

## AN ACT

ENTITLED, An Act to prohibit the sale of prepaid adult entertainment cards and to provide a penalty therefor.

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

Section 1. For the purposes of this Act, a prepaid adult entertainment card is a product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more erotic or pornographic internet sites by means of a predetermined user identification and password unique to each card.

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

Section 3. A prepaid adult entertainment telephone card is a product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more adult entertainment telephone services for a predetermined number of minutes by means of a telephone number and an access code or password unique to each card.

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

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

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

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

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

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

- (1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;
- (2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;
- (3) Exemplary damages;
- (4) Attorneys' fees; and
- (5) Disbursements.

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

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

Section 9. As a public nuisance, all prepaid adult entertainment cards and prepaid adult entertainment telephone cards are subject to seizure and destruction without compensation by any law enforcement agency with appropriate jurisdiction.

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I certify that the attached Act
originated in the
SENATE as Bill No. 73

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 73
File No.
Chapter No.

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Received at this Executive Office
this \_\_\_ day of \_\_\_\_\_,
20\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_
for the Governor

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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_
at \_\_\_\_\_ o'clock \_\_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_
Asst. Secretary of State