

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

970H0510

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 73 - 01/28/2002

Introduced by: Senators Moore, Albers, Brosz, Dennert, Duxbury, Everist, Ham, Hutmacher, Munson, and Sutton (Dan) and Representatives Michels, Burg, Flowers, Gillespie, Hanson (Gary), Hunhoff, Madsen, Napoli, Olson (Mel), Peterson (Bill), and Sigdestad

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of prepaid adult entertainment cards and
2 to provide a penalty therefor.

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

4 Section 1. For the purposes of this Act, a prepaid adult entertainment card is a product,
5 either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder
6 to access one or more erotic or pornographic internet sites by means of a predetermined user
7 identification and password unique to each card. The cardholder enters the user identification and
8 password on any computer and gains entry to a set number of hours of site access. When the set
9 number of hours has been exhausted, the card expires.

10 Section 2. It is a Class 1 misdemeanor to sell, give, or distribute any prepaid adult
11 entertainment card or any prepaid adult entertainment telephone card to any person under
12 eighteen years of age.

13 Section 3. A prepaid adult entertainment telephone card is a product, either sold at



1 wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one
2 or more adult entertainment telephone services for a predetermined number of minutes by means
3 of a telephone number and an access code or password unique to each card. The cardholder
4 places the telephone call and gains entry to the service for purposes of engaging in sexually-
5 explicit telephone conversations with one or more adults. When the predetermined number of
6 minutes has been exhausted, the card automatically expires.

7 Section 4. Any person who knowingly participates in any conduct proscribed by this Act is
8 liable for civil damages.

9 Section 5. Any of the following persons may bring an action for damages caused by another
10 person's conduct as proscribed by this Act:

- 11 (1) The victimized minor;
- 12 (2) A parent, legal guardian, or sibling of a victimized minor; or
- 13 (3) Any person injured as a result of the willful, reckless, or negligent actions of a person
14 who knowingly participated in conduct proscribed by this Act.

15 If the parent or guardian is named as a defendant in the action, the court shall appoint a
16 special guardian to bring the action on behalf of the minor.

17 Section 6. Any person entitled to bring an action under section 5 of this Act may seek
18 damages from any person who knowingly participated in the sale or in the chain of distribution
19 of any prepaid adult entertainment card or any prepaid adult entertainment telephone card
20 proscribed by this Act.

21 Section 7. Any person entitled to bring an action under section 5 of this Act may recover all
22 of the following damages:

- 23 (1) Economic damages, including the cost of treatment and rehabilitation, medical
24 expenses, loss of economic or educational potential, loss of productivity, absenteeism,

1 support expenses, accidents or injury, and any other pecuniary loss proximately
2 caused by the proscribed conduct;

3 (2) Noneconomic damages, including physical and emotional pain, suffering, physical
4 impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss
5 of companionship, services, and consortium, and other nonpecuniary losses
6 proximately caused by the proscribed conduct;

7 (3) Exemplary damages;

8 (4) Attorneys' fees; and

9 (5) Disbursements.

10 Section 8. Any action for damages under this Act shall be commenced within six years of the
11 time the plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The
12 knowledge of a parent, guardian, or custodian may not be imputed to the minor.

13 For a plaintiff, the statute of limitations under this section is tolled while any potential
14 plaintiff is incapacitated by minority.