

2026 South Dakota Legislature

Senate Bill 190**AMENDMENT 190H
FOR THE HOUSE STATE AFFAIRS ENGROSSED BILL**

1 **An Act to codify the rights of a parent.**

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

3 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

4 ~~A~~It is the fundamental right of each parent to make decisions concerning the
5 nurture, upbringing, education, care, custody, and control of the parent's minor child. No
6 person, state agency, or ~~any~~ political subdivision of this state may ~~not~~ substantially burden
7 the fundamental right of ~~a~~ each parent to direct the upbringing, education, health care,
8 and mental health of the parent's minor child, without demonstrating that the burden
9 imposed on the parent is required by a compelling governmental interest as applied to the
10 parent and the parent's minor child and is the least restrictive means for furthering that
11 compelling governmental interest.

12 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

13 The ~~right~~ rights of a parent with regard to the parent's minor child include the right
14 to:

- 15 (1) Direct the upbringing of the parent's minor child;
16 (2) Direct the moral and religious training of the parent's minor child;
17 (3) Except as otherwise provided in section 5 of this Act, make and consent to all
18 physical and mental health care decisions for the parent's minor child;
19 (4) Access and review all medical records of the parent's minor child;
20 (5) Direct the education of the parent's minor child;
21 (6) Access and review all written and electronic educational records relating to the
22 parent's minor child, which are in the possession of a school, as provided in section
23 7 of this Act;
24 (7) Have the parent's minor child excused from school attendance for religious
25 purposes;

- 1 (8) Participate in parent-teacher organizations and other school organizations
 2 sanctioned by the board of a school district;
 3 (9) Be notified promptly if an employee of the state reasonably believes that abuse,
 4 neglect, or other criminal offense has been committed against the parent's minor
 5 child by someone other than the parent, unless doing so would interfere with a
 6 criminal or other investigation;
 7 (10) Consent before a biometric scan of the parent's minor child is performed, shared,
 8 or stored;
 9 (11) Consent before any record of the blood or deoxyribonucleic acid of the parent's
 10 minor child is created, stored, or shared, unless authorized pursuant to a court
 11 order; and
 12 (12) Consent before any state agency or political subdivision of this state makes a video
 13 or audio recording of the minor child, unless the video or audio recording is made
 14 as part of:
 15 (a) A court proceeding;
 16 (b) A law enforcement investigation;
 17 (c) An interview conducted as part of a criminal or other investigation;
 18 (d) A surveillance or other security system;
 19 (e) A photographic identification card; or
 20 (f) A public event where the minor child has no reasonable expectation of
 21 privacy.

22 Nothing in this section may be construed to permit a parent to abuse or neglect
 23 the parent's minor child, as defined in § 26-8A-2, or to end the life of the parent's minor
 24 child. ~~Nothing in this section may be construed to prevent law enforcement or the~~
 25 ~~Department of Social Services from conducting an investigation or otherwise carrying out~~
 26 ~~their responsibilities under state law.~~

27 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

- 28 Except for a law enforcement officer in the conduct of a criminal investigation or
 29 as otherwise provided by law, an employee of this state or a political subdivision of the
 30 state may not:
 31 (1) Encourage or coerce a minor child to withhold information from the minor child's
 32 parent; or
 33 (2) Withhold from a minor child's parent information that is relevant to the physical,
 34 emotional, or mental health of the parent's minor child.

1 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

2 Except as provided in section 5 of this Act, a person, private entity, state agency,
3 political subdivision of this state, or employee of a state agency or political subdivision
4 must obtain the consent of a minor child's parent before:

5 (1) Procuring, soliciting, arranging, providing a referral for, or performing:

6 (a) A surgical procedure upon the minor child;

7 (b) A medical examination of the minor child;

8 (c) A mental health evaluation, in a clinical or nonclinical setting, of the minor
9 child; or

10 (d) Any mental health treatment for the minor child; or

11 (2) Prescribing or dispensing any prescription medication to the minor child.

12 A parent may provide a person, entity, state agency, political subdivision of this
13 state, or employee of a state agency or political subdivision written, informed consent to
14 perform an action requiring consent, pursuant to this section.

15 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

16 Notwithstanding the requirements of section 4 of this Act, a licensed physician or
17 other health professional, acting within the professional's scope of practice, may:

18 (1) Perform an examination of a minor child to determine whether, in the opinion of
19 the treating physician or health professional, exercising competent medical
20 judgement, the minor child requires emergency medical care and services; or

21 (2) Perform any of the actions listed in section 4 of this Act to a minor child without
22 the consent of the minor child's parent if:

23 (a) The licensed physician or health professional is permitted to perform the
24 action under § 20-9-4.2;

25 (b) The minor is accompanied by an individual who has documentation signed
26 by the minor child's parent authorizing the individual to make decisions
27 regarding the minor child's health care; or

28 (c) The licensed physician or health professional relies in good faith on the
29 representation of an individual, that the individual has been granted
30 authority by the minor child's parent to make decisions regarding the minor
31 child's health.

32 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

1 The board of a school district, shall, in consultation with parents, teachers, and
2 administrators, adopt a policy to promote the involvement of parents of minor children
3 enrolled in the school district. The policy must include:

4 (1) A plan for parent participation in the school to improve parent and teacher
5 cooperation in areas of homework, attendance, and discipline; and

6 (2) The process by which a parent:

7 (a) Reviews the curriculum offered to the parent's minor child or is otherwise
8 informed about the course of study provided to the parent's minor child;

9 (b) May learn about the nature and purpose of clubs or other extracurricular
10 activities that have been approved by the school;

11 (c) Withdraws the parent's minor child from a school club or extracurricular
12 activity;

13 (d) Is notified of, and consents to having the parent's minor child receive, any
14 instruction in or presentation on human sexuality, human sexual behavior,
15 an understanding of an individual's identity disconnected from or
16 inconsistent with the biological reality of an individual's sex, or the idea that
17 an individual is able to identify with a gender that corresponds to an
18 individual's internal and subjective sense of self, disconnected from the
19 biological reality of the minor's sex;

20 (e) May object to any specific instruction or presentation provided to the
21 parent's minor child;

22 (f) May withdraw the parent's minor child from any specific instruction or
23 presentation if the parent considers the instruction or presentation harmful
24 to the parent's minor child; and

25 (g) Provides consent before the parent's minor child may use a name or
26 nickname other than the minor child's legal name or a derivative or
27 diminutive of the minor child's legal name.

28 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

29 Except as provided in § 26-8A-13, a school district shall allow the parent of a minor
30 child enrolled in the school district to access all written and electronic records concerning
31 the parent's minor child that are in the possession of the school district, a district
32 employee, or other person hired, contracted, or authorized by the school district to provide
33 services to the parent's minor child.

1 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

2 Except as provided in § 26-8A-13, an employee of a school district may not
3 withhold or conceal information from or facilitate, encourage, or coerce a minor child to
4 withhold or conceal information from, the minor child's parent about the minor child's:

5 (1) Curricular or extracurricular projects, assignments, or activities;

6 (2) Physical, emotional, or mental health; or

7 (3) Purported identification with a gender that corresponds to the minor child's internal
8 and subjective sense of self, disconnected from the biological reality of the minor
9 child's sex.

10 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

11 A parent may submit a written complaint to the board of a school district, detailing
12 any violation of sections 6 to 8, inclusive, of this Act. The parent is entitled to a meeting
13 with the superintendent of the school district to discuss the complaint. The superintendent
14 shall investigate the complaint and respond to the parent in writing within fourteen days
15 of receiving the complaint. The response provided by the superintendent must describe
16 the actions that the district is to take in order to remedy the parent's complaint.

17 A parent may appeal the actions of the superintendent to the board of the school
18 district by submitting a written complaint detailing the violation of sections 6 to 8, inclusive
19 of this Act and a description of how the actions taken by the superintendent failed to
20 resolve the complaint. The board shall investigate the complaint and shall meet with the
21 parent to discuss the complaint. The board shall adopt a plan of action to remedy the
22 complaint at the first meeting of the board following receipt of the complaint.

23 If the board's plan of action does not remedy the parent's complaint, the parent
24 may file suit and assert a violation of sections 6 to 8, inclusive, of this Act as a claim
25 against the school district. A parent who successfully asserts a claim or defense under this
26 section may recover declaratory relief, injunctive relief, liquidated damages of five
27 thousand dollars per violation, reasonable attorneys' fees and costs, and any other
28 appropriate relief.

29 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

30 For the purposes of sections 6 to 9, inclusive, of this Act, "school district" does not
31 include any public institution of higher education, provided that the parent of a minor child
32 retains the parent's rights under this Act and any other applicable federal law, as applied

1 to a school district, if the parent's child is enrolled in a dual enrollment course offered by
2 the school district and a public institution of higher education.

3 **Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

4 A parent may bring suit for a violation of this chapter and may raise this chapter
5 as a defense in any judicial or administrative proceeding, without regard to whether the
6 proceeding is brought by or in the name of the state, a private person, or other party.

7 A parent who successfully asserts a claim or defense under this chapter may
8 recover declaratory relief, injunctive relief, compensatory damages, reasonable attorneys'
9 fees and costs, and any other appropriate relief.

10 A state agency or political subdivision of this state shall indemnify the employees
11 of the state or political subdivision for any liability incurred by the employee and for any
12 judgement entered against the employee for claims arising under this chapter. A state
13 agency or political subdivision of this state is not required to indemnify an employee if the
14 employee was convicted of a criminal violation for the conduct from which the claim arises.