



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Two Hundred Fifty-ninth Meeting  
Tuesday  
June 14, 2005**

**Room 413  
State Capitol Building  
Pierre, South Dakota**

The two hundred fifty-ninth meeting of the Rules Review Committee was called to order by Vice-Chair Senator Orville Smidt at 9:00 a.m., June 14, 2005, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Eric Bogue, Jim Hundstad and Orville Smidt (Vice-Chair); and Representatives Roger Hunt (appearing telephonically) and Bill Thompson. Representative Jean Hunhoff (Chair) was present following the roll call.

Staff members present included Doug Decker, Code Counsel, and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

### **Approval of Minutes**

*Senator Bogue moved, seconded by Senator Hundstad, that the minutes of the May 17, 2005, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunt, Smidt, and Thompson. Excused: Hunhoff.*

### **Rules Reviewed**

**Department of Game, Fish and Parks** - Amend the exceptions on the restrictions on use of firearms and bows at Adams Homestead and Nature Preserve, at La Framboise Island, and at Farm Island Recreation Area, and prohibit deer hunting in state parks and recreation and nature areas during January 1-31; amend the special Custer State Park Antlerless Elk season; amend the National Wildlife Refuge Deer seasons; modify the Youth Deer Hunting season; amend the Black Hills Deer Hunting season; amend the Fall Wild Turkey Hunting season and establish new hunting units in Hutchinson and Turner County; amend the Special Canada Goose Hunting season by repealing the special hunting units in Fall River, Custer, and Minnehaha County and include the property within Unit 1, modify the season dates in Unit 11B (Bennett County), modify license type in Unit 11A to be 3 tag license, and

establish (lower) the number of licenses available in Unit 11B; amend the Nonresident Waterfowl licenses by modifying the numbering system for the applicable units, provide that certain Bennett County nonresident licenses are valid for the January Canada goose season, and modify the number of 3 day temporary nonresident waterfowl licenses available in the hunting units comprised of the counties of Potter, Stanley, Sully, Hughes, and Lyman by transferring a number of them to the unit comprised of the counties of Brown, Marshall, Roberts, Day, Grant, Clark, Codington, Deuel, and Hamlin; amend Tundra Swan hunting season by modifying the number of licenses available to residents and nonresidents; amend Hunting Requirements and Prohibited Methods by modifying conditions, restrictions, and prohibitions relating to "accompaniment" of a big game firearm licensee by a person not similarly licensed to hunt in the same area and at the same time of year and provide exemptions therefrom; amend Archery Restrictions by modifying conditions, restrictions, and prohibitions relating to "accompaniment" of a person licensed to hunt only by archery by a person not similarly licensed to hunt in the same area and at the same time of year and provide exemptions therefrom; and amend Public Water Zoning by designating the waters within Wilmarth Lake in Aurora County as a "no wake" zone.

**Mr. Doug Hofer** reviewed the proposed rules for the Division of Parks and Recreation. He also informed the committee that the commission will be holding a public hearing on July 7, 2005, in Sioux Falls, regarding a proposed \$3 increase to the annual park license fee and a \$1.50 increase for purchase of a second annual park license. The proposed fee increases will be part of the rules package at the next meeting.

**Mr. Doug Hansen** reviewed the proposed rules for the Division of Wildlife. He informed the committee that the commission had withdrawn the proposed rules regarding the transfer of one hundred 3 day temporary nonresident waterfowl licenses from hunting units along the Missouri River to the northeastern part of the state based on public testimony.

*Senator Hundstad moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunt, Smidt, and Thompson. Excused: Hunhoff.*

**Department of Revenue and Regulation: Division of Insurance - Business Tax** - Amend rules to change the permissible exclusions in life insurance policies and clarify how certain notice requirements can be made; update Medicare supplement insurance policies and related requirements, clarify overinsurance, clarify the allowance of agent compensation, specify acceptable rating methodologies and update references and the Division's address; define premium; adopt notice requirements to those in long-term care facilities, define overinsurance; allow companies to implement a minimum premium for purposes of returning unearned premiums; clarify how certain notice requirements can be made; and implement definitions for discount plans.

**Ms. Ellen Blauert** reviewed the proposed rules. She stated that the department was withdrawing the proposed changes to ARSD 20:06:08:39.

Ms. Blauert also noted there was a typographical error made in the revision to ARSD 20:06:13:43 (Overinsurance). In the second paragraph, line five, the word "director" should have been "policyholder." She stated it was noted after the public hearing and was corrected at that time. The industry has indicated that the burden should be on the policyholder to request a refund, not the director, based on federal rules. The industry felt it was against their contractual relationship with their insured. Ms. Blauert stated there were no consumers present at the public hearing. Senator Bogue stated that a refund should be automatic if the director has notified the company of the overinsurance. Following a brief discussion, it was the consensus of the committee that the typographical error was a substantive change and the rule should be referred back for further public hearing.

Representative Hunhoff was concerned with the notice requirements and what the industry was doing to educate the consumer. Ms. Blauert stated that the department was working with the Department of Social Services on the notice requirements.

*Senator Bogue moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance - Business Tax with the exception of ARSD 20:06:13:43 which shall be referred back for further public hearing or that the department provide additional information supporting the word change in the rule. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

**Department of Revenue and Regulation: Risk Pool Board** - Amend rules to implement definitions and clarify the tolling of the 63-day timeframe.

**Ms. Blauert** explained the proposed rule changes.

*Representative Hunhoff moved, seconded by Senator Smidt, to approve the rules proposed by the Department of Revenue and Regulation: Risk Pool Board. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

**Department of Revenue and Regulation: Property and Business Taxes** - Amend rules that will allow taxpayers to submit an electronic application to file and pay taxes electronically; change the definition of commencement of a project; change the way tax is reported on bad debts; provide information required for Streamline Registration and permits, and explain the reporting periods for volunteer registrations; allow direct mail transactions to be sourced under either of the two methods in this rule; clarify who is responsible for collecting tax due from auction sales; add definitions related to computer services; update sourcing examples for attorneys; end the exemption for nutritional supplements; and remove the requirements for a disclosure form for manufactured homes purchased.

**Ms. Jane Page** reviewed the proposed rules.

*Senator Bogue moved, seconded by Senator Smidt, to approve the rules proposed by the Department of Revenue and Regulation: Property and Business Taxes. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

**Department of Revenue and Regulation: Special Taxes** - Amend rules to add and delete provisions from the definitions; make form and style changes; reduce the reporting requirements for transfers of stock in corporations holding alcohol licenses; clarify that this chapter applies to all alcoholic beverages, except malt beverages; authorize electronic filing of price schedules; repeal rules that are no longer necessary; repeal the requirement that all advertising specialties be submitted to the Department, and increase the value of advertising material wholesalers may supply to retailers; increase the maximum amount of a rebate authorized by a manufacturer and to require wholesalers to notify other wholesalers before moving their products; allow the Secretary to authorize special disposition of alcoholic beverages; add a provision from ARSD 64:75:07:02 to 64:75:07:01 which allows that rule to be repealed; increase the maximum value of items that wholesalers may supply to retailers, and repeal the special provisions for tap handles; add rules to the chapters dealing with malt beverages; and require all wholesale licensees to report any attempts to solicit unauthorized incentives.

**Mr. Mike Kenyon** reviewed the rules regarding alcohol beverages.

Senator Bogue stated that ARSD 64:75:02:02 as written was overly broad and was beyond the scope of the department's authority. He also questioned the department's answer to question number seven on the Small Business Impact Statement (SBIS).

In response, Mr. Kenyon stated that the secretary could only disapprove a transfer if there was a felony issue involved. He stated the answers on the SBIS were based on the entire rules package overall and that the reporting requirements for the alcohol beverage industry will decrease.

### **Public Testimony**

**Mr. Bob Riter**, Pierre, attorney representing the South Dakota Beer Wholesalers, testified in opposition to the proposed ARSD 64:75:08:11 (Commercial bribery – Solicitation of bribery). He stated that the second and fourth sentences are beyond the authority of the department. The requirements would be burdensome to the industry and do not support the issue intended. Mr. Riter also stated that SDCL 34-4-52 refers to liquor only, not malt beverages.

In response, Mr. Kenyon stated that the department is trying to standardize both industries. Currently the liquor industry must file a monthly report that is no longer useful to the

department. It was the intention of the department to eliminate the monthly report. He stated that the liquor industry is in favor of the proposed rule; whereas, the beer wholesalers are opposed because they are not required to do the monthly report. Mr. Kenyon stated that the monthly reporting was part of a consent decree, not an administrative rule, which was entered into during the 1970's.

Following a fifteen minute committee break, Mr. Kenyon stated that the department was withdrawing the proposed ARSD 64:75:08:11 at this time.

*Senator Bogue moved, seconded by Representative Thompson, to approve the rules proposed by the Department of Revenue and Regulation: Special Taxes, with the exception of ARSD 64:75:08:11. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Department of Health** - Adopt and amend rules to determine the application requirements for certified and informational copies of a vital record, acceptable proof of identity and the security features required on a certified or informational copy and adopt rules that will establish the requirements for a delayed certificate of marriage.

**Mr. Jerry Hofer** and **Ms. Kathi Mueller** reviewed the proposed rules. They stated the rules were being promulgated based on SB 41 and HB 1031 from the 2005 Legislative Session. She stated that at the public hearing a \$3 fee increase for marriage and divorce records was requested by the South Dakota Association of County Officials, on behalf of the Registers of Deeds. The request was made to bring consistency to the fees charged for a vital record. A revised fiscal impact statement was distributed (**Document 1**).

*Senator Bogue moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Health. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Department of Health** - Amend and adopt rules that will expand the availability of healthcare services for South Dakota residents, increase the number of sub specialist physicians practicing in South Dakota, and allow additional areas in South Dakota to partake of the J-1 Visa Waiver Program.

**Ms. Laurie Gill** and **Mr. Bernie Osberg** reviewed the proposed rules. Mr. Osberg stated the rules are being updated to meet new federal legislation. A map showing the medically underserved areas in the state was distributed (**Document 2**).

*Senator Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Health. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Department of Labor: Board of Accountancy** - Amend a rule that will allow the board to collect the fees associated with the computerized Uniform CPA Examination from candidates, to be paid to the third party providers upon receipt of their services.

**Ms. Bobbi Barnhill** reviewed the proposed rule.

*Senator Hundstad moved, seconded by Senator Smidt, to approve the rule proposed by the Department of Labor: Board of Accountancy. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Department of Labor: Division of Labor and Management** - Update the Workers' Compensation Fee Schedule.

**Mr. James Marsh** reviewed the changes to the proposed rules.

*Senator Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Labor: Division of Labor and Management. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Secretary of State: Board of Elections** - Amend rules to bring the petition to increase or decrease the number of county commissioners, confirmation mailing notice, voter registration form and instructions into compliance with statutory changes, set up guidelines for statutory change on acceptance of facsimile absentee ballot applications from UOCAVA voters, set up criteria for approving electronic ballot marking systems, set up parameters for voter registration verification with social security administration records, provide additional information on the provisional ballot envelope, provide agencies with a larger size voter registration, declination and instruction form to use.

**Secretary of State Chris Nelson** reviewed the proposed changes. He stated that the proposed rules will require the entire state to use an electronic ballot voting system which will mark a paper ballot. All of the ballots will then be optically scanned for counting.

*Senator Bogue moved, seconded by Representative Thompson, to approve the rules proposed by the Secretary of State: Board of Elections. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

**Department of Social Services: Office of Medical Services** - Amend rules relating specifically to prescription drugs, the effects of these changes will be to: remove the coverage limits and prior authorization requirements for Clozaril therapy; no longer require that certain lab tests be conducted as a condition of continued Clozaril therapy; no longer require the treating psychiatrist to notify the department if Clozaril therapy is being discontinued; remove the Clozaril enrollment information form; begin covering items prescribed for weight control and appetite depressants; supply the federal website address from which an individual can obtain a current list of drugs that the federal government has determined to be less than effective; delete a reference to the Health Care Financing Administration and reference instead the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services; change a reference to the brand name drug

"Clozaril" to the generic name "Clozapine"; remove the coverage limits for Azidothymidine, brand name Retrovir; allow a pharmacy claim to be submitted electronically; require that a claim for a prescription drug include the provider's National Council of Prescription Drug Providers' (NCPDP) number and the prescribing physician's Drug Enforcement Agency (DEA) number; no longer require a referral from the recipient's primary care physician for prescriptions written by a physician who was not the recipient's primary care provider; no longer print a code on the recipient's medical identification card if a third-party payment source exists and instead notify providers through either the Department's Medical Eligibility Verification System or the Audio Response System; if a third-party payment source exists and the provider submits an electronic claim to the department for payment, require the provider to maintain and submit to the department, on request, evidence of payment or payment rejection from the third-party payment source.

**Ms. Jill Wellhouse** and **Mr. Rick LaBrie** reviewed the proposed rules.

Representative Hunhoff inquired why the nicotine patch was removed from the approved drug list. Mr. LaBrie stated that the Department of Health provides the patches free of charge through their help line. At the request of Representative Hunhoff, the Department of Social Services will follow up with the Department of Health to verify that.

*Senator Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Social Services: Office of Medical Services. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Smidt, and Thompson. Excused: Hunt.*

### **Committee Discussion**

The committee discussed whether changes need to be made to the SBIS as the information tends to be incomplete.

The committee also commented that they greatly appreciate when agencies number the pages on the rules being proposed. It makes it easier to follow the presenter when they go in the order of the rules packet and inform the committee where they are at.

Staff will send a letter to the rule contacts making them aware of the committee's concerns and requests, along with information on the new requirement for a fund balance statement which is effective July 1, 2005.

The next Rules Review Committee meeting will be held on Tuesday, August 9, 2005.

*Senator Bogue moved, seconded by Senator Hundstad, that the meeting be adjourned. Motion prevailed unanimously on a voice vote.*

The chair adjourned the meeting at 12:27 p.m.



All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage (<http://legis.state.sd.us>). Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.htm>).