

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

628S0622

SENATE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1255** - 3/2/2011

Introduced by: The Committee on Health and Human Services

1 FOR AN ACT ENTITLED, An Act to provide for the award of joint physical custody of
2 children under certain circumstances.

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

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If joint legal custody is awarded, pursuant to § 25-5-7.1, there is a rebuttable presumption
7 that both parents have joint physical custody of their children. Joint physical custody of the
8 children is defined as equal time-sharing. The burden of overcoming the presumption rests on
9 the parent challenging the presumption. The presumption may be overcome by demonstrating
10 that joint physical custody would not be in the best interests of the children or by one parent
11 waiving the presumption. The party challenging the presumption must overcome the
12 presumption by the greater convincing force of the evidence. Upon request by either parent, the
13 court shall hold a hearing at which the parties may introduce evidence. The court shall issue
14 findings of fact and conclusions of law upon request by either parent. The court shall require the
15 parents to prepare and submit a parenting plan to the court reflecting parental preferences and



1 agreement on the matters of substance concerning the child's education, upbringing, religious
2 training, medical, and dental care. The parents shall share decision-making authority and
3 responsibility as to the important decisions affecting the child's welfare and if parents are unable
4 to agree, the court may order the parties to submit to a preselected mediator. If the parties cannot
5 agree on the residency of the child, the court shall determine the child's primary residence. If the
6 court finds that a party has overcome the presumption in favor of joint physical custody, the
7 court shall use the best interests of the child to make its determination for custodial
8 arrangements. This Act does not apply to any child custody case filed on or before June 1, 2008.

9 Section 2. If any provision of this Act or its application to any person or circumstance is held
10 invalid, the invalidity does not affect other provisions or applications of this Act which can be
11 given effect without the invalid provision or application, and to this end the provisions of this
12 Act are severable.