

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0324

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1051 - 01/13/2006

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding notice to a tribe of
2 a child custody proceeding subject to the Indian Child Welfare Act.

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

4 Section 1. That § 26-7A-15 be amended to read as follows:

5 26-7A-15. The officer or party who takes a child into temporary custody, with or without
6 a court order, except under a court order issued during a noticed hearing after an action has been
7 commenced, shall immediately, without unnecessary delay in keeping with the circumstances,
8 inform the child's parents, guardian, or custodian of the temporary custody and of the right to
9 a prompt hearing by the court to determine whether temporary custody should be continued. If
10 the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer
11 or party taking temporary custody of the child shall report that fact and the circumstances
12 immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian,
13 or custodian, without unnecessary delay, of the time, date, and place of the temporary custody
14 hearing. If the temporary custody hearing concerns an apparent abused or neglected Indian child,
15 the state's attorney or Department of Social Services shall make reasonable efforts to inform the



1 Indian custodian and the designated tribal agent for the Indian child's tribe, if known, of the
2 time, date, and place of the temporary custody hearing. The information regarding the temporary
3 custody hearing may be provided to the Indian custodian or ~~Indian child's tribe~~ the designated
4 tribal agent orally or in writing, including by telephone or facsimile. The hearing shall be held
5 within forty-eight hours if it concerns any apparent abused or neglected child or if it concerns
6 any apparent delinquent child pursuant to § 26-8C-3 or within twenty-four hours if it concerns
7 any apparent child in need of supervision pursuant to § 26-8B-3, excluding Saturdays, Sundays,
8 and court holidays, after taking the child into temporary custody, unless extended by order of
9 the court. Failure to notify the child's parents, guardian, or custodian, or to inform the Indian
10 custodian or the ~~Indian child's tribe~~ designated tribal agent, of the temporary custody hearing
11 is not cause for delay of the hearing if the child is represented by an attorney at the hearing. As
12 used in this section, the terms, Indian child, Indian custodian, and Indian child's tribe, are
13 defined as in 25 U.S.C. § 1903, as amended to January 1, 2005.

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

16 As used in this chapter, the term, designated tribal agent, means the agent, agency, or entity
17 designated by the tribe, through tribal code or resolution, to receive notices of child custody
18 proceedings subject to the Indian Child Welfare Act. The tribe may provide, in writing, to the
19 director of the Division of Child Protection Services, Department of Social Services, the name
20 or title, address, telephone number, and facsimile number, if applicable, of the designated agent.
21 The department shall make the information available electronically by posting the information
22 on the department's website not later than ten business days after the information is received by
23 the director. If a tribe does not designate a tribal agent for receipt of notice, notice shall be given
24 in accordance with 25 C.F.R. 23.12.

1 Section 3. That § 26-7A-15.1 be amended to read as follows:

2 26-7A-15.1. In any proceeding under chapters 26-7A, 26-8A, or 26-8B, to which the terms
3 of the "Indian Child Welfare Act", 25 U.S.C. § 1901 et seq., as amended to January 1, 2005,
4 apply:

5 (1) If the state's attorney knows or has reason to know that an Indian child is involved,
6 the state's attorney shall notify the parent or Indian custodian and the Indian child's
7 tribe, if known, of the pending proceedings and of their right of intervention. The
8 notice shall be sent by registered mail with return receipt requested but may be
9 personally served on any person entitled herein to receive notice in lieu of mail
10 service. The notice to the Indian child's tribe shall be sent to the designated tribal
11 agent. However, if the tribe appears by counsel or by a representative of the tribe
12 pursuant to § 26-8A-33, the notice shall be sent to counsel or to the representative,
13 as applicable. If the identity or location of the parent or Indian custodian and the
14 Indian child's tribe cannot be determined, the notice shall be given to the United
15 States Secretary of the Interior and to the area director for the Bureau of Indian
16 Affairs in like manner, who have fifteen days after receipt to provide the requisite
17 notice to the parent or Indian custodian and the tribe;

18 (2) The state's attorney shall provide ~~such~~ the notice prior to any adjudicatory hearing
19 and prior to any final dispositional hearing in which the state seeks termination of
20 parental rights of one or both parents or termination of the rights of the Indian
21 custodian. However, upon intervention, the parent, tribe, or Indian custodian is
22 entitled to notice in the manner authorized by the Rules of Civil Procedure and
23 chapters 26-7A and 26-8A. The notice shall be served on counsel for the tribe or the
24 representative for the tribe pursuant to § 26-8A-33, as applicable;

1 (3) The court shall establish in the record that a notice of the proceeding was provided
2 as required in this section. No foster care placement or termination of parental rights
3 proceedings may be held until at least ten days after receipt of the foregoing notice
4 by the parent or Indian custodian and the tribe or the Secretary. The parent or Indian
5 custodian or the tribe shall, upon request, be granted up to twenty additional days to
6 prepare for the proceeding;

7 (4) The notice required in this section shall be written in clear and understandable
8 language and shall include the following:

- 9 (a) The name and tribal affiliation, if known, of the Indian child;
- 10 (b) A copy of the petition unless the notice is served by publication pursuant to
11 § 26-7A-48;
- 12 (c) The name and address of the state's attorney;
- 13 (d) A statement listing the rights of the Indian child's parents, Indian custodians,
14 and tribes, under the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., as
15 amended to January 1, 2005, including:
 - 16 (I) The right of a Indian custodian or the Indian child's tribe to intervene
17 in a proceeding for the foster care placement of, or termination of
18 parental rights to, the Indian child;
 - 19 (ii) The right to file a motion to transfer the proceeding to the tribal court
20 of the Indian child's tribe;
 - 21 (iii) The right to be granted up to twenty days from the receipt of the notice
22 to prepare for the proceeding; and
 - 23 (iv) The right to request that the court grant further extensions of time;
- 24 (e) If the petition alleges the child to be an abused or neglected child, a statement

1 that the termination of parental or custodial rights is a possible remedy under
2 the proceedings;

3 (f) A statement that if the Indian child's parents or Indian custodian are unable to
4 afford counsel, counsel may be appointed to represent them;

5 (g) A statement in the notice to the tribe that the information contained in the
6 notice, petition, pleading, or other documents are confidential; and

7 (h) The location, mailing address and telephone number of the court.

8 The original or a copy of each notice sent pursuant to this section shall be filed with
9 the court together with any return receipts or other proof of service;

10 (5) Each party may examine all reports or other documents filed with the court upon
11 which any decision with respect to such action may be based.

12 As used in this section, the terms, Indian, Indian child, parent, Indian custodian, tribe, Indian
13 child's tribe, foster care placement, termination of parental rights, and secretary, are defined as
14 in 25 U.S.C. § 1903, as amended to January 1, 2005.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

596M0260 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 83 - 01/24/2006

Introduced by: Senators Knudson, Adelstein, Dempster, Hansen (Tom), Hanson (Gary), Kelly, Kooistra, Nesselhuf, and Olson (Ed) and Representatives Thompson, Bradford, Cutler, Elliott, Faehn, Garnos, Gassman, Glover, Hennies, McCoy, McLaughlin, Miles, Murschel, Nelson, Olson (Ryan), Roberts, Street, Tornow, and Van Norman

1 FOR AN ACT ENTITLED, An Act to increase the length of time for which nationally certified
2 teachers may receive stipends.

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

4 Section 1. That § 13-42-26 be amended to read as follows:

5 13-42-26. The Department of Education shall establish a program to reimburse public school
6 teachers for the application and processing fee for the National Board for Professional Teaching
7 Standards certification process. The reimbursement shall include any federal funds that may be
8 available through a candidate subsidy program. The reimbursement shall be paid upon receipt
9 of documentation that the teacher successfully completed all certification requirements and was
10 awarded the credential.

11 In addition to the reimbursement provided pursuant to this section, a teacher who teaches
12 in a public school and who has obtained certification by the National Board for Professional
13 Teaching Standards shall receive a payment of two thousand dollars per year for five years. The



1 stipend shall be paid as follows:

2 (1) One thousand dollars from the Department of Education;

3 (2) One thousand dollars from the school district where the teacher is employed.

4 Once the first five years is complete, the school district that employs the teacher may opt to
5 continue payments during the period of the next five years. If, during that period, the school
6 district pays the teacher a stipend, the Department of Education shall also pay the teacher a
7 stipend equal to the amount offered by the school district, up to a maximum of one thousand
8 dollars. However, the department is not required to pay a teacher a stipend pursuant to this
9 section during years six to ten unless the school district employing the teacher opts to pay a
10 stipend.

11 The Board of Education shall adopt rules, pursuant to chapter 1-26, to establish guidelines
12 necessary to implement the program.

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372M0014 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 106 - 01/24/2006

Introduced by: Senators McNenny, Duenwald, Greenfield, Lintz, McCracken, and Peterson
(Jim) and Representatives Jensen, Brunner, Buckingham, Dennert, Howie,
and Rhoden

1 FOR AN ACT ENTITLED, An Act to exempt certain small sand, gravel, and other extraction
2 operations from license fees and surety requirements.

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

4 Section 1. That chapter 45-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any operator is exempt from paying any license fee under §§ 45-6-65 and 45-6-72 and
7 exempt from paying any surety under § 45-6-71 if the operator submits to the department a
8 notarized statement that, under the penalty of perjury, the operator complies with the following
9 criteria:

- 10 (1) At least two-thirds of the operator's total family gross income is derived from
11 agriculture;
- 12 (2) The operator is the owner of the affected land;
- 13 (3) The affected land lies within or is contiguous with parcels of agricultural land owned
14 by the operator on which a portion of the operator's agricultural income is generated;



1 (4) The affected land is less than ten acres; and

2 (5) The operator extracts from the affected land an average of less than twenty-five

3 thousand tons per year of sand, gravel, and any other material specified in § 45-6-65.

4 The average shall be calculated using the total annual amounts of sand, gravel, and

5 other materials specified in § 45-6-65 that were extracted during the three

6 immediately preceding calendar years.

7 The exemptions provided under this section do not exempt the operator from the

8 requirements to obtain a license pursuant to § 45-6-65 and to file annual reports pursuant to

9 § 45-6-72.

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771M0088

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 107** - 01/24/2006

Introduced by: Senators Olson (Ed), Dempster, Duniphan, Hansen (Tom), Knudson, and Sutton (Duane) and Representatives Sebert, Buckingham, Cutler, Hennies, Kroger, Michels, Putnam, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise the definition of manufacturer as it relates to the
2 ownership of certain motor vehicle dealerships and to declare an emergency.

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

4 Section 1. That § 32-6B-79 be amended to read as follows:

5 32-6B-79. In §§ 32-6B-79 to 32-6B-83, inclusive, the term, manufacturer, includes a
6 representative or a person or entity who is directly or indirectly controlled by, or is under
7 common control with, the manufacturer. For purposes of this section, a person or entity is
8 controlled by a manufacturer if the manufacturer has the authority directly or indirectly, by law
9 or by agreement of the parties, to direct or influence the management and policies of the person
10 or entity. However, the term, manufacturer, does not include any person or entity who
11 manufactures or assembles less than two hundred fifty motorcycles a year or who manufactures
12 or assembles trailers.

13 Section 2. Whereas, this Act is necessary for the support of the state government and its
14 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in



1 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

178M0578

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 132 - 01/23/2006

Introduced by: Senators Moore, Abdallah, Duniphan, Gray, Hanson (Gary), and Schoenbeck
and Representatives Hunhoff, Haley, Hennies, Michels, and Rounds

1 FOR AN ACT ENTITLED, An Act to clarify the jurisdiction of conservation officers to enforce
2 certain alcohol-related provisions.

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

4 Section 1. That § 41-15-10.1 be amended to read as follows:

5 41-15-10.1. Any conservation officer, who is certified pursuant to §§ 23-3-39 to 23-3-45,
6 inclusive, or has been appointed on a temporary or probationary basis as permitted by § 23-3-41,
7 shall enforce every state statute:

8 (1) Which is a crime under Title 22;

9 (2) Which pertains to game, fish, parks, forestry, or boating;

10 (3) Which pertains to driving while intoxicated, reckless driving, or eluding an officer;

11 (4) Which is a crime under §§ 35-1-9.1 and 35-9-2 ~~and occurs on property owned,~~
12 ~~managed, or leased by the Department of Game, Fish and Parks;~~

13 (5) Which is a crime under § 32-5-84.2;

14 (6) Which is a crime under § 32-20-6.6;

15 (7) Which is a crime under chapter 32-20A; and



1 (8) Which is a crime under chapter 34A-7.

2 While performing any duty pursuant to this section, a conservation officer is a law

3 enforcement officer with the same authority as any other law enforcement officer.