

Senate Daily Reader

Wednesday, January 30, 2002

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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0223

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1015 - 01/28/2002

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to modify certain requirements for service of notice of entry
2 in an action involving abuse or neglect.

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

4 Section 1. That § 26-8A-28 be amended to read as follows:

5 26-8A-28. Notice of entry of order of adjudication or final decree of disposition issued by
6 the court in any action involving an abused or neglected child shall be served on the child's
7 attorney and the child's guardian ad litem or special advocate, if any, and on all respondent
8 parents and other respondent parties in the same manner as service of the summons in the action
9 as provided in § 26-7A-47. The notice of entry may be served by publication in the same manner
10 as service of the summons in the action as provided in ~~§§ 26-7A-47 and § 26-7A-48~~. If the
11 notice of entry is served by publication, the service is completed five days after the date of
12 publication. The time for appeal ~~from any final decree of disposition begins~~ commences on the
13 day following the date of completed service of the notice of entry regardless of the manner in
14 which the notice of entry is served.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0250

HOUSE ENGROSSED NO. **HB 1037** - 01/22/2002

Introduced by: The Committee on Transportation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to authorize the Department of Revenue to deny a motor
2 vehicle registration or title to certain commercial motor carriers and to provide for the
3 suspension or revocation of certain commercial motor carrier registration, license plates, or
4 permits.

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

6 Section 1. That chapter 32-9 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The department or its agent shall refuse to issue a registration, license plate, permit, or a
9 certificate of title or to transfer any title on a vehicle licensed under chapter 32-9 or 32-10 that
10 has been assigned to a commercial motor carrier who has been prohibited from operating by the
11 Federal Motor Carrier Safety Administration. However, the department or its agent may allow
12 a commercial motor carrier, who has been prohibited from operating by the Federal Motor
13 Carrier Safety Administration, to transfer a title if the commercial motor carrier does not retain
14 an interest, either directly or indirectly, in the vehicle.

15 The department or its agent may suspend, revoke, or remove the registration, plate, or any



1 permit issued to any vehicle assigned to a commercial motor carrier who has been prohibited
2 from operating by the Federal Motor Carrier Safety Administration.

3 If the prohibition by the Federal Motor Carrier Safety Administration is rescinded, the
4 department or its agent may issue a registration, license plate, permit, or a certificate of title to
5 the vehicle provided all other taxes and fees have been paid to the department.

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.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

643H0531

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 118** - 01/28/2002

Introduced by: Senators McCracken, Diedtrich (Elmer), Ham, and McIntyre and
Representatives Peterson (Bill), Frost, Glenski, and Van Etten

1 FOR AN ACT ENTITLED, An Act to prohibit smoking in public places.

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

3 Section 1. That § 22-36-2 be amended to read as follows:

4 22-36-2. No person may smoke tobacco or carry any lighted tobacco product in the
5 following places:

6 ~~—(1)— Any hospital or medical or dental clinic;~~

7 ~~—(2)— Any nursing facility;~~

8 ~~—(3)— Any public library, museum, indoor theater, or concert hall;~~

9 ~~—(4)— Any elementary or secondary school building;~~

10 ~~—(5)— Any public conveyance;~~

11 ~~—(6)— Any jury room;~~

12 ~~—(7)— Any elevator;~~

13 ~~—(8)— Any registered or unregistered day care program, day care center, day care
14 cooperative, or family day care home governed by chapter 26-6 during the time in~~



1 ~~which children who are not family members of the day care provider are receiving~~
2 ~~care.~~

3 ~~—This section does not prohibit the smoking of tobacco or tobacco products in the places~~
4 ~~named in this section, if the smoking is confined to areas designated as smoking areas any public~~
5 ~~place or place of employment.This section does not apply to any sleeping room in a lodging~~
6 ~~establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any~~
7 ~~video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to~~
8 ~~chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the~~
9 ~~sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely~~
10 ~~incidental.~~

11 A violation of this section is a petty offense.

12 Section 2. For the purposes of this Act, a public place is any enclosed indoor area to which
13 the public is invited or to which the public is permitted, including any hospital or medical or
14 dental clinic; any nursing facility; any public library, museum, theater, or concert hall; any
15 elementary or secondary school building; any public conveyance; any jury room; any elevator;
16 any reception area; any restaurant; any retail service establishment; any retail store; and any
17 registered or unregistered day care program, day care center, day care cooperative, or family day
18 care home governed by chapter 26-6 during the time in which children who are not family
19 members of the day care provider are receiving care. A private residence is not a public place
20 unless it is used for day care.

21 Section 3. For the purposes of this Act, a place of employment is any enclosed indoor area
22 under the control of a public or private employer, including work areas, employee lounges and
23 restrooms, conference and class rooms, employee cafeterias, and hallways. A private residence
24 is not a place of employment unless it is used for day care.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

447H0385

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 129** - 01/28/2002

Introduced by: Senators Vitter and Reedy and Representatives Murschel and Gillespie

1 FOR AN ACT ENTITLED, An Act to revise the provisions related to the sale of surplus
2 property.

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

4 Section 1. That § 6-13-5 be amended to read as follows:

5 6-13-5. Sealed bids received on the surplus property shall be filed with the fiscal officer of
6 the political subdivision and shall be opened at a governing board meeting at the time specified
7 in the notice required by § 6-13-4, or the governing board may designate an official of the
8 political subdivision and a witness to open all bids before the meeting of the governing board as
9 specified in the notice required by § 6-13-4. The governing board may reject any and all bids.
10 However, if the governing board accepts a bid, it must be the bid of the highest bidder. If no bids
11 are received, the governing board may have the surplus property reappraised pursuant to § 6-13-
12 2, or may, within twelve months thereafter, sell the property at private sale for not less than
13 ninety percent of the appraised value without further publication or appraisal. If the property to
14 be sold was created as a result of an educational program in a school, the school board may
15 accept the highest bid or it may reject all bids and may ~~within twelve months thereafter~~ sell the



1 property at private sale without further publication.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

445H0124

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 152** - 01/28/2002

Introduced by: Senators Sutton (Dan), Diedrich (Larry), Diedrich (Elmer), Greenfield, Hutmacher, McIntyre, Munson, Staggers, Symens, and Whiting and Representatives Monroe, Bartling, Broderick, Garnos, Heineman, Olson (Mel), Pederson (Gordon), Sebert, and Slaughter

1 FOR AN ACT ENTITLED, An Act to allow the offer of an individual health benefit plan
2 without certain mandates.

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

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 An insurer may offer an individual health benefit plan that does not meet the minimum
7 requirements of any or all of the following sections: §§ 58-17-1.1, 58-17-1.2, 58-17-30.5, 58-17-
8 62, 58-17-84.1, 58-17-98, and 58-17-107. The offer of rejection shall be contained in a separate
9 disclosure document approved by the director.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

575H0681

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 167 - 01/28/2002

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Greenfield, Apa, Bogue, Diedrich (Larry), Drake, Koskan, and McCracken and Representatives Fryslie, Jensen, Juhnke, Klaudt, Koistinen, and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise the contractor's excise tax provisions for a
2 commercial power production facility.

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

4 Section 1. Any commercial power production facility, utilizing renewable resources, such as
5 sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and
6 produces more than ten megawatts of electricity as measured by nameplate rating, and is owned
7 by a natural person, corporation, nonprofit or for profit business organization, or tribal council
8 (if the facility is located outside the boundaries of the reservation), irrigation district, drainage
9 district, or other political subdivision or agency of the state authorized by statute to carry on the
10 business of developing, transmitting, utilizing, or distributing electric power is subject to the
11 provisions of this Act for any new or expanded facility.

12 Section 2. Rural electric cooperatives developing commercial power production facilities
13 utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject to a



1 gross receipts tax as defined in § 10-36-6.

2 Section 3. Terms used in this Act mean:

3 (1) "Department," the Department of Revenue;

4 (2) "New or expanded facility," a new commercial power production facility as defined
5 in section 1 of this Act or an addition to an existing commercial power production
6 facility, the construction or installation of which is subject to contractors' excise tax
7 pursuant to chapter 10-46A or 10-46B;

8 (3) "Project," the installation or construction of generation capacity of a new or expanded
9 facility, excluding any associated transmission facilities;

10 (4) "Project cost," the amount of money incurred and paid after July 1, 2002, for a
11 project;

12 (5) "Secretary," the secretary of the Department of Revenue.

13 Section 4. The tax imposed under chapters 10-46A and 10-46B on a new or expanded facility
14 shall be imposed as provided in chapters 10-46A and 10-46B, and remitted to the state by the
15 holder of the permit issued pursuant to section 6 of this Act.

16 Section 5. The owner shall file a tax return on or before December thirty-first of each year
17 reporting the project costs subject to tax under chapters 10-46A or 10-46B incurred during the
18 previous twelve months. The tax due from such return shall be paid in four equal annual
19 payments with the first payment due no later December thirty-first following the filing of the tax
20 return. Each subsequent annual payment shall be made no later than December thirty-first
21 following the last payment.

22 Section 6. Any person desiring to pay the contractor's excise tax pursuant to section 4 of this
23 Act shall apply for a permit from the secretary at least thirty days prior to commencement of the
24 project. The application for a permit shall be submitted on a form prescribed by the secretary.

1 A separate application shall be made and submitted for each project. Upon approval of the
2 application, the secretary shall issue a permit to the applicant. The permit is not assignable or
3 transferable except as collateral or security pursuant to chapter 57A-9.

4 Section 7. Any person aggrieved by the denial of a permit, may within thirty days after
5 service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon
6 notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.

7 Section 8. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 8 (1) Permitting, including the permit application;
- 9 (2) The filing of returns and payment of the tax;
- 10 (3) Determining the application of the tax and exemptions;
- 11 (4) Taxpayer and owner record-keeping requirements; and
- 12 (5) Determining auditing methods.

13 Section 9. That § 10-59-1 be amended to read as follows:

14 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
15 or fees imposed by this Act and chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
16 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and
17 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

18 Section 10. If the secretary of revenue finds that the assessment or collection of the tax
19 required to be paid under this Act is in jeopardy, the secretary may immediately make an
20 assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the
21 payment is not made, a lien may be filed on the owner's real and personal property located in the
22 state and a distress warrant issued.

23 Section 11. Each person subject to tax or responsible for payment of tax under this Act shall
24 keep records and books of all receipts and sales, together with invoices, bills of lading, copies

1 of bills of sale, and other pertinent papers and documents. Such books and records and other
2 papers and documents shall, at all times during business hours of the day, be subject to inspection
3 by the secretary of revenue or the secretary's duly authorized agents and employees to determine
4 the amount of tax due. Such books and records shall be preserved for a period of three years
5 unless the secretary of revenue, in writing, authorized their destruction or disposal at an earlier
6 date.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

592H0680

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 169** - 01/28/2002

Introduced by: Senators Daugaard and Volesky and Representatives Michels and McCaulley

1 FOR AN ACT ENTITLED, An Act to amend the Uniform Limited Partnership Act to provide
2 limited liability limited partnerships.

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

4 Section 1. That chapter 48-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 48-7-1106. (a) A limited partnership may become a limited liability limited partnership by:

7 (1) Obtaining approval of the terms and conditions of the limited partnership becoming
8 a limited liability limited partnership by the vote necessary to amend the limited
9 partnership agreement except, in the case of a limited partnership agreement that
10 expressly considers contribution obligations, the vote necessary to amend those
11 provisions;

12 (2) Filing a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership
13 Act; and

14 (3) Having as the last words or letters of its name the words "Registered Limited Liability
15 Limited Partnership," or the abbreviation "L.L.L.P.," or the designation "LLL.P."



1 (b) A limited liability limited partnership continues to be the same entity that existed before
2 the filing of a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership Act.

3 (c) Sections 48-7A-306(c) and 48-7A-307(b) of the Uniform Partnership Act apply to both
4 general and limited partners of a limited liability limited partnership. Section 48-7-303 also
5 applies to limited partners.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 177** - 01/25/2002

Introduced by: Senators Hutmacher and Koskan and Representatives Juhnke and Jensen

1 FOR AN ACT ENTITLED, An Act to revise and modify certain provisions relating to the award
2 of child custody.

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

4 Section 1. That § 25-5-7 be amended to read as follows:

5 25-5-7. The father and mother of an unmarried minor child are equally entitled to the child's
6 custody, service, and earnings. If either the father or mother is dead, or refuses to ~~take the~~
7 assume custody, or ~~has abandoned~~ abandons the family, the other is entitled to the child's
8 custody, service, and earnings. If a sole surviving parent or both parents abandons the child, the
9 court may award custody of the child to a third person pursuant to section 4 of this Act.

10 Section 2. A parent's presumptive right to custody of his or her child may be rebutted by
11 clear and convincing proof that the parent is unfit, has abandoned the child, or has forfeited or
12 otherwise surrendered his or her custodial rights over the child to a third person who stands,
13 constructively or legally, in loco parentis.

14 Section 3. Nothing in section 2 of this Act creates any right on behalf of a stepparent to seek
15 custody or visitation with a stepchild who has lived with that stepparent merely because the



1 stepparent was married to or living with the child's biological parent.

2 Section 4. Any person other than the parent of the child may petition a court of competent
3 jurisdiction for custody or visitation of any child in his or her immediate care if the petitioner has
4 had the child in his or her care and control for a year or more. Either biological parent may rebut
5 the petition by presenting evidence that he or she:

6 (1) Did not abandon his or her parental rights over the child during the time the child was
7 in the care and control of the petitioner; or

8 (2) Did not forfeit or surrender his or her parental rights over the child to any third party
9 during the time the child was in the care and control of the petitioner; or

10 (3) Persistently asserted and exercised his or her parental rights over the child and made
11 good faith efforts to fulfill his or her parental duties and obligations to the child during
12 the time the child was in the care and control of the petitioner.

13 Section 5. If a court determines that a petitioner pursuant to section 4 of this Act should be
14 awarded custody or visitation, the court need not terminate either biological parent's parental
15 rights over the child. A judgment awarding the petitioner custodial rights may award the
16 biological parent with visitation rights with the child.

17 Section 6. If a court awards a third party custodial rights to a child, the court may set child
18 support in whatever amount it deems appropriate, and notwithstanding the provisions of any
19 other statute to the contrary, may waive the biological parent's duty to provide monetary or other
20 support for their child.