

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

675Z0688

## SENATE BILL NO. 105

Introduced by: Senators Sohlt, Frerichs, Langer, Rusch, Solano, and Wiik and  
Representatives Steinhauer, Ahlers, Barthel, Bartling, Clark, Diedrich,  
Hawley, and Heinemann

1 FOR AN ACT ENTITLED, An Act to authorize a health care practitioner to administer a  
2 toxicology test to an infant under certain circumstances.

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

4 Section 1. That chapter 26-8A be amended by adding a NEW SECTION to read:

5 If a health care practitioner has reason to believe based on a medical assessment of a mother  
6 or a newborn infant that the mother used a controlled substance for a nonmedical purpose during  
7 the pregnancy, the health care practitioner may administer, with or without the consent of the  
8 newborn infant's parent or guardian, a toxicology test to the newborn infant under the health  
9 care practitioner's care to determine whether there is evidence of prenatal exposure to a  
10 controlled substance. If the test results are positive, the health care practitioner shall report the  
11 results pursuant to § 26-8A-8.

12 Section 2. That chapter 26-8A be amended by adding a NEW SECTION to read:

13 A health care practitioner or any other medical personnel administering a toxicology test to  
14 determine the presence of a controlled substance in a newborn infant at birth or during the first



1 twenty-eight days of life and the employer of the person administering the test are immune from  
2 civil or criminal liability arising from administration of the test if the health care practitioner  
3 ordering the test believes in good faith that the test is permitted under this section and if the test  
4 is administered in accordance with an established protocol and reasonable medical practice.

5 If a health care practitioner or any other medical personnel determines in good faith not to  
6 administer a toxicology test under this section, the person making the determination and the  
7 person's employer are immune from civil or criminal liability arising from not administering the  
8 test.

9 Section 3. That chapter 26-8A be amended by adding a NEW SECTION to read:

10 For purposes of this Act, a health care practitioner is a person licensed, accredited, or  
11 certified to perform specified health services consistent with state law.