieth, inclusive. The
7 proper highway authority, responsible for maintenance of the highways, shall set reduced load
8 limits during this period and may increase, lessen, or remove these restrictions if highway
9 conditions warrant. That authority may be exercised without formal resolution if the highway
10 authority erects or causes to be erected and maintained signs designating the restrictions. If
11 highway and climatic conditions warrant, the proper highway authority may extend the time
12 period mentioned in this section by ordinance or resolution. Nothing in this requirement,
13 however, removes or interferes with the proper highway authority imposing restrictions as set
14 forth in §§ 32-14-6, 32-14-7, and 32-22-25 to ~~32-22-27~~, inclusive. Moreover, during the time
15 period mentioned in this section the transportation commission may, pursuant to § 32-22-42,



1 allow the issuance of overweight permits to heavier vehicles to permit ~~them~~ such vehicles to be
2 operated on those highways which the commission designates as capable of handling heavier
3 loads. A violation of this section is a Class 2 misdemeanor.

4 Section 2. That § 32-22-25 be amended to read as follows:

5 32-22-25. If, for any reason, the improved highways of this state are rendered incapable of
6 bearing the customary traffic without undue damage, or if it is considered by the Department of
7 Transportation ~~or~~ the county highway superintendent board of county commissioners of any
8 county, the board of supervisors of any township, or the board of trustees of any road district,
9 that the improved highways or any section of them under their jurisdiction would be damaged
10 or destroyed by heavy traffic by reason of thawing or excessive moisture, or for any reason, the
11 maximum weight of the vehicle and the load shall be reduced. Notice of any restriction under this
12 section shall be given by placing at ~~the beginning and~~ each end of that section of highway on
13 which the allowable weight limit is reduced and at points of intersection, as deemed necessary
14 by the proper highway authority, signs of substantial construction which conspicuously indicate
15 the limitations of the gross weight of the vehicle. Exceeding such weight limits is a Class 2
16 misdemeanor.

17 Section 3. That § 32-14-6 be amended to read as follows:

18 32-14-6. Local authorities, including road districts, may by ordinance or resolution prohibit
19 the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles
20 ~~for a total period not to exceed ninety days in any one calendar year~~ allowed. Such prohibitions
21 or restrictions apply only to vehicles to be operated upon any highway under the jurisdiction of
22 and for the maintenance of which such local authorities are responsible and only if the highway
23 by reason of ~~deterioration~~ physical condition, rain, snow, or other climatic conditions will be
24 seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the

1 permissible weights of the vehicles are reduced. Any local authority enacting any such ordinance
2 or resolution shall erect and maintain or cause to be erected and maintained signs designating the
3 provisions of the ordinance or resolution at each end of that portion of any highway affected by
4 the ordinance or resolution. The ordinance or resolution is not valid unless such signs are erected
5 and maintained.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

528H0299

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1180 - 02/04/2002

Introduced by: Representatives Monroe, Bartling, Madsen, and Napoli and Senator Apa

1 FOR AN ACT ENTITLED, An Act to increase the amount of the lien that is permitted on the
2 parents of a minor child for whom legal counsel has been provided.

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

4 Section 1. That § 23A-40-11 be amended to read as follows:

5 23A-40-11. A lien, enforceable as provided by this chapter, upon all the property, both real
6 and personal, of any person, including the parents of a minor child, for whom legal counsel or
7 a public defender has been appointed under the provisions of § 23A-40-6, subdivisions
8 23A-40-7(2) and (3), or § 26-7A-31 may be filed. The services rendered and expenses incurred
9 are a claim against the person and that person's estate, enforceable according to law in an amount
10 to be determined by a judge of the circuit court or a magistrate judge and paid by the county or
11 municipality chargeable for them. A lien on the parents of a minor child pursuant to this section
12 may not exceed one thousand five hundred dollars plus an amount equal to any taxable court
13 costs.

14 Section 2. That § 26-7A-32 be amended to read as follows:

15 26-7A-32. There is hereby created a lien, enforceable as provided in chapter 23A-40, upon



1 all the property, both real and personal, of the parents, jointly or severally, of any child involved
2 in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C to repay funds paid by the
3 county for a court-appointed attorney for the child's parents or by the county or the state for the
4 child. The county, on behalf of the county or the state, shall have a claim against the parents and
5 their estates, jointly or severally, as provided in chapter 23A-40.

6 However, except in the case of informal adjustment or suspended imposition of adjudication,
7 no lien or claim against the parents of a child may be created or may arise if the child is not
8 adjudicated to be an abused or neglected child, a child in need of supervision or a delinquent
9 child at the completion of the adjudicatory hearing and the proceedings are terminated.

10 The lien and claim on the property of the parents of a child pursuant to this section may not
11 exceed one thousand five hundred dollars plus an amount equal to any taxable court costs. This
12 limit does not apply to any claim or lien against the parents of a child adjudicated to be an abused
13 or neglected child.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

673H0456

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1189 - 02/04/2002

Introduced by: Representatives Wick, Abdallah, Adelstein, Brown (Richard), Duniphan, Hennies (Thomas), Holbeck, Hundstad, Jensen, McCaulley, Peterson (Bill), and Smidt and Senators Munson, Greenfield, Koetzle, Koskan, Olson (Ed), and Staggers

1 FOR AN ACT ENTITLED, An Act to establish the crime of air piracy.

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

3 Section 1. That chapter 22-30 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any person who obtains physical control of any aircraft registered pursuant to the provisions
6 of chapter 50-11 by means of inflicting or threatening to inflict serious bodily harm or death on
7 any person is guilty of air piracy.

8 A violation of this section that results in the death of any person is a Class B felony. Any
9 other violation of this section is a Class 1 felony.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

453H0098

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1222** - 02/04/2002

Introduced by: Representative Holbeck and Senators Diedtrich (Elmer), Daugaard, Dennert,
Olson (Ed), and Reedy

1 FOR AN ACT ENTITLED, An Act to provide for the compensation of librarians and library
2 employees.

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

4 Section 1. That § 14-2-40 be amended to read as follows:

5 14-2-40. Each board of public library trustees shall:

- 6 (1) Appoint a librarian to serve at the pleasure of the board. Any paid librarian shall
7 receive any employee benefits provided all other employees of the local governmental
8 unit and shall be compensated at rates determined by the governing body's
9 compensation schedule, if such schedule exists. If no such schedule exists, the salary
10 shall be set by the local governing body;
- 11 (2) Adopt bylaws for the conduct of their business and adopt policies for the selection of
12 public library materials, the governance of the library, and the use of public library
13 services and materials;
- 14 (3) Prepare and submit an annual budget request to its governing body;



- 1 (4) Adopt a final annual budget within those funds certified to it as being appropriated in
- 2 the annual budget of its governing body;
- 3 (5) Meet at least once during each quarter of the year;
- 4 (6) Prepare and submit an annual report to its governing body and to the South Dakota
- 5 State Library on such forms as may be provided by the State Library.

6 Section 2. That § 14-2-42 be amended to read as follows:

7 14-2-42. Each librarian shall:

- 8 (1) Serve as secretary to the board of public library trustees and keep all its records;
- 9 (2) Prepare such reports, budgets, and other documents as are required by the board of
- 10 public library trustees or are required of ~~said~~ the board by its governing body;
- 11 (3) Appoint such staff as are necessary to operate the public library within its budgetary
- 12 limitations. Library employees shall receive any employee benefits provided all other
- 13 employees of the local-governing governmental unit and shall be compensated at rates
- 14 determined by the governing body's compensation schedule. If no such schedule
- 15 exists, the salary shall be set by the library board;
- 16 (4) Select and purchase all public library materials for use by the library in its provision
- 17 of public library services within policies established by the board of public library
- 18 trustees;
- 19 (5) Publish and enforce the policies of the board of public library trustees;
- 20 (6) Execute all contracts and agreements approved by the board of public library trustees;
- 21 (7) Keep an accurate account of the financial transactions of the public library; and
- 22 (8) Carry out any other activities authorized by law that the board of public library
- 23 trustees consider appropriate in the development, improvement, and provision of
- 24 public library services.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0216

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 32** - 01/15/2002

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to require photo identification for all aeronautics operations,
2 to increase the pilot registration fee, and to declare an emergency.

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

4 Section 1. That § 50-11-24 be amended to read as follows:

5 50-11-24. Any person operating any aircraft within this state shall, except as otherwise
6 expressly provided, biennially, on or before the thirty-first day of March, register with the
7 secretary of transportation, ~~his~~ the person's federal airman's certificate issued under the authority
8 of the United States and shall biennially pay to the secretary a fee of ~~fifteen~~ twenty dollars.
9 Failure to register and pay the fee before the time set by this section is a Class 2 misdemeanor.
10 ~~Certificates~~ A certificate showing ~~such~~ the registration may be issued by the ~~director~~ secretary
11 as the Aeronautics Commission deems proper ~~and the~~. The commission may prescribe
12 requirements for the possession and exhibition ~~thereof~~ of the certificate.

13 Section 2. That chapter 50-11 be amended by adding thereto a NEW SECTION to read as
14 follows:



1 Any airport employee, airline employee, and any employee of a fixed base operator or a
2 charter service, unless otherwise required by federal law or regulation, shall have in possession
3 while on duty at the airport a state-issued photo identification badge. The Aeronautics
4 Commission shall promulgate rules pursuant to chapter 1-26 specifying display of the badge;
5 indications on the badge regarding the scope of the person's access and movement privileges at
6 an airport; personal information including full name, employer, and identification number;
7 procedures regarding the production, issuance, retrieval, and replacement of badges; and the
8 length of time for which the badge is valid.

9 The commission shall, by rules promulgated pursuant to chapter 1-26, establish the fee for
10 a badge. The fee shall be based on the cost to produce the badge but may not exceed ten dollars.
11 Any fee collected shall be deposited into the state aeronautics fund.

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0284

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 43** - 01/14/2002

Introduced by: The Committee on State Affairs at the request of the Department of Game,
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to permit the recording of certain deeds to or from the State
2 of South Dakota without platting.

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

4 Section 1. That chapter 43-30 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any conveyance of property to or by South Dakota or any of its political subdivisions
7 obtained from the United States of America, acting by and through the Secretary of the Army,
8 pursuant to and under authority of title VI of the Water Resources Development Act of 1999
9 (Public Law 106-53) as amended by the Water Resources Development Act of 2000 (Public Law
10 106-541), or any portion thereof, that is described by individual or cumulative metes and bounds
11 descriptions or that is described by points of beginning and termination, water or contour
12 elevations, federal engineering survey references, maps, highways, and other rights-of-way is
13 exempt from the provisions of chapter 11-3 and chapter 43-21, provided the description contains
14 references to the affected section, township, and range. The grantee shall furnish, if available, any



1 copies of federal engineering survey references, maps, rights-of-way, and other documents
2 describing conveyances of the property to or by South Dakota or any of its political subdivisions
3 to the director of equalization in each county wherein the conveyances are filed. The exemption
4 contained in this section does not apply to any conveyance of property title to private ownership.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0255

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 48** - 01/16/2002

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

1 FOR AN ACT ENTITLED, An Act to expand the Board of Pardons and Paroles to nine
2 members.

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

4 Section 1. That § 24-13-1 be amended to read as follows:

5 24-13-1. The Board of Pardons and Paroles shall consist of ~~six~~ nine members. ~~Two~~ Three
6 members shall be appointed by the Governor; at least one shall be an attorney. ~~Two~~ Three
7 members shall be appointed by the attorney general; ~~one of whom~~ at least one shall be an
8 attorney. ~~Two~~ Three members shall be appointed by the Supreme Court; ~~one of whom~~ at least
9 one shall be an attorney. Each member of the board shall be a resident of South Dakota and be
10 appointed with the advice and consent of the Senate.

11 Section 2. That § 24-13-2 be amended to read as follows:

12 24-13-2. The members of the board shall serve for terms of four years. Members are eligible
13 for reappointment. The Governor, the attorney general, and the Supreme Court each shall
14 appoint ~~two~~ three members, whose terms shall expire on the third Monday in January of the



1 fourth year after appointment. Each member shall serve until ~~his~~ a successor takes office as
2 provided by law. In case of a vacancy, the appointing power shall make an interim appointment
3 to expire at the end of the next legislative session.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

490H0285

SENATE ENGROSSED NO. **SB 58** - 01/25/2002

Introduced by: Senators Brown (Arnold), Albers, Craddock, Daugaard, Diedrich (Larry), Everist, Greenfield, Ham, Hutmacher, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Michels, Davis, Frost, Fryslie, Glenski, Hunhoff, McCoy, Pitts, Solum, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish a nursing workforce center under the direction
2 of the Board of Nursing and to provide funding through a fee assessed upon nursing license
3 renewal.

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

5 Section 1. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Board of Nursing shall establish a nursing workforce center. The board shall charge a
8 fee of ten dollars upon the biennial renewal of each registered nurse and practical nurse license
9 in addition to the license renewal fee for the funding of the nursing workforce center. Donations
10 and bequests from persons to further the intent of the nursing workforce center or additional
11 funds designated by the board may also be accepted and placed in the restricted fund.

12 Section 2. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as
13 follows:



1 The nursing workforce center may address issues regarding the supply, demand, and need
2 for nurses, including issues of recruitment, retention, educational preparation, and utilization of
3 nurses. In addition, the nursing workforce center may:

- 4 (1) Maintain a database on the supply, demand, and need for nurses in the state;
- 5 (2) Convene representatives of nurses, health care providers, consumers, educators,
6 government officials, and other individuals in business and industry to review and
7 comment on data analysis; make recommendations for strategic action; and evaluate
8 effectiveness of actions implemented;
- 9 (3) Provide electronic access to comprehensive information and research conducted by
10 the nursing workforce center;
- 11 (4) Evaluate the effectiveness of nursing education articulation and support for nursing
12 education mobility;
- 13 (5) Promote strategies to improve nursing workplace environments and promote nursing
14 leadership development; and
- 15 (6) Evaluate the effectiveness of state initiatives implemented to address nursing
16 workforce capacities and requirements.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

970H0510

SENATE ENGROSSED NO. **SB 73** - 01/31/2002

Introduced by: Senators Moore, Albers, Brosz, Dennert, Duxbury, Everist, Ham, Hutmacher, Munson, and Sutton (Dan) and Representatives Michels, Burg, Flowers, Gillespie, Hanson (Gary), Hunhoff, Madsen, Napoli, Olson (Mel), Peterson (Bill), and Sigdestad

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of prepaid adult entertainment cards and
2 to provide a penalty therefor.

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

4 Section 1. For the purposes of this Act, a prepaid adult entertainment card is a product,
5 either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder
6 to access one or more erotic or pornographic internet sites by means of a predetermined user
7 identification and password unique to each card.

8 Section 2. It is a Class 1 misdemeanor to sell, give, or distribute any prepaid adult
9 entertainment card or any prepaid adult entertainment telephone card to any person under
10 eighteen years of age.

11 Section 3. A prepaid adult entertainment telephone card is a product, either sold at
12 wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one
13 or more adult entertainment telephone services for a predetermined number of minutes by means
14 of a telephone number and an access code or password unique to each card.



1 Section 4. Any person who knowingly participates in any conduct proscribed by this Act is
2 liable for civil damages.

3 Section 5. Any of the following persons may bring an action for damages caused by another
4 person's conduct as proscribed by this Act:

- 5 (1) The victimized minor;
- 6 (2) A parent, legal guardian, or sibling of a victimized minor; or
- 7 (3) Any person injured as a result of the willful, reckless, or negligent actions of a person
8 who knowingly participated in conduct proscribed by this Act.

9 If the parent or guardian is named as a defendant in the action, the court shall appoint a
10 special guardian to bring the action on behalf of the minor.

11 Section 6. Any person entitled to bring an action under section 5 of this Act may seek
12 damages from any person who knowingly participated in the sale or in the chain of distribution
13 of any prepaid adult entertainment card or any prepaid adult entertainment telephone card
14 proscribed by this Act.

15 Section 7. Any person entitled to bring an action under section 5 of this Act may recover all
16 of the following damages:

- 17 (1) Economic damages, including the cost of treatment and rehabilitation, medical
18 expenses, loss of economic or educational potential, loss of productivity, absenteeism,
19 support expenses, accidents or injury, and any other pecuniary loss proximately
20 caused by the proscribed conduct;
- 21 (2) Noneconomic damages, including physical and emotional pain, suffering, physical
22 impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss
23 of companionship, services, and consortium, and other nonpecuniary losses
24 proximately caused by the proscribed conduct;

1 (3) Exemplary damages;

2 (4) Attorneys' fees; and

3 (5) Disbursements.

4 Section 8. Any action for damages under this Act shall be commenced within six years of the
5 time the plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The
6 knowledge of a parent, guardian, or custodian may not be imputed to the minor.

7 For a plaintiff, the statute of limitations under this section is tolled while any potential
8 plaintiff is incapacitated by minority.

9 Section 9. As a public nuisance, all prepaid adult entertainment cards and prepaid adult
10 entertainment telephone cards are subject to seizure and destruction without compensation by
11 any law enforcement agency with appropriate jurisdiction.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

734H0534

HOUSE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 93** - 02/08/2002

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

Introduced by: Senators Madden, de Hueck, Everist, Greenfield, Ham, Hutmacher, Koskan, McIntyre, Olson (Ed), Staggers, Sutton (Dan), and Whiting and Representatives Peterson (Bill), Adelstein, Begalka, Broderick, Clark, Duenwald, Frost, Heineman, Klaudt, Napoli, Olson (Mel), Pitts, Valandra, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish certain requirements for genetic testing.

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

3 Section 1. That chapter 34-14 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If a genetic test, as defined in § 34-14-21, is required or authorized by state law, or
6 performed in the state, the test shall be performed in a laboratory accredited by the College of
7 American Pathologists, the Joint Commission on Accreditation of Healthcare Organizations, or
8 any accreditation body approved by the United States Secretary of Health and Human Services
9 and which has requirements that are substantially equivalent to, or more comprehensive than,
10 those of the College of American Pathologists. In addition, the laboratory shall be enrolled in a
11 proficiency testing program sponsored by an organization approved by the Centers for Medicare
12 and Medicaid Services. Nothing in this section alters the ability of the state health laboratory to



1 perform genetic tests.

2 Section 2. That § 34-14-24 be amended to read as follows:

3 34-14-24. Nothing in §§ 34-14-21 to 34-14-24, inclusive, or section 1 of this Act, alters the
4 ability to perform genetic tests done in pursuance of a lawful criminal investigation or court
5 order.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

592H0680

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 169 - 01/28/2002

Introduced by: Senators Daugaard and Volesky and Representatives Michels and McCaulley

1 FOR AN ACT ENTITLED, An Act to amend the Uniform Limited Partnership Act to provide
2 limited liability limited partnerships.

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

4 Section 1. That chapter 48-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 48-7-1106. (a) A limited partnership may become a limited liability limited partnership by:

7 (1) Obtaining approval of the terms and conditions of the limited partnership becoming
8 a limited liability limited partnership by the vote necessary to amend the limited
9 partnership agreement except, in the case of a limited partnership agreement that
10 expressly considers contribution obligations, the vote necessary to amend those
11 provisions;

12 (2) Filing a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership
13 Act; and

14 (3) Having as the last words or letters of its name the words "Registered Limited Liability
15 Limited Partnership," or the abbreviation "L.L.L.P.," or the designation "LLL.P."



1 (b) A limited liability limited partnership continues to be the same entity that existed before
2 the filing of a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership Act.

3 (c) Sections 48-7A-306(c) and 48-7A-307(b) of the Uniform Partnership Act apply to both
4 general and limited partners of a limited liability limited partnership. Section 48-7-303 also
5 applies to limited partners.

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.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0719

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 183** - 02/08/2002

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

1 FOR AN ACT ENTITLED, An Act to prohibit misleading unsolicited commercial e-mails.

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

3 Section 1. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Terms used in this Act mean:

6 (1) "Assist the transmission," actions taken by a person to provide substantial assistance
7 or support that enables any person to formulate, compose, send, originate, initiate, or
8 transmit a commercial electronic mail message if the person providing the assistance
9 knows or consciously avoids knowing that the initiator of the commercial electronic
10 mail message is engaged, or intends to engage, in any practice that violates this
11 chapter;

12 (2) "Commercial electronic mail message," an electronic mail message sent for the
13 purpose of promoting real property, goods, or services for sale or lease. The term
14 does not mean an electronic mail message to which an interactive computer service
15 provider has attached an advertisement in exchange for free use of an electronic mail



1 account, if the sender has agreed to such an arrangement;

2 (3) "Electronic mail address," a destination, commonly expressed as a string of
3 characters, to which electronic mail may be sent or delivered;

4 (4) "Initiate the transmission," the action by the original sender of an electronic mail
5 message. The term does not refer to the action by any intervening interactive
6 computer service that may handle or retransmit the message, unless such intervening
7 interactive computer service assists in the transmission of an electronic mail message
8 if it knows, or consciously avoids knowing, that the person initiating the transmission
9 is engaged, or intends to engage, in any act or practice that violates this chapter;

10 (5) "Interactive computer service," any information service, system, or access software
11 provider that provides or enables computer access by multiple users to a computer
12 server, including specifically a service or system that provides access to the internet
13 and systems operated or services offered by libraries or educational institutions;

14 (6) "Internet domain name," a globally unique, hierarchical reference to an internet host
15 or service, assigned through centralized internet naming authorities, comprising a
16 series of character strings separated by periods, with the right-most string specifying
17 the top of the hierarchy.

18 Section 2. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 No person may initiate the transmission, conspire with another to initiate the transmission,
21 or assist the transmission, of a commercial electronic mail message from a computer located in
22 South Dakota or to an electronic mail address that the sender knows, or has reason to know, is
23 held by a South Dakota resident that:

24 (1) Uses a third party's internet domain name without permission of the third party, or

1 otherwise misrepresents or obscures any information in identifying the point of origin
2 or the transmission path of a commercial electronic mail message; or

3 (2) Contains false or misleading information in the subject line.

4 For purposes of this section, a person knows that the intended recipient of a commercial
5 electronic mail message is a South Dakota resident if that information is available, upon request,
6 from the registrant of the internet domain name contained in the recipient's electronic mail
7 address.

8 Section 3. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The Legislature finds that the practices covered by this Act are matters vitally affecting the
11 public interest for the purpose of protecting the public. A violation of this Act is not reasonable
12 in relation to the development and preservation of business and is an unfair or deceptive act in
13 trade or commerce and an unfair method of competition for the purpose of applying this chapter.

14 Section 4. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 An interactive computer service may, upon its own initiative, block the receipt or
17 transmission through its service of any commercial electronic mail that it reasonably believes is,
18 or will be, sent in violation of this Act.

19 No interactive computer service is liable for any action voluntarily taken in good faith to
20 block the receipt or transmission through its service of any commercial electronic mail which it
21 reasonably believes is, or will be, sent in violation of this Act.

22 Section 5. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 A recipient or a provider of internet access services may bring either or both of the following

1 actions:

2 (1) An action based on a violation of section 2 of this Act to enjoin such violation.

3 (2) An action to recover damages for such a violation in an amount equal to the greater
4 of:

5 (a) The amount of the actual monetary loss; or

6 (b) Five hundred dollars for each violation, not to exceed a total of ten thousand
7 dollars.

8 If the court finds that the defendant willfully, knowingly, or repeatedly violated section 2 of
9 this Act, the court may increase the amount of the award to an amount equal to not more than
10 three times the amount available under this section.

11 In any such action, the court may require an undertaking for the payment of the costs of such
12 action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

13 At the request of any party to an action brought pursuant to this section or any other
14 participant in such an action, the court may issue protective orders and conduct legal proceedings
15 in such a way as to protect the secrecy and security of the computer, computer network,
16 computer data, computer program, and computer software involved in order to prevent possible
17 recurrence of the same or a similar act by another person and to protect any trade secrets of any
18 such party or participant.

19 Section 6. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 A commercial electronic mail message shall include in the subject line of each message
22 "ADV:" as the first four characters. If these messages contain information that consists of
23 material that may only be viewed, purchased, rented, leased, or held in possession by an
24 individual eighteen years of age and older, the subject line of each message shall include

1 "ADV:ADLT" as the first eight characters.