

# Prohibiting the Sale of Prepaid Adult Entertainment Cards

This Act prohibits selling prepaid adult entertainment cards to people younger than 18 years. Prepaid adult entertainment cards are products, either sold at wholesale, retail, or distributed gratis as a promotion, which permit cardholders to access one or more erotic or pornographic Internet sites or “adult” telephone services by means of a predetermined user identification and password unique to each card.

Submitted as:  
South Dakota  
SB 73 (enrolled version)  
Status: Enacted into law in 2002.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Prohibit the Sale of Prepaid  
2 Adult Entertainment Cards and to Provide a Penalty Therefor.”

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4           Section 2. [*Definitions.*] For the purposes of this Act, a prepaid adult entertainment card  
5 is:

6           (A) A product, either sold at wholesale, retail, or distributed gratis as a promotion, which  
7 permits the cardholder to access one or more erotic or pornographic Internet sites by means of a  
8 predetermined user identification and password unique to each card; or

9           (B) A product, either sold at wholesale, retail, or distributed gratis as a promotion, which  
10 permits the cardholder to access one or more adult entertainment telephone services for a  
11 predetermined number of minutes by means of a telephone number and an access code or  
12 password unique to each card.

13  
14           Section 3. [*Penalties.*] It is a [Class 1 misdemeanor] to sell, give, or distribute any  
15 prepaid adult entertainment card or any prepaid adult entertainment telephone card to any  
16 person under [eighteen] years of age.

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18           Section 4. [*Civil Damages.*]

19           (A) Any person who knowingly participates in any conduct proscribed by this Act is  
20 liable for civil damages.

21           (B) Any of the following people may bring an action for damages caused by another  
22 person's conduct as proscribed by this Act:

23                   (1) The victimized minor;

24                   (3) A parent, legal guardian, or sibling of a victimized minor; or

25                   (3) Any person injured as a result of the willful, reckless, or negligent actions of a  
26 person who knowingly participated in conduct proscribed by this Act.  
27 If the parent or guardian is named as a defendant in the action, the court shall appoint a special  
28 guardian to bring the action on behalf of the minor.

29 (C) Any person entitled to bring an action under this section may seek damages from any  
30 person who knowingly participated in the sale or in the chain of distribution of any prepaid adult  
31 entertainment card or any prepaid adult entertainment telephone card proscribed by this Act.

32 (D) Any person entitled to bring an action under this section may recover all of the  
33 following damages:

34 (1) Economic damages, including the cost of treatment and rehabilitation,  
35 medical expenses, loss of economic or educational potential, loss of productivity, absenteeism,  
36 support expenses, accidents or injury, and any other pecuniary loss proximately caused by the  
37 proscribed conduct;

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

42 (3) Exemplary damages;

43 (4) Attorneys' fees; and

44 (5) Disbursements.

45 (E) Any action for damages under this Act shall be commenced within [six years] of the  
46 time the plaintiff knew, or had reason to know, of any injury caused by violations of this Act.  
47 The knowledge of a parent, guardian, or custodian may not be imputed to the minor. For a  
48 plaintiff, the statute of limitations under this section is tolled while any potential plaintiff is  
49 incapacitated by minority.

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51 Section 5. [*Prepaid Adult Entertainment Telephone Cards Subject to Seizure and*  
52 *Destruction.*] As a public nuisance, all prepaid adult entertainment cards and prepaid adult  
53 entertainment telephone cards are subject to seizure and destruction without compensation by  
54 any law enforcement agency with appropriate jurisdiction.

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56 Section 6. [*Severability.*] [Insert severability clause.]

57

58 Section 7. [*Repealer.*] [Insert repealer clause.]

59

60 Section 8. [*Effective Date.*] [Insert effective date.]