

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

466L0298

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1106 - 01/28/2005

Introduced by: Representatives Boomgarden, Cutler, Deadrick, Jerke, Michels, and Schafer
and Senators Olson (Ed), Abdallah, Broderick, Kooistra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the duties of certain licensed mental health
2 professionals with regard to certain insanity and guilty-but-mentally-ill proceedings.

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

4 Section 1. That § 23A-10-4 be amended to read as follows:

5 23A-10-4. In an appropriate case a court shall, upon motion of a prosecuting attorney, order
6 the defendant to submit to a ~~psychiatric~~ mental health examination by a psychiatrist or licensed
7 psychologist, designated for this purpose by the prosecuting attorney in an order of the court.
8 The court may also appoint medical experts and require that the defendant submit ~~himself~~ for
9 to examination by such court-appointed medical experts. No statement made by an accused in
10 the course of any examination provided for by this section, whether the examination was with
11 or without the consent of the accused, ~~shall~~ may be admitted in evidence against ~~him~~ the
12 defendant on the issue of guilt in any criminal proceeding except for the purpose of impeaching
13 the defendant.

14 Section 2. That § 23A-10-7 be amended to read as follows:

15 23A-10-7. Subject to court approval, the defendant may be examined at an approved



1 community health center by a psychiatrist or licensed psychologist, of ~~his~~ the defendant's own
2 choosing at ~~his~~ the defendant's own expense or, if indigent, at county expense. Examination of
3 the defendant shall be on the issue of ~~his~~ the defendant's insanity when the offense occurred.
4 Notice of the independent examination shall be given to the prosecuting attorney at least five
5 days before the examination date. A psychiatrist or licensed psychologist, who examines an
6 indigent defendant may receive a reasonable fee.

7 Section 3. That § 23A-7-16 be amended to read as follows:

8 23A-7-16. In addition to the requirements of §§ 23A-7-4 and 23A-7-5, if a defendant
9 charged with a felony pleads guilty but mentally ill, the court may not accept the plea until the
10 defendant has been examined by a licensed psychiatrist or licensed psychologist, and the court
11 has examined the ~~psychiatric~~ mental health reports. The court shall hold a hearing on the
12 defendant's mental condition; and if there is a factual basis on which the court can conclude that
13 the defendant was mentally ill at the time of the offense, the plea shall be accepted.

14 Section 4. That § 23A-27-40 be amended to read as follows:

15 23A-27-40. If a defendant is found "guilty but mentally ill" and is placed on probation, the
16 sentencing court, upon recommendation of a licensed psychiatrist or licensed psychologist, shall
17 make treatment a condition of probation. Reports as specified by the sentencing court shall be
18 filed with the court service department and the sentencing court. The defendant's failure to
19 continue treatment, except by agreement with the treating agency and the sentencing court, is
20 basis for commencing a probation revocation hearing and grounds for probation revocation.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

643L0377

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1148 - 02/05/2005

Introduced by: Representatives Van Etten, Brunner, Cutler, Frost, Hennies, Hunhoff, Jensen, Kraus, Krebs, Michels, Murschel, Peters, Rave, Roberts, Sebert, and Tornow and Senators Knudson, Abdallah, Bogue, Gray, Koetzle, Koskan, and Moore

1 FOR AN ACT ENTITLED, An Act to provide that certain statements and actions made by
2 health care providers are not admissible to prove negligence or culpable conduct in medical
3 malpractice actions.

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

5 Section 1. No statement made by a health care provider apologizing for an adverse outcome
6 in medical treatment, no offer to undertake corrective or remedial treatment or action, and no
7 gratuitous act to assist affected persons is admissible to prove negligence by the health care
8 provider in any action for damages for personal injury or death alleging malpractice against any
9 health care provider. Nothing in this section prevents the admission, for the purpose of
10 impeachment, of any statement constituting an admission against interest by the health care
11 provider making such statement.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

186L0293

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1178 - 02/05/2005

Introduced by: Representatives Rounds, Halverson, Hanks, Hennies, Kroger, Olson (Ryan),
Sebert, and Turbiville and Senators Koskan and Gray

1 FOR AN ACT ENTITLED, An Act to provide a means to correct errors or omissions made to
2 recorded plats.

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

4 Section 1. If any typographical error or omission of data is detected on a recorded plat, the
5 original land surveyor shall record an affidavit confirming the error or omission. If the original
6 land surveyor is deceased, is not licensed as a land surveyor pursuant to chapter 36-18A, or
7 cannot be located, two licensed land surveyors may record an affidavit confirming the error or
8 omission. The surveyor or surveyors shall file an affidavit describing the nature and extent of
9 the error or omission and the correction or addition to the recorded plat. The surveyor or
10 surveyors shall also note the document reference number or recording information of the
11 recorded plat on the affidavit. The register of deeds shall stamp on the plat of record, the word,
12 corrected, and note the document reference number or recording information on the recorded
13 affidavit. A copy of the recorded affidavit shall be filed with the director of equalization and
14 shall be mailed by the surveyor or surveyors to any owner of record. No affidavit of correction
15 may be used to change or modify the plotted or recorded property lines as originally



1 monumented. This affidavit of correction does not require prior approval by any governing
2 body.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

619L0609

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1227 - 02/03/2005

Introduced by: Representatives Bradford, Sigdestad, Valandra, and Van Norman and
Senators Hanson (Gary) and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the hiring by school
2 districts of persons convicted of felony drug distribution.

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

4 Section 1. That § 13-10-13 be amended to read as follows:

5 13-10-13. A school district may refuse to employ a person, either directly or by contract,
6 who has been convicted of a crime involving moral turpitude as defined in subdivision 22-1-
7 2(25).

8 No person may be employed by a school district, either directly or by contract, if the person
9 has been convicted of a crime of violence as defined in subdivision 22-1-2(9), or a sex offense,
10 as defined in § 22-22-30, ~~or trafficking in narcotics.~~

11 Nothing in this section prohibits a school district from considering any criminal conviction
12 in making a hiring decision.

13 Section 2. That chapter 13-10 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 No person may be employed by a school district, either directly or by contract, if the person



1 has been convicted of felony distribution of drugs. However, the prohibition provided for in this
2 section does not apply if:

3 (1) The person has been pardoned pursuant to chapter 24-13; or

4 (2) Seven years have elapsed since the person was released from custody and the person
5 has not subsequently been convicted of a crime involving moral turpitude, as defined
6 in subdivision 22-1-2(25).

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

807L0736

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1234** - 02/05/2005

Introduced by: Representatives Valandra, Bradford, Hargens, and Van Norman and Senators Moore, Adelstein, Kooistra, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise the conditions where the state may enter into
2 compacts with Indian tribes.

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

4 Section 1. That § 10-12A-4 be amended to read as follows:

5 10-12A-4. The department may enter into tax collection agreements with any Indian tribe
6 under the provisions of this chapter and chapter 1-24. These agreements may provide for the
7 collection of any of the following state taxes and any tribal taxes imposed by a tribe that are
8 identical to the following state taxes:

- 9 (1) The retail sales and service tax imposed by chapter 10-45;
- 10 (2) The use tax imposed by chapter 10-46;
- 11 (3) The contractors' excise tax imposed by chapter 10-46A;
- 12 (4) The alternate contractors' excise tax imposed by chapter 10-46B;
- 13 (5) The cigarette tax imposed by chapter 10-50;
- 14 (6) The motor vehicle excise tax imposed by chapter 32-5B; ~~or~~
- 15 (7) The fuel excise tax imposed by chapter 10-47B;



1 (8) The wholesale tax on tobacco products imposed by chapter 10-50; or

2 (9) The amusement device tax imposed by chapter 10-58.

3 The agreement may provide for the retention by the department of an agreed-upon
4 percentage of the gross revenue as an administrative fee.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0371

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **SB 55** - 02/04/2005

Introduced by: The Committee on Health and Human Services at the request of the
Department of Social Services

1 FOR AN ACT ENTITLED, An Act to provide for a preference for placement of abused and
2 neglected children with relatives and to provide a hearing for review of adoptive placement
3 decisions.

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

5 Section 1. That § 26-7A-19 be amended to read as follows:

6 26-7A-19. If the child is an apparent, alleged, or adjudicated abused or neglected child, after
7 the temporary custody hearing the court may:

8 (1) Order the release of the child from temporary custody, either with or without
9 restriction or condition or upon written promise of the child's parents, guardian, or
10 custodian regarding the care and protection of the child; or

11 (2) Continue the temporary custody of the child under the terms and conditions for
12 duration and placement that the court requires, including placement of temporary
13 custody of the child with the Department of Social Services, in foster care or shelter.

14 The court and the Department of Social Services shall give placement preference to
15 a relative or custodian who is available and who has been determined by the



1 department to be qualified, provided that placement with the relative or custodian is
2 in the best interest of the child. If temporary custody of the child is continued by the
3 court, the court may provide for visitation of the child by the child's parents,
4 guardian, custodian, or family members in keeping with the best interests of the
5 child;~~and~~

6 ~~—(3)—~~ If the child is in temporary custody of the Department of Social Services and has not
7 been adjudicated as an abused or neglected child, the court shall review the child's
8 temporary custody placement at least once every sixty days.

9 As used in this section, the term, relative, means an adult who is related to the child by
10 blood, adoption, or marriage, and who is the child's grandparent, aunt, uncle, sibling, brother-in-
11 law, sister-in-law, niece, nephew, great grandparent, great uncle, great aunt, first cousin, second
12 cousin, stepparent, or stepsibling.

13 As used in this section, the term, custodian, means an adult who is the biological parent,
14 adoptive parent, or guardian of the child's sibling or half-sibling.

15 Section 2. That chapter 26-7A be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Subsequent to a temporary custody hearing, if a placement is made of an apparent, alleged,
18 or adjudicated abused or neglected child, placement preference shall be given to a relative
19 entitled to placement under § 26-7A-19.

20 Section 3. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Except under circumstances where placement was with another relative of the child, any
23 relative who has been denied adoptive placement by the Department of Social Services may
24 request a hearing to determine if the placement was an abuse of discretion. The request shall be

1 filed with the circuit court having jurisdiction pursuant to § 26-8A-29 and shall be filed within
2 thirty days of written notification from the department by regular mail to the relative's last
3 known address. The hearing shall be held within thirty days of the filing of the request for
4 hearing and may be continued for not more than thirty days upon good cause shown. The
5 relative shall be granted limited intervention only for the purpose of the placement review
6 hearing.

7 No intervention may be allowed in a proceeding involving an apparent, alleged, or
8 adjudicated abused or neglected child, including an adoption or guardianship proceeding for a
9 child placed in the custody of the Department of Social Services pursuant to § 26-8A-27, except
10 as provided by this chapter and under the Indian Child Welfare Act, (25 U.S.C. 1901 to 1963,
11 inclusive), as amended to January 1, 2005.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

294L0194

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 74** - 01/27/2005

Introduced by: Senators Sutton (Duane) and Napoli and Representatives Rausch,
Buckingham, and Dennert

1 FOR AN ACT ENTITLED, An Act to revise certain restrictions concerning the operation of
2 snowmobiles.

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

4 Section 1. That § 32-20A-3 be amended to read as follows:

5 32-20A-3. There is no age limitation for the operation of a snowmobile ~~except that,~~
6 However, no person under the age of ~~sixteen~~ fourteen may drive a snowmobile ~~upon or~~ across
7 a ~~highway~~ roadway as defined in subdivision ~~31-1-5(1) and no person under the age of twelve~~
8 ~~may drive a snowmobile upon or across~~ 32-14-1(26) of a highway as defined in subdivisions
9 ~~31-1-5(2)~~ 31-1-5(1) to (4), inclusive, ~~except under the immediate direction of a parent, legal~~
10 guardian, or person who is eighteen years of age or older. A violation of this section is a Class
11 2 misdemeanor.

