

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

529B0342

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1054** - 1/26/98

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the definition of consanguinity and affinity in  
2 challenges for cause in jury trials.

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

4 Section 1. That § 23A-20-13 be amended to read as follows:

5 23A-20-13. A challenge for implied bias may be taken for ~~all~~ or any of the following causes,  
6 and for no other:

7 (1) The juror has a consanguinity or affinity within the sixth degree, inclusive, as  
8 determined by ~~the common law~~ section 3 of this Act, to the person alleged to be  
9 injured by the offense charged, or on whose complaint the prosecution was instituted,  
10 or to the defendant;

11 (2) The juror is a guardian, ward, client, employer, employee, landlord, tenant, or a  
12 member of the household of the defendant, the person alleged to be injured by the  
13 offense charged, the person on whose complaint the prosecution was instituted, or the  
14 prosecuting attorney or the defense attorney;

15 (3) The juror is a party adverse to the defendant in a civil action, or has complained

- 1 against or been accused by the defendant in a criminal action;
- 2 (4) The juror served on a grand jury which found the indictment, or on a coroner's jury  
3 which inquired into the death of a person whose death is the subject of the  
4 prosecution;
- 5 (5) The juror served on a trial jury which tried another person for the offense charged in  
6 the indictment or information;
- 7 (6) The juror was a member of a jury formerly sworn to try the indictment, information,  
8 or complaint, and whose verdict was set aside or which was discharged without a  
9 verdict;
- 10 (7) The juror served as a juror in a civil action brought against the defendant for the act  
11 charged as an offense;
- 12 (8) The juror applied directly or indirectly to a sheriff, deputy sheriff, or coroner of the  
13 county to be summoned for jury duty; or
- 14 (9) The juror served as a juror on the trial of a case in a court of record in the county  
15 within four years prior to the opening day of the term of court during which  
16 summoned as a juror, or was a party to any suit pending for trial in that county at that  
17 term of court. However, in counties of less than five thousand population or more  
18 than one hundred thousand population, the applicable time period shall be two years  
19 rather than four years.

20 Section 2. That § 15-14-6 be amended to read as follows:

21 15-14-6. Challenges for cause may be taken on ~~one or more~~ any of the following grounds:

- 22 (1) A want of any of the qualifications prescribed by chapter 16-13 to render a person  
23 competent as a juror;
- 24 (2) Consanguinity or affinity, within the fourth degree as determined by section 3 of this  
25 Act, to either party;

- 1       (3)    That the relationship of guardian and ward, master and servant, employer and clerk,  
2            or principal and agent exists between the juror and any party to the action; or that the  
3            juror is a member of the family of any party to the action; or that the juror is a partner  
4            in business with any party or surety on any bond or obligation for any party; that the  
5            relationship of attorney and client exists between the juror and any attorney in the  
6            case; that the juror is an officer, agent, or employee of any corporation between which  
7            corporation and any attorney in the case the relationship of attorney and client exists;  
8            that the juror is the spouse of any attorney in the case or the spouse of a person who  
9            if called as a juror in the case would be subject to challenge for cause under  
10           subdivision (2), subdivision (3), or subdivision (4) of this section;
- 11       (4)    Having served as a juror or been a witness on a previous trial between the same  
12            parties for the same cause of action;
- 13       (5)    Interest on the part of the juror in the event of the action, or in the main question  
14            involved in the action, except an interest as a member or citizen of a municipal  
15            corporation;
- 16       (6)    Having an unqualified opinion or belief as to the merits of the action founded upon  
17            knowledge of its material facts, or some of them;
- 18       (7)    The existence of a state of mind in the juror evincing enmity against, or bias to or  
19            against the other party;
- 20       (8)    That the juror does not understand the English language as used in the courts;
- 21       (9)    That the juror has served as a juror on the trial of a cause in any court of record in the  
22            county within four years previous to the time of being offered as a juror. However,  
23            in counties of less than five thousand population or more than one hundred thousand  
24            population, the applicable time period shall be two years rather than four years;
- 25       (10)   Having applied directly to a sheriff or deputy sheriff of the county in which the person

1 is drawn to be summoned as a juror at the term of court then held;

2 (11) That the juror is a party to a suit pending for trial in the court at that term.

3 Section 3. The degree of kindred is established by the number of generations, and each  
4 generation is called a degree. The series of degrees form the line; the series of degrees between  
5 persons who descend from one another is called direct or lineal consanguinity; and the series of  
6 degrees between persons who do not descend from one another, but spring from a common  
7 ancestor, is called the collateral line or collateral consanguinity.

8 The direct line is divided into a direct line descending and a direct line ascending. The first  
9 is that which connects the ancestor with those who descend from that ancestor. The second is  
10 that which connects a person with those from whom that person descends. In the direct line there  
11 are as many degrees as there are generations. Thus the son is, with regard to the father, in the  
12 first degree; the grandson in the second; and vice versa with regard to the father and grandfather  
13 toward the sons and grandsons.

14 In the collateral line the degrees are counted by generations from one of the relations up to  
15 the common ancestor, and from the common ancestor to the other relations. In such computation  
16 the person whose consanguinity or affinity is being determined is excluded, the relative included,  
17 and the ancestor counted but once. Thus brothers are related in the second degree, uncle and  
18 nephew in the third degree, cousins germane in the fourth degree, and so on.

1 **BILL HISTORY**

2 1/14/98 First read in House and referred to Judiciary. H.J. 37

3 1/23/98 Scheduled for Committee hearing on this date.

4 1/23/98 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 194

5 1/23/98 Judiciary Place on Consent Calendar.