

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0028

CONFERENCE COMMITTEE ENGROSSED NO. **HB**

1220 - 02/22/2002

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

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and
2 to declare an emergency.

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

4 Section 1. That § 29A-5-106 be amended to read as follows:

5 29A-5-106. Custody of a child may be sought by a person other than the parent under this
6 chapter and the substantive law of this state. A person other than the parent may not use this
7 chapter to seek custody if a proceeding is pending pursuant to chapter 25-3, 25-4, 25-5A, 25-6,
8 25-8, 26-7A, 26-8A, 26-8B, or 26-8C, or if the child is subject to the continuing jurisdiction of
9 another court. Nothing in this chapter affects the provisions of chapters 25-4, 25-5, 25-5A, 25-6,
10 25-8, 26-7A, 26-8A, 26-8B, and 26-8C relating to the appointment of guardians and
11 conservators and the administration of guardianships and conservatorships for children who have
12 been adjudicated to be delinquent, abused, neglected, or in need of supervision. Nor may
13 anything in this chapter affect the provisions of Title 27A, relating to individuals with mental



1 illnesses. In the event of any inconsistency or conflict, the provisions of chapters 25-4, 25-5, 25-
2 5A, 25-6, 25-8, 26-7A, 26-8A, 26-8B, and 26-8C or of Title 27A shall control, and the
3 provisions of this chapter are in all respects to be supplementary thereto. A petition pursuant to
4 this chapter seeking custody by a person other than the parent shall be dismissed if an action
5 concerning the child is filed pursuant to chapter 26-7A, 26-8A, 26-8B, or 26-8C. If, while a
6 guardianship petition pursuant to this chapter seeking custody by a person other than the parent
7 is pending, an action is commenced pursuant to chapter 25-4, 25-5, 25-5A, 25-6, or 25-8, the
8 court may, in its discretion, dismiss the guardianship proceeding and defer the child custody
9 matter to the other proceeding or considering the stage of the proceedings, judicial economy, and
10 best interests of the child, retain jurisdiction and establish the guardianship, or enter an
11 appropriate protection order pending resolution of the pending proceedings.

12 Section 2. That chapter 29A-5 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 It is the express legislative intent that this Act, together with chapter 25-5 dealing with
15 custody disputes between a parent and a person other than the parent, apply to all pending and
16 subsequent guardianship matters involving a custody dispute between a parent and a person
17 other than the parent.

18 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,
19 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
20 effect from and after its passage and approval.