

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

824I0768

STYLE AND FORM VETO ENGROSSED NO. **HB** **1282** - 03/24/2003

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

Introduced by: Representatives Peterson (Bill), Madsen, Michels, and Olson (Mel) and Senators Bogue, Brown, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the official records
2 and the notification requirements relating to pardons, paroles and commutations.

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

4 Section 1. That § 24-14-11 be amended to read as follows:

5 24-14-11. Any person who has been granted a pardon under the provisions of this chapter
6 shall be released from all disabilities consequent on ~~such~~ the person's conviction. Upon the
7 granting of a pardon under the provisions of this chapter, the Governor shall order that all official
8 records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt,
9 ~~and receipt of a pardon~~ application for a pardon, and the proceedings of the Board of Pardons
10 and Paroles shall be sealed. ~~The effect of such order is to restore such~~ The Governor shall file
11 a public document with the secretary of state certifying that the Governor has pardoned the
12 person in compliance with the provisions of this chapter. The document shall remain a public
13 document for five years and after five years that document shall be sealed. The receipt of any
14 pardon, which was granted without following the provisions of this chapter, may not be sealed.



1 The pardon restores the person, in the contemplation of the law, to the status the person
2 occupied before arrest, indictment, or information. No person as to whom such order has been
3 entered may be held thereafter under any provision of any law to be guilty of perjury or of giving
4 a false statement by reason of such person's failure to recite or acknowledge such arrest,
5 indictment, information, or trial in response to any inquiry made of such person for any purpose.

6 For the sole purpose of consideration of the sentence of a defendant for subsequent offenses
7 or the determination of whether the defendant is a habitual offender under chapter 22-7 or
8 whether the defendant has prior driving under the influence convictions pursuant to chapter 32-
9 23, the pardoned offense shall be considered a prior conviction.

10 The court shall forward a nonpublic record of disposition to the Division of Criminal
11 Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies,
12 prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in
13 determining whether or not, in any subsequent proceeding, the person is a habitual offender
14 under chapter 22-7 or the determination of whether the defendant has prior driving under the
15 influence convictions pursuant to chapter 32-23.

16 Section 2. That § 24-14-4 be amended to read as follows:

17 24-14-4. Any applicant shall, upon notice of hearing from the board for clemency
18 consideration, ~~publish once, at a time between one and two weeks prior to the hearing, in some~~
19 ~~newspaper of general circulation in each week for three consecutive weeks in one of the official~~
20 ~~newspapers designated by the county where the offense was committed or, if no such newspaper~~
21 ~~exists, shall post in a conspicuous place on the door of the courthouse of such county, the name~~
22 ~~of the person on whose behalf the application is made, the public offense for which ~~he~~ the person~~
23 ~~was convicted, the time of ~~his~~ the person's conviction, and the term of imprisonment. The last
24 publication shall be published at least twenty days before the hearing. The affidavit of the~~

1 publisher of the paper ~~or the person posting the notice~~ showing that notice has been published
2 ~~or posted~~ shall accompany the application. This notice requirement does not apply to an inmate
3 who has been released from the state penitentiary for at least five years and who was convicted
4 of not more than one felony, if the felony for which ~~he~~ the inmate was convicted is not
5 punishable by life imprisonment.

6 Section 3. That chapter 24-14 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Upon the scheduling of a clemency hearing, the Board of Pardons and Paroles shall notify
9 the victim pursuant to §§ 24-15-8.1 and 24-15A-22. Notice of a clemency hearing shall be made
10 at least two weeks prior to the hearing. The notice shall provide the offender's clemency hearing
11 date, time, and location and shall advise the victim that the victim may be present at the hearing
12 and may state an opinion regarding clemency.

13 Section 4. That § 24-14-9 be amended to read as follows:

14 24-14-9. Applications for exceptional pardons shall be in accordance with §§ 24-14-3 ~~and~~
15 24-14-5, and section 3 of this Act. The notice requirement contained in § 24-14-4 ~~shall~~ does not
16 apply to exceptional pardons.

17 Section 5. That § 24-15-8.1 be amended to read as follows:

18 24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and
19 Parole when an inmate who was convicted of committing the crime is granted parole ~~or~~, the
20 inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is
21 recommended. The board shall send the notice by first class mail to the address provided by the
22 victim. However, the board is not liable for any damages to the victim if it fails to mail the notice.

23 Section 6. That § 24-15A-22 be amended to read as follows:

24 24-15A-22. The victim may request in writing to be notified by the board when an inmate

1 who was convicted of committing the crime is released on parole ~~or~~, the inmate's parole is
2 revoked, an offender is granted a clemency hearing, or clemency is recommended. The board
3 shall send the notice by first class mail to the address provided by the victim. However, the board
4 is not liable for any damages to the victim if it fails to mail the notice.