

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

427Q0405

SENATE JUDICIARY ENGROSSED NO. **HB 1097** - 2/5/2009

Introduced by: Representatives Cutler, Deadrick, Engels, Feinstein, Gosch, Hunt, Lust, and Russell and Senators Abdallah, Gillespie, Heidepriem, and Knudson

1 FOR AN ACT ENTITLED, An Act to provide for certain filing fees and surcharges in certain
2 civil cases and to provide exemptions in certain cases.

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

4 Section 1. That § 16-2-29 be amended to read as follows:

5 16-2-29. The clerk of courts shall charge and collect the following fees ~~and commissions~~:

6 (1) For the probate of an estate, seventy-five dollars;

7 (2) For all service connected with the preparation and transmission of a settled record to
8 the Supreme Court, including the remittitur from the Supreme Court, fifty dollars;

9 (3) For any of the following, twenty-five dollars:

10 (a) Civil cases filed for jury or court trial;

11 (b) Guardianship or conservatorship actions, adoption cases, termination of life
12 estates;

13 (c) Cases to determine amount of inheritance tax in estates in which real and
14 personal property is transferred in contemplation of death;



- 1 (d) Default actions to quiet title to real property;
- 2 (e) Default cases involving garnishment proceedings;
- 3 (f) Dissolutions of corporations;
- 4 (g) Foreclosure actions;
- 5 (h) Special administration proceedings;
- 6 (i) Summary administration proceedings;
- 7 (j) Appeals to the circuit court from an action of a political subdivision of the
- 8 state or from an action of the state or its officers, boards, agencies, and
- 9 commissions; or
- 10 (k) All matters not otherwise provided for in this section;

11 ~~twenty-five dollars;~~

12 (4) For any of the following, fifty dollars:

- 13 (a) Petitions and motions to modify final child support orders, except if the
- 14 petitioner or moving party is a recipient of assistance benefits pursuant to Title
- 15 28;
- 16 (b) Petitions and motions to modify final child custody orders;
- 17 (c) Petitions and motions to modify final visitation orders;
- 18 (d) Petitions and motions to modify final spousal support orders;

19 (5) For any of the following, five dollars:

- 20 (a) Issuing a transcript of a judgment;
- 21 (b) Filing and docketing a transcript of a judgment;
- 22 (c) Issuing and docketing an execution, commission, or writ;
- 23 (d) Filing a special execution; or
- 24 (e) Renewing a judgment according to § 15-16-33;

1 ~~five dollars;~~

2 ~~(5)(6)~~ For any of the following, two dollars:

- 3 (a) Reproducing an authenticated, exemplified, or double certificate of a record
- 4 on file in the clerk's office;
- 5 (b) Certifying a document not excepted by subdivision ~~(6)~~ (7) of this section;
- 6 (c) Issuing a subpoena in a civil case; or
- 7 (d) Safekeeping or filing of a will;

8 ~~two dollars;~~

9 ~~(6)(7)~~ All true and correct copies of any original record or paper furnished by the attorney
10 of record or the personal representative qualified to act in any of the following cases
11 which are necessary for the completion of the case shall be certified at no extra
12 charge for the certification:

- 13 (a) Guardianship or conservatorship actions, adoption cases, termination of life
- 14 estates, trusts, probate actions;
- 15 (b) Cases to determine amount of inheritance tax in estates in which real and
- 16 personal property is transferred in contemplation of death; and
- 17 (c) Divorce actions;

18 ~~(7)(8)~~ For a facsimile transmission of any opinion, record, or paper from an active or
19 inactive file in the clerk's custody, one dollar per page, but the minimum charge ~~shall~~
20 ~~be~~ is five dollars. Fees collected pursuant to this subdivision shall be deposited into
21 the unified judicial system court automation fund.

22 No fee for filing, docketing, issuing, recording, certifying, or searching, or other fee or
23 commission, may be required of the state, any foreign state, or the federal government, or its
24 officers, boards, agencies, and commissions, or its political subdivisions, in any action or

1 proceeding commenced by the state or a political subdivision. In addition, no fee for record
2 searches may be required of any agency of the federal government which is charged with law
3 enforcement or investigatory duties under federal law.

4 No filing fee may be required in any action under § 25-10-3, 25-10-6, 22-19A-8, or 22-19A-
5 12.

6 Section 2. That § 16-2-39 be amended to read as follows:

7 16-2-39. In each civil action, ~~other than small claims actions~~, proceeding for judicial
8 remedy, and probate proceeding, the clerk of courts shall collect the sum of twenty dollars as
9 a unified judicial system court automation surcharge. The twenty-dollar surcharge does not
10 apply to a small claims action. In each small claims action, the clerk of courts shall collect as
11 a unified judicial system court automation surcharge the sum of six dollars if the amount in
12 controversy is less than four thousand dollars and eight dollars if the amount in controversy is
13 four thousand dollars or more. The surcharge shall be collected from the plaintiff or person
14 instituting the action or proceeding at the time of filing the first paper. The surcharge shall be
15 collected by the clerk in the manner in which other fees are collected. However, no surcharge
16 may be collected for any petition or motion to modify final orders for child support, child
17 custody, child visitation, or spousal support or in any civil action or proceeding for judicial
18 remedy commenced by the state, a county, a municipality, or a school district.

19 Section 3. That § 14-6-1 be amended to read as follows:

20 14-6-1. Upon order of the presiding judge of the circuit court made and filed in the office
21 of the clerk of courts of any county within the circuit of which such county is a part, the clerk
22 of courts of such county shall collect in each civil action, proceeding for judicial remedy, and
23 probate proceeding, ~~except such as commenced by the state, county, municipality, or school~~
24 ~~district therein, in the manner in which other fees are collected therein and in addition thereto,~~

1 as a county lawbook and county law library fee, a sum of two dollars in actions commenced
2 pursuant to chapter 15-39 and a sum of five dollars in all other civil actions, proceedings for
3 judicial remedy, and probate proceedings; The clerk shall collect the fee in the manner in which
4 other fees are collected from the plaintiff or person instituting such action or proceeding, at the
5 time of filing the first paper ~~therein~~ in such action or proceeding. However, no surcharge may
6 be collected for any petition or motion to modify final orders for child support, child custody,
7 child visitation, or spousal support or in any civil action or proceeding for judicial remedy
8 commenced by the state, a county, a municipality, or a school district.

9 Section 4. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For any petition or motion to modify final orders for child support, child custody, child
12 visitation, or spousal support, the clerk of courts shall collect the sum of fifty dollars as a
13 commission on equal access to our courts surcharge. The surcharge shall be collected from the
14 person filing the motion or petition at the time of filing. The surcharge shall be collected by the
15 clerk in the manner in which other fees are collected. No surcharge may be collected in any civil
16 action or proceeding commenced by the state, county, a municipality, or a school district. The
17 surcharge may be waived pursuant to the provisions of §§ 16-2-29.2 and 16-2-29.3.

18 Section 5. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The clerk of courts shall collect all amounts due under section 4 of this Act and transmit
21 such amounts monthly to the state treasurer who shall place such amounts received into the
22 equal access to our courts fund.