

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

581W0624

## SENATE BILL NO. 187

Introduced by: Senators Jensen (Phil), Greenfield (Brock), Monroe, and Olson and Representatives Craig, Brunner, Campbell, DiSanto, Heinemann (Leslie), Kaiser, Latterell, Marty, May, Qualm, Russell, Schaefer, Stalzer, and Zikmund

1 FOR AN ACT ENTITLED, An Act to establish certain rights of parents regarding the  
2 upbringing, education, health care, and mental health care of their children and to provide  
3 certain penalties for the violation of those rights.

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

5 Section 1. This state, any political subdivision of this state, or any other governmental entity  
6 may not infringe on the fundamental rights of parents to direct the upbringing, education, health  
7 care, and mental health of their children without demonstrating that the compelling  
8 governmental interest as applied to the child involved is of the highest order, is narrowly  
9 tailored, and is not otherwise served by a less restrictive means.

10 Section 2. For the purposes of this Act, the term, parent, means the natural or adoptive  
11 parent or legal guardian of a minor child.

12 Section 3. All parental rights are reserved to a parent of a minor child without obstruction  
13 or interference from this state, any political subdivision of this state, any other governmental  
14 entity, or any other institution, including the following rights:



- 1 (1) The right to direct the education of the minor child;
- 2 (2) The right to access and review all school records relating to the minor child;
- 3 (3) The right to direct the upbringing of the minor child;
- 4 (4) The right to direct the moral or religious training of the minor child;
- 5 (5) The right to make health care decisions for the minor child, unless otherwise
- 6 prohibited by law;
- 7 (6) The right to access and review all medical records of the minor child unless
- 8 otherwise prohibited by law or the parent is the subject of an investigation of a crime
- 9 committed against the minor child and a law enforcement official requests that the
- 10 information not be released;
- 11 (7) The right to consent in writing before a biometric scan of the minor child is made;
- 12 (8) The right to consent in writing before any record of the minor child's blood or
- 13 deoxyribonucleic acid is created, stored, or shared;
- 14 (9) The right to consent in writing before the state or any of its political subdivisions
- 15 makes a video or voice recording of the minor child, unless the video or voice
- 16 recording is made during or as a part of a court proceeding, by law enforcement
- 17 officers during or as part of a law enforcement investigation, during or as part of a
- 18 forensic interview in a criminal or Department of Social Services investigation or to
- 19 be used solely for any of the following:
  - 20 (a) Safety demonstrations, including the maintenance of order and discipline in
  - 21 the common areas of a school or on student transportation vehicles;
  - 22 (b) A purpose related to a legitimate academic or extracurricular activity;
  - 23 (c) A purpose related to regular classroom instruction;
  - 24 (d) Security or surveillance of buildings or grounds; and

- 1 (e) A photo identification card; and
- 2 (10) The right to be notified promptly if an employee of this state, any political
- 3 subdivision of this state, any other governmental entity, or any other institution
- 4 suspects that a criminal offense has been committed against the minor child by
- 5 someone other than a parent, unless the incident has first been reported to law
- 6 enforcement and notification of the parent would impede a law enforcement or
- 7 Department of Social Services investigation. This subdivision does not create any
- 8 new obligation for school districts and charter schools to report misconduct between
- 9 students at school, such as fighting or aggressive play, that is routinely addressed as
- 10 a student disciplinary matter by the school.

11 Section 4. The provisions of section 3 of this Act do not authorize or allow a parent to

12 engage in conduct that is unlawful or to abuse or neglect a child in violation of the laws of this

13 state. The provisions of section 3 of this Act do not apply to a parental action or decision that

14 would end life. The provisions of section 3 of this Act do not prohibit courts, law enforcement

15 officers, or employees of a government agency responsible for child welfare from acting in their

16 official capacity within the reasonable and prudent scope of their authority. The provisions of

17 section 3 of this Act do not prohibit a court from issuing an order that is otherwise permitted by

18 law.

19 Section 5. Any attempt to encourage or coerce a minor child to withhold information from

20 the child's parent shall be grounds for discipline of an employee of this state, any political

21 subdivision of this state, or any other governmental entity, except for law enforcement

22 personnel.

23 Section 6. Unless parental rights have been legally waived or legally terminated, parents

24 have inalienable rights that are more comprehensive than those listed in section 3 of this Act.

1 This Act does not prescribe all rights of parents. Unless otherwise required by law, the rights  
2 of parents of minor children may not be limited or denied. This Act does not apply to a parental  
3 action or decision that would end life.

4 Section 7. The school board, in consultation with parents, teachers, and administrators, shall  
5 develop and adopt a policy to promote the involvement of parents and guardians of children  
6 enrolled in the schools within the school district, including:

7 (1) A plan for parent participation in the schools which is designed to improve parent  
8 and teacher cooperation in such areas as homework, attendance, and discipline;

9 (2) Procedures by which parents may learn about the course of study for their children  
10 and review learning materials, including the source of any supplemental educational  
11 materials;

12 (3) Procedures by which parents who object to any learning material or activity on the  
13 basis that it is harmful may withdraw their children from the activity or from the class  
14 or program in which the material is used. Objection to a learning material or activity  
15 on the basis that it is harmful includes objection to a material or activity because it  
16 questions beliefs or practices in sexuality, morality, or religion;

17 (4) Procedures to opt out of a school district providing sexuality education instruction  
18 to a child if the child's parent provides written objection to the child's participation  
19 in the sexuality education curricula;

20 (5) Procedures by which parents will be notified in advance of and given the opportunity  
21 to withdraw their children from any instruction or presentations regarding sexuality  
22 in courses other than formal sexuality education curricula;

23 (6) Procedures by which parents may learn about the nature and purpose of clubs and  
24 activities that are part of the school curriculum, as well as extracurricular clubs and

1 activities that have been approved by the school; and

2 (7) Procedures by which parents may learn about parental rights and responsibilities  
3 under the laws of this state, including the following:

4 (a) The right to opt out of a sex education curriculum if one is provided by the  
5 school district;

6 (b) Open enrollment rights;

7 (c) The right to opt out of assignments pursuant to this section;

8 (d) The right to review test results;

9 (e) The right to inspect instructional materials used in connection with any  
10 research or experimentation program or project;

11 (f) The right to receive a school report card;

12 (g) The attendance requirements;

13 (h) The right to public review of courses of study and textbooks;

14 (i) The right to be excused from school attendance for religious purposes;

15 (j) The right to participate in parent-teacher associations and organizations that  
16 are sanctioned by the school board; and

17 (k) The right to opt out of any data collection instrument at the district level that  
18 would capture data for inclusion in the state longitudinal student data system  
19 except what is necessary and essential for establishing a student's public  
20 school record.

21 Section 8. The school board may adopt a policy to provide to parents the information  
22 required by section 7 of this Act in an electronic form.

23 Section 9. A parent shall submit a written request for information pursuant to section 7 of  
24 this Act during regular business hours to either the school principal at the school site or the

1 superintendent of the school district at the office of the school district. Within ten days of  
2 receiving the request for information, the school principal or the superintendent of the school  
3 district shall either deliver the requested information to the parent or submit to the parent a  
4 written explanation of the reasons for the denial of the requested information. If the request for  
5 information is denied or the parent does not receive the requested information within fifteen  
6 days after submitting the request for information, the parent may submit a written request for  
7 the information to the school board, which shall formally consider the request at the next  
8 scheduled public meeting of the board if the request can be properly noticed on the agenda. If  
9 the request cannot be properly noticed on the agenda, the school board shall formally consider  
10 the request at the next subsequent public meeting of the board.

11 Section 10. Except as otherwise provided by law, no person, corporation, association,  
12 organization, or state-supported institution may procure, solicit to perform, arrange for the  
13 performance of, perform surgical procedures, or perform a physical examination upon a minor  
14 or prescribe any prescription drugs to a minor without first obtaining a written consent of a  
15 parent or legal guardian of the minor.

16 Section 11. No hospital may permit surgical procedures to be performed upon a minor in its  
17 facilities without first having received a written consent from a parent or legal guardian of the  
18 minor.

19 Section 12. The provisions of sections 10 and 11 of this Act do not apply if it has been  
20 determined by a physician that an emergency exists and that it is necessary to perform such  
21 surgical procedures for the treatment of an injury or drug abuse, or to save the life of the patient,  
22 or if such parent or legal guardian cannot be located or contacted after reasonably diligent effort.

23 Section 13. Any person who violates the provisions of section 10 or 11 of this Act is guilty  
24 of a Class 1 misdemeanor.

1       Section 14. Except as otherwise provided by law or a court order, no person, corporation,  
2       association, organization, or state-supported institution, or any individual employed by any of  
3       these entities, may procure, solicit to perform, arrange for the performance of, or perform mental  
4       health evaluation in a clinical or nonclinical setting or mental health treatment on a minor  
5       without first obtaining the written or oral consent of a parent or a legal custodian of the minor  
6       child. If the parental consent is given through telemedicine, the health professional shall verify  
7       the identity of the parent at the site where the consent is given.

8       Section 15. The provisions of section 14 of this Act do not apply when an emergency exists  
9       that requires a person to perform mental health screening or provide mental health treatment to  
10      prevent serious injury to or save the life of a minor child.

11      Section 16. Any person who violates the provisions of section 14 of this Act is guilty of a  
12      Class 1 misdemeanor.