

Committee: Senate Judiciary

Thursday, March 05, 2020 7:45 AM

Roll Call

Present: Sen. Blare, Sen. Novstrup, Sen. Schoenbeck, Sen. Stalzer, Sen. Kennedy, Sen. Rusch, and Sen. Russell

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Russell

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, MARCH 04TH

Moved by: Blare
Second by: Stalzer
Action: Prevailed by voice vote

PETER LIEBERMAN OF MINNEHAHA COUNTY, SIOUX FALLS, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Presented by: Mike Leidholt, Department of Corrections

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF PETER LIEBERMAN OF MINNEHAHA COUNTY, SIOUX FALLS, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Rusch
Second by: Stalzer
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

PATRICIA WHITE HORSE CARDA OF CHARLES MIX COUNTY, WAGNER, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Presented by: Mike Leidholt, Department of Corrections

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE REAPPOINTMENT OF PATRICIA WHITE HORSE CARDA OF CHARLES MIX COUNTY, WAGNER, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Rusch
Second by: Kennedy
Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Blare, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

Excused: Novstrup

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED THE REAPPOINTMENT OF PATRICIA WHITE HORSE CARDA OF CHARLES MIX COUNTY, WAGNER, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1088 : create a penalty for violation of a vulnerable adult protection order and to revise certain provisions regarding protection orders.

Proponents: Greg Sattizahn, Unified Judicial System
Charlie McGuigan, Office of the Attorney General
Erik Nelson, AARP SD

MOTION: AMEND HB 1088

1088E

On page 1, line 9, of the House Judiciary bill, delete " § 22-18-1. 1" and insert " § 22-18-1"
On page 1, line 21, of the House Judiciary bill, delete " § 22-18-1. 1" and insert " § 22-18-1"
On page 1, line 24, of the House Judiciary bill, after "section" insert ", § 21-65-19,"
On page 2, line 15, of the House Judiciary bill, after "section" insert ", § 21-65-19,"
Moved by: Schoenbeck
Second by: Blare
Action: Prevailed by voice vote

MOTION: DO PASS HB 1088 AS AMENDED

Moved by: Schoenbeck
Second by: Stalzer
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1088 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1133 : provide a rebuttable presumption in favor of joint physical custody of a minor child.

Presented by: Representative Tamara St. John
Proponents: Representative Tom Pischke (Handout(s) 1,2)
Representative Drew Dennert
Carleen Wild, Leading Women for Shared Parenting, Flandreau, SD
Joel Arends, self, Sioux Falls
Jeremy Cummings, self, Rapid City, SD
Opponents: Dianna Miller, South Dakota Network Against Family Violence (Handout(s) 3,4,5)
Gina Karst, self, Aberdeen, SD
April LeBeau, self, Oacoma, SD
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls, SD
Dr. Tamara Grove, South Dakota Family Policy Council, Sioux Falls

MOTION: DO PASS HB 1133

Moved by: Blare
Second by: Russell
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DEFER HB 1133 TO THE 41ST LEGISLATIVE DAY

Moved by: Schoenbeck
 Second by: Kennedy
 Action: Prevailed by Majority Members Elect (5-2-0-0)

Voting Yes: Novstrup, Schoenbeck, Stalzer, Kennedy, and Rusch

Voting No: Blare and Russell

MOTION: AMEND HB 1140

1140B

On page 1, line 9, of the House Judiciary bill, after "The " insert "minimum "
 On page 1, line 13, of the House Judiciary bill, after "the " insert "minimum "
 On page 1, line 16, of the House Judiciary bill, after "the " insert "minimum "

Moved by: Kennedy
 Second by: Schoenbeck
 Action: Prevailed by voice vote

HB 1140 : provide for a regular review of parenting guidelines.

Presented by: Representative Tom Pischke
 Proponents: Casey Wilson, self, Flandreau, SD
 Greg Sattizahn, Unified Judicial System
 Dianna Miller, South Dakota Network Against Family Violence
 Joel Arends, self, Sioux Falls

MOTION: DO PASS HB 1140 AS AMENDED

Moved by: Kennedy
 Second by: Stalzer
 Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1140 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**HB 1205 : revise provisions regarding a custodial parent relocating a minor child.**

Presented by: Senator Arthur Rusch
 Proponents: Lindsey Riter- Rapp, SD State Bar
 Representative Tom Pischke

MOTION: DO PASS HB 1205

Moved by: Kennedy

Second by: Stalzer
Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Blare, Novstrup, Stalzer, Kennedy, Rusch, and Russell

Excused: Schoenbeck

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1205 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1206 : revise certain provisions regarding the commitment of a delinquent child to the Department of Corrections.

Presented by: Representative Kevin Jensen
Proponents: Greg Sattizahn, Unified Judicial System (Handout(s) 6)
Kristi Bunkers, Department of Corrections
Paul Bachand, South Dakota State's Attorneys Association
Charlie McGuigan, Office of the Attorney General
Lori Martinec, SD Police Chiefs Association
Justin Bell, SD Association of Criminal Defense Lawyers
Opponents: Ole Olson, self, Rapid City, SD

MOTION: AMEND HB 1206

1206A

On page 2, line 13, of the Introduced bill, after "exists;" insert " and"
On page 2, line 14, of the Introduced bill, after "and" insert " one of the following:"
On page 2, line 15, of the Introduced bill, delete "(c)" and insert "(i)"
On page 2, line 23, of the Introduced bill, delete "(d)" and insert "(ii)"
On page 2, line 28, of the Introduced bill, delete "(i)" and insert "(A)"
On page 2, line 30, of the Introduced bill, delete "(ii)" and insert "(B)"
Moved by: Kennedy
Second by: Rusch
Action: Prevailed by voice vote

MOTION: DO PASS HB 1206 AS AMENDED

Moved by: Stalzer
Second by: Novstrup
Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

Excused: Blare

HB 1246 : revise the attorney's fees allowed in a retaliation action against a lessor.

Presented by: Representative Linda Duba
Proponents: Dean Krogman, South Dakota Multi-Housing Association, Brookings

MOTION: DO PASS HB 1246

Moved by: Rusch
 Second by: Kennedy
 Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

Excused: Blare

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1246 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1092 : establish immunity from liability for injuries to or the death of a person engaged in off-road vehicle activity under certain circumstances.

Presented by: Rep Tim Goodwin
 Opponents: Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls, SD

MOTION: AMEND HB 1092

1092B

On page 1, line 1, of the House Judiciary bill, delete "establish immunity from liability for injuries to or the death of a" and insert " provide for an assumption of risk by any"

On page 1, line 2, of the House Judiciary bill, after "activity " insert "and to limit the liability of the renters of off-road vehicles "

On page 1, line 6, of the House Judiciary bill, delete "32-20-22" and insert "32-20-20"

On page 2, line 13, of the House Judiciary bill, delete "32-20-22" and insert "32-20-20"

On page 2, line 18, of the House Judiciary bill, after "activity." delete "Section 3. That a NEW SECTION be added:

"

On page 2, line 19, of the House Judiciary bill, after "added:" delete "Immunity from liability--Inherent risks of off-road vehicle activity."

On page 2, line 19, of the House Judiciary bill, after "activity." delete "

Except as provided in § 32-20-20, no off-road vehicle activity sponsor or off-road vehicle professional is liable for an injury to or the death of a participant resulting from an inherent risk of off-road vehicle activity. No participant or the representative of any participant may make a claim against, maintain an action against, or recover from an off-road vehicle activity sponsor or an off-road vehicle professional for injury, loss, damage, or the death of the participant resulting from an inherent risk of off-road vehicle activity.

For the purposes of this section, the inherent risks of off-road vehicle activity are those dangers or conditions that are an integral part of off-road vehicle activities including:

- (1) The propensity of off-road vehicle users to behave in ways that may result in injury, harm, or death to a person on or around an off-road vehicle;
- (2) The inherently dangerous nature of the terrain and environment in which off-road vehicles are ridden including the potential for rolling over, tipping over, or receiving other injuries;
- (3) Certain hazards relating to the surface and subsurface conditions;
- (4) Collisions with other off-road vehicles or objects; and
- (5) The potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others."

On page 3, after line 3, of the House Judiciary bill, insert "

Section 3. That a NEW SECTION be added:

32-20-19. Assumption of risk of injury.

A participant assumes the risks inherent in engaging in off-road vehicle activity. A participant is responsible for:

- (1) Knowing the range of the participant's own ability to engage in off-road vehicle activity within the limits of the participant's ability considering the conditions;
 - (2) Maintaining control of the off-road vehicle's speed and course at all times while engaging in off-road vehicle activity;
 - (3) Heeding all posted warnings; and
 - (4) Refraining from acting in a manner that may cause or contribute to the injury of anyone.
- The provisions of this section do not affect a product's liability cause of action based upon the design or manufacture of off-road vehicles or the safety equipment used incidental to the operation of an off-road vehicle.

"

On page 3, line 12, of the House Judiciary bill, after "negligence." delete "Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-road vehicle or an off-road vehicle professional, if the off-road activity sponsor or the off-road vehicle professional:

- (1) Knowingly provides faulty equipment or should have known the equipment was faulty, and the equipment was faulty to the extent that it caused the accident;
- (2) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustains any injury because of a dangerous latent condition which was known to the off-road vehicle activity sponsor, or the off-road vehicle professional and for which warning signs had not been conspicuously posted;
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
- (4) Injures the participant intentionally.

Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-road vehicle activity sponsor or an off-road vehicle professional under product liability laws."

On page 3, line 28, of the House Judiciary bill, after "laws." delete "Section 5. That a NEW SECTION be added:

"

On page 3, line 29, of the House Judiciary bill, after "added:" delete "Off-road vehicle activity-- Warning notices."

On page 3, line 29, of the House Judiciary bill, after "notices." delete "

An off-road vehicle activity sponsor or off-road vehicle professional shall post and maintain signs that contain a warning notice to participants regarding the inherent risks associated with off-road vehicle activities. The signs shall be placed in a clearly visible location on or near entrance and exit gates, clubhouses, business centers, rental facilities, or arenas where the off-road vehicle activity sponsor or off-road vehicle professional conduct off-road vehicle activities or once at the primary entrance to any riding trail maintained or operated by the off-road vehicle activity sponsor. The warning notice must appear on the sign in black letters with each letter a minimum of three inches in height and contain the following language:

"WARNING

Under South Dakota law, an off-road vehicle activity sponsor or an off-road vehicle professional is not liable for an injury to or the death of a participant in off-road vehicle activity resulting from an inherent risk of off-road vehicle activity as provided in this Act. "

Any written contract entered into by an off-road vehicle activity sponsor or by an off-road vehicle professional to provide access for off-road vehicle activities, professional services, instruction, or rental of equipment to a participant shall contain in clear, readable print the warning notice specified in this section."

On page 4, line 14, of the House Judiciary bill, after "section." delete "Section 6. That a NEW SECTION be added:

"

On page 4, line 15, of the House Judiciary bill, after "added:" delete "Failure to meet warning requirements--Immunity from liability not applicable."

On page 4, line 16, of the House Judiciary bill, after "applicable." delete "

The immunity from liability provided in § 32-20-19 does not apply to any off-road vehicle activity sponsor or off-road vehicle professional who fails to comply with the warning sign and warning notice requirements in § 32-20-21."

Moved by: Kennedy
Second by: Stalzer
Action: Prevailed by voice vote

MOTION: DO PASS HB 1092 AS AMENDED

Moved by: Rusch
Second by: Stalzer
Action: Prevailed by Majority Members Elect (4-2-1-0)

Voting Yes: Stalzer, Kennedy, Rusch, and Russell

Voting No: Novstrup and Schoenbeck

Excused: Blare

MOTION: ADJOURN

Moved by: Rusch
Second by: Stalzer
Action: Prevailed by voice vote

Rachael Person, Committee Secretary

/s/ LANCE RUSSELL
Lance Russell, Chair