

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

455Q0058

SENATE TRANSPORTATION ENGROSSED NO. **HB 1007** - 3/4/2009

Introduced by: Representatives Olson (Ryan), Krebs, Noem, Putnam, and Rausch and
Senator Vehle at the request of the Interim Committee on South Dakota
Highway Needs and Financing

1 FOR AN ACT ENTITLED, An Act to increase certain noncommercial and commercial motor
2 vehicle license fees and to increase the fuel excise tax on certain fuel used by motor
3 vehicles.

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

5 Section 1. That § 32-5-6 be amended to read as follows:

6 32-5-6. License fees and compensation on a noncommercial motor vehicle which is an
7 automobile, pickup truck, or van as provided by § 32-5-5, shall be determined by the
8 manufacturer's shipping weight, including accessories, as follows:

- 9 (1) Two thousand pounds or less, inclusive, ~~thirty~~ forty dollars;
- 10 (2) From 2,001 to 4,000 pounds, inclusive, ~~forty-two~~ fifty-two dollars;
- 11 (3) From 4,001 to 6,000 pounds, inclusive, ~~fifty-five~~ sixty-five dollars;
- 12 (4) Over 6,000 pounds, ~~sixty-five~~ seventy-five dollars.

13 Section 2. That § 32-5-6.1 be amended to read as follows:

14 32-5-6.1. License fees for any noncommercial motor home shall be determined by the



1 manufacturer's shipping weight, including accessories, as follows:

- 2 (1) Six thousand pounds or less, inclusive, ~~sixty~~ seventy dollars;
- 3 (2) From 6,001 to 8,000 pounds, inclusive, ~~eighty~~ one hundred dollars;
- 4 (3) From 8,001 to 10,000 pounds, inclusive, ~~one hundred~~ one hundred twenty dollars;
- 5 (4) For each additional 2,000 pounds or major fraction thereof, in excess of 10,000
- 6 pounds, twenty dollars.

7 For the purposes of this section, a motor home is a vehicle designed to provide temporary
8 living quarters for recreational, camping, or travel use, built on or permanently attached to a
9 self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the
10 completed vehicle.

11 Section 3. That § 32-5-6.3 be amended to read as follows:

12 32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile,
13 pickup truck, or van licensed pursuant to § 32-5-6 shall be determined by the gross weight of
14 the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

- 15 (1) Eight thousand pounds or less, inclusive, ~~fifty-five~~ sixty-five dollars;
- 16 (2) For each additional 2,000 pounds or major fraction thereof from 8,001 to 32,000
- 17 pounds, inclusive, three dollars;
- 18 (3) For each additional 2,000 pounds or major fraction thereof from 32,001 to 54,000
- 19 pounds, inclusive, six dollars;
- 20 (4) For each additional 2,000 pounds or major fraction thereof from 54,001 to 80,000
- 21 pounds, inclusive, eighteen dollars;
- 22 (5) For each additional 2,000 pounds or major fraction thereof in excess of 80,000
- 23 pounds, twenty-four dollars.

24 It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this

1 section at a gross weight in excess of the gross weight for which it has been licensed. If the
2 owner chooses to lower the registered weight, the plate shall be returned along with any
3 validation decal and a new plate issued with the correct registered weight.

4 Section 4. That § 32-5-8 be amended to read as follows:

5 32-5-8. License fees and compensation for any recreational vehicle as defined in § 32-3-1
6 or for any noncommercial trailer and semitrailer, for use of the highways payable under § 32-5-5
7 and pulled by a noncommercial motor vehicle on which the license fees were paid pursuant to
8 § 32-5-6, shall be determined upon the basis of their actual weight as follows:

- 9 (1) One thousand pounds or less, inclusive, ~~ten~~ fifteen dollars;
- 10 (2) From 1,001 to 2,000 pounds, inclusive, ~~twenty~~ twenty-five dollars;
- 11 (3) From 2,001 to 3,000 pounds, inclusive, ~~thirty-five~~ forty dollars;
- 12 (4) From 3,001 to 4,000 pounds, inclusive, ~~forty-five~~ fifty dollars;
- 13 (5) From 4,001 to 5,000 pounds, inclusive, ~~fifty-five~~ sixty dollars;
- 14 (6) From 5,001 to 6,000 pounds, inclusive, ~~sixty-five~~ seventy dollars;
- 15 (7) From 6,001 to 7,000 pounds, inclusive, ~~seventy-five~~ eighty dollars;
- 16 (8) From 7,001 to 8,000 pounds, inclusive, ~~eighty-five~~ ninety dollars;
- 17 (9) From 8,001 to 9,000 pounds, inclusive, ~~ninety-five~~ one hundred dollars;
- 18 (10) From 9,001 to 10,000 pounds, inclusive, one hundred ~~five~~ ten dollars;
- 19 (11) For each additional 1,000 pounds or major fraction thereof, in excess of 10,000
20 pounds, ten dollars.

21 Any trailer or semitrailer licensed pursuant to this section may be pulled by a
22 noncommercial motor vehicle licensed pursuant to § 32-5-8.1 or a commercially licensed motor
23 vehicle if the motor vehicle is registered at a gross weight to cover the weight of the trailer and
24 its load.

1 Section 5. That § 32-6B-21 be amended to read as follows:

2 32-6B-21. The department shall issue metal numerical license plates to licensed dealers
3 upon application and payment of a ~~forty-two~~ sixty-two dollar yearly fee to be paid at the time
4 of the annual review date for each set desired. ~~Such~~ The fees shall be distributed in the manner
5 specified in §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be
6 numbered consecutively and shall bear as a prefix the number 77. The plates may be issued for
7 a multiple year period. If a dealer's license is revoked or canceled or the dealer goes out of
8 business the 77 plates shall be returned to the department. If any person operates a motor vehicle
9 with 77 plates after the dealer license is revoked or canceled or after the dealer goes out of
10 business, or if the person refuses to return the plates, the person is guilty of a Class 2
11 misdemeanor.

12 Section 6. That § 32-5-30 be amended to read as follows:

13 32-5-30. If any noncommercial motor vehicle, according to the manufacturer's model year
14 designation, is ~~five~~ seven years old or more on January first of the year for which a license fee
15 is required, such fee shall be ~~seventy~~ seventy-five percent of the fee ordinarily prescribed.

16 Section 7. That § 32-9-15 be amended to read as follows:

17 32-9-15. In consideration of the unusual use of the public highways, each person, except as
18 otherwise provided in this chapter, desiring to operate a motor vehicle, trailer, or semitrailer,
19 upon the public highways of this state as a motor carrier, shall annually pay the commercial
20 motor vehicle fee as follows, to the county treasurer of the county of which ~~he~~ the person is a
21 resident, if a carrier of property; or to the Department of Revenue and Regulation, if ~~he~~ the
22 person is not a resident of this state:

23 (1) Gross weight under 4000 pounds, eighty-five dollars;

24 (2) Gross weight of 4001 to 6000 pounds, one hundred dollars;

- 1 (3) Gross weight of 6001 to 8000 pounds, one hundred fifteen dollars;
- 2 (4) Gross weight of 8001 to 10,000 pounds, one hundred thirty dollars;
- 3 (5) Gross weight of 10,001 to 12,000 pounds, one hundred fifty dollars;
- 4 (6) Gross weight of 12,001 to 14,000 pounds, one hundred seventy-five dollars;
- 5 (7) Gross weight of 14,001 to 16,000 pounds, two hundred dollars;
- 6 (8) Gross weight of 16,001 to 18,000 pounds, two hundred twenty-five dollars;
- 7 (9) Gross weight of 18,001 to 20,000 pounds, two hundred fifty dollars;
- 8 (10) For each additional 2000 pounds or major fraction thereof in excess of 20,000
- 9 pounds, forty dollars;:
- 10 (11) For each vehicle or combination of vehicles as defined in § 32-22-10 with a gross
- 11 weight in excess of 78,000 pounds, seven dollars in addition to the fee schedule
- 12 above.

13 ~~—If any commercial motor vehicle, according to the manufacturer's model year designation,~~
 14 ~~is five years old or more on January first of the year for which a license fee is required, that fee~~
 15 ~~is ninety percent of the fee ordinarily prescribed.~~

16 Section 8. That § 10-47B-4 be amended to read as follows:

17 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 18 (1) Motor fuel (except ~~ethanol blends, E85 and M85 blends~~ ethyl alcohol, methyl
 19 alcohol, and aviation gasoline)--~~\$.22~~ \$.25 per gallon;
- 20 (2) Special fuel (except jet fuel)--~~\$.22~~ \$.25 per gallon;
- 21 (3) ~~Ethanol blends--\$.20 per gallon;~~
- 22 ~~—(4)—Aviation gasoline--\$.06 per gallon;~~
- 23 ~~(5)(4)~~ Jet fuel--\$.04 per gallon;
- 24 ~~—(6)—E85 and M85--\$.10 per gallon;~~

- 1 ~~(7)~~ ~~E85 and M85 used in aircraft--\$.04 per gallon;~~
- 2 ~~(8)~~(5) Liquid petroleum gas--~~\$.20~~ \$.23 per gallon;
- 3 ~~(9)~~(6) Compressed natural gas--~~\$.10~~ \$.13 per gallon;
- 4 (7) Ethyl alcohol and methyl alcohol--\$.09 per gallon.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0228

SENATE COMMERCE

ENGROSSED NO. **HB 1060** - 3/3/2009

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Commerce at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the mortgage lender
2 business and to provide for fees and penalties related thereto.

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

4 Section 1. That § 54-14-12 be amended to read as follows:

5 54-14-12. Terms used in this chapter mean:

6 (1) "Depository institution," the same meaning as provided in 12 U.S.C. § 1813(c) as of
7 January 1, 2009, and includes any credit union;

8 (2) "Director," the director of the Division of Banking of the Department of Revenue and
9 Regulation;

10 ~~(2)~~(3) "Division," the Division of Banking of the Department of Revenue and Regulation;

11 (4) "Federal banking agencies," the Board of Governors of the Federal Reserve System,
12 the Comptroller of the Currency, the director of the Office of Thrift Supervision, the
13 National Credit Union Administration, and the Federal Deposit Insurance
14 Corporation;



1 (5) "Immediate family member," a spouse, child, sibling, parent, grandparent, grandchild,
2 stepparent, stepchildren, stepsibling, and adoptive relationship;

3 (6) "Individual," a natural person;

4 ~~(3)~~(7) "Licensee," the person holding a license provided by this chapter;

5 ~~(4)~~(8) "Mortgage lender," any person who, for valuable consideration, originates, sells, or
6 services mortgages, or holds himself, herself, or itself out as a person who, for
7 valuable consideration, originates, sells, or services mortgages, other than those
8 exempt pursuant to § 54-14-21;

9 ~~(5)~~(9) "Mortgage broker," any person who, ~~for compensation or gain, acts as an~~
10 ~~intermediary between borrower and lender to assist a person in obtaining or applying~~
11 ~~to obtain a mortgage loan or holds himself, herself, or itself out as being able to assist~~
12 ~~a person in obtaining or applying to obtain a mortgage loan~~ acts as a mortgage loan
13 originator and has not less than a ten percent interest in a mortgage brokerage;

14 ~~(5A)~~(10) "Mortgage brokerage," any person engaged in placing mortgage loans with
15 investors for a fee, but does not service such loans;

16 ~~(6)~~ "Mortgage brokering activities," ~~for compensation, either directly or indirectly,~~
17 ~~assisting or offering to assist in the preparation of an application for a mortgage loan~~
18 ~~on behalf of a borrower, or negotiating or offering to negotiate the terms or~~
19 ~~conditions of a mortgage loan with any person making mortgage loans;~~

20 ~~(7)~~ "Mortgage loan originator," any person acting under the supervision of a licensee and
21 who, for compensation or gain, takes or receives a mortgage application, assembles
22 information, and prepares paperwork and documentation necessary for obtaining a
23 mortgage loan or arranges for a conditional mortgage loan commitment between a
24 borrower and a lender, or arranges for a loan commitment from a lender. The term,

1 ~~mortgage loan originator, does not include an employee of a licensee whose job~~
 2 ~~responsibilities are limited to clerical tasks that do not include processing of~~
 3 ~~mortgage loans;~~

4 ~~(8)(11)~~ "Mortgage lending activities," for compensation, either directly or indirectly,
 5 accepting or offering to accept applications for making mortgage loans;

6 (12) "Nationwide mortgage licensing system and registry," a mortgage licensing system
 7 developed and maintained by the Conference of State Bank Supervisors and the
 8 American Association of Residential Mortgage Regulators for the licensing and
 9 registration of licensed mortgage loan originators;

10 ~~(9)(13)~~ "Regional revolving loan fund," any regional revolving loan fund with a
 11 service area of at least five South Dakota counties, a designated staff for loan
 12 processing and servicing, a loan portfolio of at least one million dollars, and
 13 which is governed by a board of directors that meets at least quarterly;

14 (14) "Residential mortgage loan," any loan primarily for personal, family, or household
 15 use that is secured by a mortgage, deed of trust, or other equivalent consensual
 16 security interest on a dwelling, as defined in 12 C.F.R. § 226.2(19), or residential real
 17 estate upon which is constructed or intended to be constructed a dwelling;

18 (15) "Unique identifier," a number or other identifier assigned by protocols established by
 19 the nationwide mortgage licensing system and registry.

20 Section 2. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
 21 follows:

22 For the purposes of this chapter, the term, loan processor or underwriter, means any
 23 individual who performs clerical or support duties as an employee at the direction of and subject
 24 to the supervision and instruction of a person licensed according to this chapter, or a person

1 exempt according to this chapter. Clerical or support duties subsequent to the receipt of an
2 application include the receipt, collection, distribution, and analysis of information common for
3 the processing or underwriting of a mortgage loan; and communicating with a consumer to
4 obtain the information necessary for the processing or underwriting of a loan, to the extent that
5 the communication does not include offering or negotiating loan rates or terms, or counseling
6 consumers about mortgage loan rates or terms.

7 No individual engaging solely in loan processor or underwriter activities may represent to
8 the public, through advertising or other means of communicating or providing information
9 including the use of business cards, stationery, brochures, signs, rate lists, or other promotional
10 items, that the individual can or will perform any of the activities of a mortgage loan originator.

11 Section 3. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 For the purposes of this chapter, the term, mortgage loan originator, means an individual
14 who for compensation or gain or in the expectation of compensation or gain takes a mortgage
15 loan application or offers or negotiates terms of a mortgage loan.

16 A mortgage loan originator does not include:

- 17 (1) An individual engaged solely as a loan processor or underwriter except as otherwise
18 provided in section 2 of this Act;
- 19 (2) An individual or entity that performs only real estate brokerage activities and is
20 licensed or registered in accordance with applicable South Dakota law, unless the
21 individual or entity is compensated by a lender, a mortgage broker, or other mortgage
22 loan originator or by any agent of such lender, mortgage broker, or other mortgage
23 loan originator; or
- 24 (3) Any individual or entity solely involved in extensions of credit relating to timeshare

1 plans, as that term is defined in 11 U.S.C. § 101(53D) as of January 1, 2009.

2 Section 4. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 For the purposes of this chapter, the term, real estate brokerage activity, means any activity
5 that involves offering or providing real estate brokerage services to the public, including:

6 (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
7 of real property;

8 (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange
9 of real property;

10 (3) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
11 purchase, lease, rental, or exchange of real property (other than in connection with
12 providing financing with respect to any such transaction);

13 (4) Engaging in any activity for which a person engaged in the activity is required to be
14 registered or licensed as a real estate agent or real estate broker under any applicable
15 law;

16 (5) Offering to engage in any activity, or act in any capacity, described in this section.

17 Section 5. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 For the purposes of this chapter, the term, registered mortgage loan originator, means any
20 individual who:

21 (1) Meets the definition of mortgage loan originator and is an employee of:

22 (a) A depository institution;

23 (b) A subsidiary that is owned and controlled by a depository institution and
24 regulated by a federal banking agency; or

- 1 (c) An institution regulated by the Farm Credit Administration; and
- 2 (2) Is registered with, and maintains a unique identifier through, the nationwide
- 3 mortgage licensing system and registry.

4 Section 6. That § 54-14-13 be amended to read as follows:

5 54-14-13. No person may act as a mortgage lender, mortgage brokerage, mortgage broker,

6 or mortgage loan originator in this state or use the title, ~~mortgage broker~~, mortgage lender,

7 mortgage brokerage, mortgage broker, or mortgage loan originator with respect to any property

8 located in South Dakota without first obtaining and maintaining a license, ~~or in the case of~~

9 ~~originators a registration, and undergoing a criminal background check from the division~~

10 according to the requirements of this chapter. Each person shall be licensed or registered, and

11 maintain a unique identifier through the nationwide mortgage licensing system and registry.

12 Section 7. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as

13 follows:

14 The director may not issue a mortgage loan originator license unless the director makes the

15 following findings:

- 16 (1) The applicant has never had a mortgage loan originator license revoked in any
- 17 governmental jurisdiction. No revocation for which there has been a subsequent
- 18 formal vacation of the revocation may be considered by the director;
- 19 (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony
- 20 in a domestic, foreign, or military court:
 - 21 (a) During the seven year period preceding the date of the application for
 - 22 licensing and registration; or
 - 23 (b) At any time preceding the date of application, if the felony involved an act of
 - 24 fraud, dishonesty, breach of trust, or money laundering.

1 No pardon of a conviction may be considered a conviction for purposes of this
2 subdivision;

3 (3) The applicant has demonstrated financial responsibility, character, and general fitness
4 such as to command the confidence of the community and to warrant a determination
5 that the mortgage loan originator will operate honestly, fairly, and efficiently within
6 the purposes of this chapter. For purposes of this subdivision, an applicant shows a
7 lack of financial responsibility if the applicant has shown a disregard in the
8 management of his or her own financial affairs. Factors to be considered may include
9 current outstanding judgments, except judgments solely as a result of medical
10 expenses; current outstanding tax liens or other governmental liens and filings;
11 foreclosures within the past three years; or a pattern of seriously delinquent accounts
12 within the past three years;

13 (4) The applicant has completed the pre-licensing education requirement provided for
14 by rule pursuant to § 54-14-31;

15 (5) The applicant has passed a written test that meets the test requirement provided for
16 by rule pursuant to § 54-14-31; and

17 (6) The applicant has met the surety bond requirement as required by § 54-14-24 and
18 provided for by rule pursuant to § 54-14-24.

19 Section 8. That § 54-14-15 be amended to read as follows:

20 ~~54-14-15. Each applicant for licensure and registration under this chapter shall submit to a~~
21 ~~state and federal criminal background investigation by means of fingerprint checks by the~~
22 ~~Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application,~~
23 ~~the Division of Banking shall submit completed fingerprint cards to the Division of Criminal~~
24 ~~Investigation. Upon completion of the criminal background check, the Division of Criminal~~

1 ~~Investigation shall forward to the Division of Banking all information obtained as a result of the~~
2 ~~criminal background check.~~ In connection with an application for licensing as a mortgage
3 lender, mortgage broker, or mortgage loan originator, the applicant shall furnish to the
4 nationwide mortgage licensing system and registry information concerning the applicant's
5 identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of Investigation, and any
7 governmental agency or entity authorized to receive such information, for a state,
8 national, and international criminal history background check; and

9 (2) Personal history and experience in a form prescribed by the nationwide mortgage
10 licensing system and registry, including the submission of authorization for the
11 nationwide mortgage licensing system and registry and the director to obtain:

12 (a) An independent credit report from a consumer reporting agency described in
13 15 U.S.C. § 1681(a) as of January 1, 2009; and

14 (b) Information related to any administrative, civil, or criminal findings by any
15 governmental jurisdiction.

16 The Division of Banking may require a state and federal criminal background check for any
17 licensee who is the subject of a disciplinary investigation by the division. Failure to submit or
18 cooperate with the criminal background investigation is grounds for denial of an application or
19 may result in revocation of a license. The applicant shall pay for any fees charged for the cost
20 of fingerprinting or the criminal background investigation. ~~Any applicant who has previously~~
21 ~~completed a background check in another jurisdiction in anticipation of receiving a license or~~
22 ~~registration in that jurisdiction may have the results of such a background check forwarded to~~
23 ~~the division in satisfaction of this requirement. However, no background check in another~~
24 ~~jurisdiction may be used if it was completed more than one year prior to application.~~

1 The director may use the nationwide mortgage licensing system and registry as a channeling
2 agent for requesting information from and distributing information to the United States
3 Department of Justice or any governmental agency. The director may use the nationwide
4 mortgage licensing system and registry as a channeling agent for requesting and distributing
5 information to and from any source so directed by the director.

6 Section 9. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The minimum standards for license renewal for mortgage loan originators shall include the
9 following:

- 10 (1) The mortgage loan originator continues to meet the minimum standards for license
11 issuance under subdivisions (1) to (5), inclusive, of section 7 of this Act; and
12 (2) The mortgage loan originator has satisfied the annual continuing education
13 requirements provided by rule pursuant to § 54-14-31.

14 Section 10. That § 54-14-16 be amended to read as follows:

15 54-14-16. The applicant for an initial license shall submit a fee in the amount of not more
16 than two hundred fifty dollars for a mortgage loan originator, not more than five hundred dollars
17 for a mortgage broker or mortgage brokerage license, and not more than one thousand dollars
18 for a mortgage lender license. ~~The applicant for initial registration shall submit a fee in the~~
19 ~~amount of not more than two hundred fifty dollars for mortgage loan originator registration.~~ The
20 director shall establish the fees by rules promulgated pursuant to chapter 1-26.

21 Section 11. That § 54-14-19 be amended to read as follows:

22 54-14-19. Any application for renewal of a license ~~or registration~~ under this chapter ~~must~~
23 shall be postmarked to the director by December first and shall be accompanied by a fee to be
24 established by the director by rules promulgated pursuant to chapter 1-26. ~~Any license granted~~

1 ~~by the division prior to the implementation of this chapter is valid until December 31, 2007.~~
2 ~~However, no mortgage loan originator is required to be licensed prior to December 31, 2007.~~
3 The fee to transact business as a mortgage loan originator may not exceed two hundred fifty
4 dollars. The fee to transact business as a mortgage broker or mortgage brokerage may not
5 exceed five hundred dollars. The fee to transact business as a mortgage lender may not exceed
6 one thousand dollars. ~~The fee to register as a mortgage loan originator may not exceed two~~
7 ~~hundred fifty dollars.~~ Any licensee or registrant that files for renewal after December first and
8 before January first of the next calendar year shall pay a late fee in addition to the renewal fee.
9 The late fee, not to exceed twenty-five percent of the renewal fee, shall be established by the
10 director by rules promulgated pursuant to chapter 1-26. After January first no license may be
11 issued unless an application is filed pursuant to §§ 54-14-13 to 54-14-16, inclusive.

12 Section 12. That § 54-14-21 be amended to read as follows:

13 54-14-21. The following entities ~~and their employees and exclusive agents~~ are exempt from
14 the ~~provisions of~~ requirement of a mortgage lender, mortgage brokerage, or mortgage broker
15 license as required by this chapter:

- 16 (1) Any state bank and its subsidiary;
- 17 (2) Any national bank and its subsidiary;
- 18 (3) Any bank holding company and its subsidiary;
- 19 (4) Any other federally insured financial institution, and its holding company and
20 subsidiary;
- 21 (5) Any South Dakota chartered trust company; and
- 22 ~~(6) Any real estate broker licensed pursuant to chapter 36-21A; and~~
- 23 ~~(7)~~(6) Any insurance company or any person acting as an intermediary thereto, if
24 participating in nonresidential mortgage lending activities solely with its own assets

1 and for its own portfolio.

2 Any registered mortgage loan originator, if acting for a depository institution, is exempt
3 from the provisions of this chapter.

4 Section 13. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No loan processor or underwriter who is an independent contractor may engage in the
7 activities of a loan processor or underwriter unless the loan processor or underwriter obtains and
8 maintains a license under this chapter. Each loan processor or underwriter who is an
9 independent contractor licensed as a mortgage loan originator shall have and maintain a valid
10 unique identifier issued by the nationwide mortgage licensing system and registry.

11 Section 14. That § 54-14-24 be amended to read as follows:

12 54-14-24. ~~Any applicant for a license~~ Each mortgage lender, mortgage brokerage, mortgage
13 broker, or mortgage loan originator shall submit with the any application, and maintain at all
14 times, a surety bond in the an amount of twenty-five thousand dollars that reflects the total
15 dollar amount of loans originated by the licensee and the licensee's employees and agents, but
16 not less than twenty-five thousand dollars. The surety bond shall be in a form and amount as
17 prescribed by the director.

18 Each mortgage loan originator and mortgage broker shall be covered by a surety bond in
19 accordance with this section. If the mortgage loan originator or mortgage broker is an employee
20 or exclusive agent of a person subject to this chapter, the surety bond of such person can be used
21 in lieu of the mortgage loan originator or mortgage broker's surety bond requirement. The surety
22 bond shall provide coverage for each mortgage loan originator and mortgage broker in an
23 amount prescribed by this section.

24 The bond shall be issued by a surety company qualified to do business as a surety in this

1 state. The bond shall be in favor of this state for the use of this state and any person who has a
2 cause of action under this chapter against the licensee. The bond shall be conditioned on:

- 3 (1) The licensee's faithful performance under this chapter and any rules adopted pursuant
4 to this chapter; and
- 5 (2) The payment of any amounts that are due to the state or another person during the
6 time the bond is in force.

7 The bond may be continuous, and regardless of how long the bond remains in force, the
8 aggregate liability of a surety to all persons damaged by a licensee's violation of the provisions
9 of this chapter may not exceed the amount of the bond. The bond may be cancelled by the surety
10 upon thirty days notice to the licensee and the director, and the surety's liability on the bond
11 shall also terminate upon the effective date of any suspension or revocation of the license.

12 ~~A mortgage brokerage may obtain one bond to satisfy the bond requirement for individual~~
13 ~~applicants employed by the mortgage brokerage. If an action is commenced on a licensee's bond,~~
14 ~~the director may require the filing of a new bond. Immediately upon recovery in any action on~~
15 ~~the bond the licensee shall file a new bond.~~

16 The director may promulgate rules pursuant to chapter 1-26 with respect to the requirements
17 for such surety bonds as are necessary to accomplish the purposes of this chapter.

18 Section 15. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The director may impose a civil penalty in an amount not to exceed one thousand dollars
21 upon any person acting as a mortgage lender, mortgage brokerage, mortgage broker, or
22 mortgage loan originator in this state without the required license or registration. Each instance
23 of operating without a license, or holding oneself out as being authorized to conduct the
24 business authorized by this chapter, constitutes a separate violation of this chapter and subjects

1 any such person to a civil penalty for each violation. A civil penalty for a series of violations
2 may not exceed twenty-five thousand dollars.

3 Section 16. That § 54-14-27 be amended to read as follows:

4 54-14-27. The director may condition, deny, decline to renew, suspend; for a period not to
5 exceed six months, or revoke a license ~~or registration~~ if the director finds:

6 (1) Any fact or condition exists that, if it had existed at the time the licensee ~~or registrant~~
7 applied for its license ~~or registration~~, would have been grounds for denying the
8 application;

9 (2) The licensee ~~or registrant~~ violated any provisions of this chapter or any rule or order
10 promulgated by the director;

11 (3) The licensee ~~or registrant~~ refuses to permit the director to make any examination
12 authorized by this chapter or rule promulgated pursuant to this chapter, or any federal
13 statute, rule, or regulation pertaining to mortgage lending;

14 (4) The licensee ~~or registrant~~ willfully fails to make any report required of this chapter;

15 (5) The competence, experience, character, or general fitness of the licensee ~~or registrant~~
16 indicates that it is not in the public interest to permit the licensee ~~or registrant~~ to
17 continue to conduct business;

18 (6) The bond of the licensee has been revoked or cancelled by the surety;

19 (7) The licensee or any partner, officer, director, manager, or employee of the licensee
20 has been convicted of a felony or a misdemeanor involving any aspect of the
21 financial services business;

22 (8) The licensee or any partner, officer, director, manager, or employee of the licensee
23 has had a license substantially equivalent to a license under this chapter, and issued
24 by another state, denied, revoked or suspended under the laws of that state;

1 (9) The licensee ~~or registrant~~ has filed an application for a license ~~or registration~~ which
2 as of the date the license ~~or registration~~ was issued, or as of the date of an order
3 denying, suspending, or revoking a license ~~or registration~~, was incomplete in any
4 material respect or contained any statement that was, in light of the circumstances
5 under which it was made, false or misleading with respect to any material fact.

6 The director may revoke a license ~~or registration~~ for good cause pursuant to chapter 1-26.
7 If the licensee is the holder of more than one license, the director may revoke any or all of the
8 licenses.

9 Section 17. That § 54-14-31 be amended to read as follows:

10 54-14-31. The director may promulgate rules pursuant to chapter 1-26 for the pre-licensing
11 education, written testing, continuing education, personal history, and experience checks of
12 mortgage brokers, mortgage brokerages, mortgage lenders, and mortgage loan originators, and
13 for the management and administration of licenses and registrations issued pursuant to this
14 chapter.

15 The director may promulgate rules pursuant to chapter 1-26 to establish fees required for the
16 licensure and renewal of licenses through the nationwide mortgage licensing system and registry
17 in addition to those fees established in §§ 54-14-16 and 54-14-19. Such fees may not exceed
18 five hundred dollars.

19 Section 18. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The director may establish relationships or contracts with the nationwide mortgage licensing
22 system and registry or other entities designated by the nationwide mortgage licensing system
23 and registry to collect and maintain records and process transaction fees or other fees related to
24 licensees or other persons subject to this chapter.

1 Section 19. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The director shall establish a process through rules promulgated pursuant to chapter 1-26
4 to allow mortgage loan originators and mortgage brokers to challenge information entered into
5 the nationwide mortgage licensing system and registry by the director.

6 Section 20. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The following provisions apply to the sharing of information collected and retained by the
9 director during the administration of this chapter:

10 (1) Except as otherwise provided in 12 U.S.C. § 5111 as of January 1, 2009, the
11 requirements under any federal law or § 51A-2-35 regarding privacy or
12 confidentiality of any information or material provided to the nationwide mortgage
13 licensing system and registry, and any privilege arising under federal or state law
14 (including the rules of any federal or state court) with respect to the information or
15 material, continue to apply to the information or material after the information or
16 material has been disclosed to the nationwide mortgage licensing system and registry.
17 The information and material may be shared with all state and federal regulatory
18 officials with mortgage industry oversight authority without the loss of privilege or
19 the loss of confidentiality protections by federal law or § 51A-2-35;

20 (2) No information or material that is subject to a privilege or confidentiality under this
21 section is subject to:

22 (a) Disclosure under any federal or state law governing the disclosure to the
23 public of information held by an officer or an agency of the federal
24 government or the respective state; or

1 (b) Subpoena or discovery, or admission into evidence, in any private civil action
2 or administrative process, unless with respect to any privilege held by the
3 nationwide mortgage licensing system and registry with respect to the
4 information or material, the person to whom the information or material
5 pertains waives, in whole or in part, in the discretion of the person, that
6 privilege.

7 This section does not apply with respect to the information or material relating to the
8 employment history of, and publicly adjudicated disciplinary and enforcement actions against,
9 mortgage loan originators that is included in the nationwide mortgage licensing system and
10 registry for access by the public.

11 Section 21. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Each mortgage lender, mortgage brokerage, mortgage broker, and mortgage loan originator
14 shall submit to the nationwide mortgage licensing system and registry reports of condition,
15 which shall be in such form and shall contain such information as the director establishes
16 through rules promulgated pursuant to chapter 1-26.

17 Section 22. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The director shall report on a regular basis violations of this chapter, as well as enforcement
20 actions and other relevant information, to the nationwide mortgage licensing system and registry
21 subject to the provisions contained in section 20 of this Act.

22 Section 23. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 The following are exempt from the requirement of obtaining a mortgage loan originator

1 license:

- 2 (1) Any individual who offers or negotiates terms of a mortgage loan with or on behalf
3 of an immediate family member of the individual;
- 4 (2) Any individual who offers or negotiates terms of a residential mortgage loan secured
5 by a dwelling that served as the individual's residence; or
- 6 (3) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client
7 as an ancillary matter to the attorney's representation of the client, unless the attorney
8 is compensated by a lender, mortgage brokerage, mortgage broker, or other mortgage
9 loan originator or by any agent of the lender, mortgage broker, or other mortgage loan
10 originator.

11 Section 24. That § 54-14-20 be amended to read as follows:

12 54-14-20. The State of South Dakota, any political subdivision of the state, and any quasi-
13 governmental organization created by an executive order of the State of South Dakota and any
14 subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22;
15 any nonprofit United States Treasury Community Development Financial Institution, Small
16 Business Administration Certified Development Company, or Regional Revolving Loan Fund;
17 or any commercial club, chamber of commerce, or industrial development corporation formed
18 pursuant to § 9-12-11 or 9-27-37 is ~~subject to this chapter but exempt from initial license fees,~~
19 ~~renewal fees, criminal background checks, the years of service requirement in § 54-14-22, any~~
20 ~~continuing education requirements, and surety bond requirements under this chapter~~ exempt
21 from the requirements of this chapter.

22 Section 25. That § 54-14-22 be amended to read as follows:

23 54-14-22. Any person, ~~including a mortgage loan originator,~~ shall complete the equivalent
24 of two years of service under the supervision and direction of a licensed mortgage broker,

1 mortgage brokerage, or mortgage lender, or another jurisdiction's equivalent thereof, before that
2 person is eligible to apply for a mortgage broker's, mortgage brokerage's, or mortgage lender's
3 license. No mortgage broker, mortgage brokerage, or mortgage lender, ~~or mortgage loan~~
4 ~~originator~~ is eligible for a license without such training and experience. The director may
5 promulgate rules pursuant to chapter 1-26 with regard to such training and experience. Any
6 person licensed as a mortgage broker or mortgage lender with the director prior to July 1, 2007,
7 is exempt from this requirement.

8 Section 26. That § 54-14-25 be amended to read as follows:

9 54-14-25. Any person, who without first obtaining a license or registration under this
10 chapter, engages in the business or occupation of, or advertises or holds the person out as, or
11 claims to be, or temporarily acts as, a mortgage broker, mortgage brokerage, mortgage lender,
12 or mortgage loan originator in this state is guilty of a Class 2 misdemeanor and may be held
13 responsible for all costs of prosecution, including restitution.

14 Section 27. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 In order to implement the minimum licensing standards and additional burdens imposed in
17 section 7 and 9 of this Act, the effective date of these sections will be:

- 18 (1) For all individuals other than individuals described in subsection (b) shall be July 31,
19 2010;
- 20 (2) For all individuals licensed as mortgage loan originators as of the enactment of this
21 Act shall be December 31, 2010.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0204

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1070** - 3/4/2009

Introduced by: The Committee on Appropriations at the request of the Department of
Agriculture

1 FOR AN ACT ENTITLED, An Act to revise certain fees pertaining to seed permits and nursery
2 certificates of inspection.

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

4 Section 1. That § 38-12A-11 be amended to read as follows:

5 38-12A-11. No person may sell, distribute, advertise, solicit orders for, offer for sale, expose
6 for sale, or transport seed without first obtaining from the Department of Agriculture a permit
7 to engage in the business. ~~A~~ No permit is ~~not~~ required of any person selling or advertising seed
8 of the person's own production in South Dakota, if the seed is stored or delivered to a purchaser
9 only on or from the farm or premises where grown or the production and sale of seed is not a
10 primary endeavor and primary source of income to such persons. Each permit shall expire on
11 the thirty-first day of December of the year following the date of issue. The biennial fee for a
12 seed permit is: Seedsman ~~--two hundred fifty~~ five hundred dollars; Seed producer ~~--fifty~~
13 seventy-five dollars; Seed dealer ~~--fifty~~ seventy-five dollars.

14 Section 2. That § 38-24B-7 be amended to read as follows:



1 38-24B-7. The Department of Agriculture may issue a certificate of inspection to any
2 nurseryman, operating as a resident nurseryman or dealer, whose nursery stock has been
3 officially inspected and found to be viable and free from pests. The biennial fee for the
4 inspection and certification is ~~one hundred fifty dollars plus four dollars for each acre over one~~
5 ~~acre of inspected plants. A conservation district that plants less than thirty acres of nursery stock~~
6 ~~in a year or a dealer who is in business for less than three months in a year and only sells plants~~
7 ~~obtained from an inspected in-state nursery may obtain a certificate of inspection at the reduced~~
8 ~~fee of one hundred dollars as follows:~~

9 (1) Resident nurseryman: three hundred fifty dollars plus ten dollars for each acre over
10 one acre of field-grown inspected plants and ten dollars for each ten thousand square
11 feet of container-grown plants, except the fee for a resident nurseryman with less than
12 five thousand dollars in gross sales on nursery stock is seventy-five dollars plus ten
13 dollars for each acre over one of field-grown inspected plants and ten dollars for each
14 ten thousand square feet of container-grown plants;

15 (2) Nursery stock dealer with less than five thousand dollars annual gross sales of
16 nursery stock: one hundred twenty-five dollars;

17 (3) Nursery stock dealer with more than five thousand but less than twenty thousand
18 dollars annual gross sales of nursery stock: two hundred dollars; or

19 (4) Nursery stock dealer with more than twenty thousand dollars annual gross sales of
20 nursery stock: three hundred fifty dollars.

21 Section 3. That § 38-24B-9 be amended to read as follows:

22 38-24B-9. Any nurseryman whose location is outside the state may obtain a certificate of
23 inspection to sell nursery stock within the state by filing a certified copy of the official
24 inspection certificate and paying a ~~one~~ two hundred fifty dollar fee to the secretary of

1 agriculture. The secretary may waive the payment of the fee if the applicant's state does not
2 require a fee by South Dakota applicants for a like certificate in that state.

3 Section 4. That § 38-24B-12 be amended to read as follows:

4 38-24B-12. Any grower or dealer of decorative plants, annual plants, sod, or related plant
5 products may apply to the department for a certificate of inspection. The Department of
6 Agriculture may issue a certificate of inspection to the person whose decorative plants, annual
7 plants, sod, or related plant products have been officially inspected and found free from pests.
8 The fee for inspection and certification is ~~one~~ two hundred fifty dollars plus ~~two~~ five dollars for
9 each acre of growing field and ~~two~~ five dollars for each ~~one~~ ten thousand square feet of growing
10 greenhouse.

11 Section 5. That § 38-24B-2 be amended to read as follows:

12 38-24B-2. The secretary of agriculture may promulgate rules pursuant to the provisions of
13 chapter 1-26 to establish:

- 14 (1) Standards for inspection and sampling;
- 15 (2) Standards for inspection performance;
- 16 (3) Forms for requests for inspection;
- 17 (4) Procedures for issuing and revoking certificates of inspections;
- 18 (5) Restrictions for the movement of plants and hosts;
- 19 (6) Treatment provisions of infested hosts or premises;
- 20 (7) Provisions for issuance of special phytosanitary certificates;
- 21 (8) Provisions for quarantine or destruction of pests and hosts; ~~and~~
- 22 (9) Reporting requirements on suspected plants; and
- 23 (10) Criteria for the implementation and administration of the fee schedule contained in
24 § 38-24B-7.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0323

SENATE TAXATION ENGROSSED NO. **HB 1072** 3/4/2009

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to increase the gross receipts tax imposed on visitor-related
2 businesses.

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

4 Section 1. That § 10-45D-2 be amended to read as follows:

5 10-45D-2. There is hereby imposed a tax of one and one-half percent on the gross receipts
6 from any lodging establishment, campground, motor vehicle rental, visitor attraction,
7 recreational equipment rental, recreational service, spectator event, and visitor-intensive
8 business. The tax imposed by this section on the gross receipts of any visitor-intensive business
9 shall apply to the gross receipts received by such business during the months of June, July,
10 August, and September. The tax imposed by this section is in addition to any other tax imposed
11 by chapters 10-45 and 10-46. Tangible personal property, any product transferred electronically,
12 services, and admissions are subject to the tax imposed by this section only if subject to tax by
13 chapters 10-45 and 10-46.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

538Q0629

SENATE JUDICIARY ENGROSSED NO. **HB 1153** 3/5/2009

Introduced by: Representatives Cutler, Bolin, Fargen, Frerichs, Krebs, Lust, Peters, Steele, Thompson, and Turbiville and Senators Gillespie, Dempster, Gray, and Novstrup (Al)

1 FOR AN ACT ENTITLED, An Act to revise the elements of the crime of indecent exposure
2 involving a child.

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

4 Section 1. That § 22-24-1.3 be amended to read as follows:

5 22-24-1.3. If any person, eighteen years of age or older, with the intent to arouse or gratify
6 the sexual desire of any person, intentionally exposes his or her genitals ~~under circumstances~~
7 ~~in which that person knows that his or her conduct is likely to annoy, offend, or alarm some to~~
8 a child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure
9 involving a child. Indecent exposure involving a child is a Class 6 felony. A second or
10 subsequent conviction for indecent exposure involving a child is a Class 5 felony.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

723Q0492

SENATE COMMERCE

ENGROSSED NO. **HB 1176** - 3/5/2009

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Gosch and Senator Haverly

1 FOR AN ACT ENTITLED, An Act to revise the earnings requirement for the purpose of
2 receiving unemployment insurance benefits.

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

4 Section 1. That § 61-1-1 be amended to read as follows:

5 61-1-1. Terms used in this title mean:

6 (1) "Annual payroll," the total amount of taxable wages paid by an employer during a
7 calendar year for employment;

8 (2) "Base period," the first four out of the last five completed calendar quarters
9 immediately preceding an individual's benefit year. For an individual who fails to
10 meet the qualifications of § 61-6-7 due to the receipt of temporary total disability
11 payments under worker's compensation, the base period is the first four of the last
12 five completed quarters preceding the disability if a claim for unemployment benefits
13 is filed within twenty-four months of the date on which the individual's disability was
14 incurred. For an individual who fails to meet the minimum requirements of § 61-6-7



- 1 due to insufficient wages, the base period is the four completed calendar quarters
2 immediately preceding the individual's benefit year. However, no calendar quarter
3 used in one base period of a valid claim may be used in a subsequent base period;
- 4 (3) "Benefit year," the one-year period beginning with the day on which a claimant files
5 a valid new claim for benefits, or the one-year period beginning with the day on
6 which a claimant files a valid new claim after the termination of his last preceding
7 benefit year;
- 8 (4) "Benefits," the money payments payable to an unemployed individual, as provided
9 in this title;
- 10 (5) "Calendar quarter," the period of three consecutive calendar months ending on March
11 thirty-first, June thirtieth, September thirtieth, or December thirty-first;
- 12 (6) "Contributions," the money payments to the state unemployment compensation fund
13 required by this title;
- 14 (7) "Department," the Department of Labor created by chapter 1-37;
- 15 (8) "Educational service agency," a governmental agency or governmental entity which
16 is established and operated exclusively for the purpose of providing services to one
17 or more educational institutions;
- 18 (9) "Employment office," a free public employment office, or branch thereof, operated
19 by this state or maintained as part of a state or federal controlled system of public
20 employment offices;
- 21 (10) "Employment security administration fund," the employment security administration
22 fund established by this title;
- 23 (11) "Extended benefits," the benefits that are provided in §§ 61-6-29 to 61-6-35,
24 inclusive;

- 1 (12) "Fund," the unemployment compensation fund established by this title;
- 2 (13) "Hospital," an institution which has been licensed, certified or approved by the State
3 Department of Health as a hospital;
- 4 (14) "Institution of higher education," an educational institution which:
- 5 (a) Admits as regular students only individuals having a certificate of graduation
6 from a high school, or the recognized equivalent of such a certificate; and
- 7 (b) Is legally authorized in this state to provide a program of education beyond
8 high school; and
- 9 (c) Provides an educational program for which it awards a bachelor's or higher
10 degree, or provides a program which is acceptable for full credit toward such
11 a degree, provides an educational program of postgraduate or postdoctoral
12 studies, or provides an educational program of training to prepare students for
13 gainful employment in a recognized occupation; and
- 14 (d) Is a public or other nonprofit institution.
- 15 Notwithstanding any of the foregoing provisions of this subdivision, all colleges and
16 universities in this state are "institutions of higher education";
- 17 (15) "Insured work," employment for employers as defined in §§ 61-1-4 to 61-1-31,
18 inclusive;
- 19 (16) "State," a state of the United States of America and the District of Columbia, the
20 Commonwealth of Puerto Rico and the Virgin Islands;
- 21 (17) "Wages," all remuneration paid for services, including commissions and bonuses.
22 The term does not include remuneration described by §§ 61-1-32 to 61-1-35,
23 inclusive. The term includes tips and other remuneration upon which a tax is imposed
24 by the Federal Unemployment Tax Act and the reasonable cash value of

1 remuneration paid in any medium other than cash determined in accordance with
2 rules promulgated pursuant to chapter 1-26 by the secretary of labor;

3 (18) "Week," the period or periods of seven consecutive calendar days ending at midnight.

4 The secretary of labor may promulgate rules pursuant to chapter 1-26 to prescribe
5 that a week is in, within or during that benefit year which includes the greater part.

6 For the purpose of § 61-1-4, if a week includes both December thirty-first and
7 January first, the days of that week up to January first shall be considered one
8 calendar week and the days beginning January first another week;

9 (19) "Weekly benefit amount," the amount of benefits an individual is entitled to receive
10 for one week of total unemployment. An individual's weekly benefit amount
11 determined for the first week of his benefit year shall constitute his weekly benefit
12 amount throughout the benefit year.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

717Q0614

SENATE TAXATION ENGROSSED NO. **HB 1215** 2/23/2009

Introduced by: Representatives Olson (Ryan), Faehn, Gosch, Noem, Peters, Putnam, and Tidemann and Senators Dempster, Gray, and Knudson

1 FOR AN ACT ENTITLED, An Act to transfer funds from the tax relief fund to the general fund
2 and to revise certain provisions concerning the effective date of the collection allowance.

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

4 Section 1. Notwithstanding the provisions of § 10-45C-14, before June 30, 2010, the state
5 treasurer shall transfer to the state general fund the sum of one million five hundred thousand
6 dollars (\$1,500,000), or so much therefore as may be available, from the tax relief fund created
7 pursuant to § 10-45C-14.

8 Section 2. That § 10-45C-16 be amended to read as follows:

9 10-45C-16. When the ~~balance in the tax relief fund~~ cumulative total of the net revenue
10 received pursuant to § 10-45C-15 exceeds ten million dollars, a collection allowance established
11 pursuant to § 10-45-27.2 shall become effective the following July first.

12 Section 3. That § 10-45C-14 be amended to read as follows:

13 10-45C-14. There is hereby created in the state treasury the tax relief fund. The revenue
14 collected pursuant to § 10-45C-15 shall be deposited in the tax relief fund for the purpose of



1 reducing the rate of taxation or reducing property taxes. The fund shall be invested as provided
2 by law, and the interest earned shall be credited to the fund. The Legislature may not appropriate
3 any money from the tax relief fund until the second fiscal year after Congress approves
4 legislation giving states the authority to require retailers to collect South Dakota's sales and use
5 tax. However, until that time, all moneys in the tax relief fund shall be transferred to the state
6 general fund before the final day of each yearly quarter.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

956Q0578

SENATE EDUCATION

ENGROSSED NO. **HB 1241** - 3/3/2009

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Sly, Bolin, Killer, Lange, Lucas, McLaughlin, Romkema, Schlekeway, Sorenson, and Vanderlinde and Senators Jerstad, Bradford, Maher, and Merchant

1 FOR AN ACT ENTITLED, An Act to clarify that certain special education placements are not
2 suspensions or expulsions.

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

4 Section 1. That § 13-32-4 be amended to read as follows:

5 13-32-4. The school board of every school district shall assist and cooperate with the
6 administration and teachers in the government and discipline of the schools. The board may
7 suspend or expel from school any student for violation of rules or policies or for insubordination
8 or misconduct, and the superintendent or principal in charge of the school may temporarily
9 suspend any student in accordance with § 13-32-4.2. The rules or policies may include
10 prohibiting the following:

11 (1) The consumption or possession of beer or alcoholic beverages on the school premises
12 or at school activities;

13 (2) The use or possession of a controlled substance, without a valid prescription, on the



1 school premises or at school activities; and

2 (3) The use or possession of a firearm, as provided in § 13-32-7, on or in any elementary
3 or secondary school premises, vehicle, or building or any premises, vehicle, or
4 building used or leased for elementary or secondary school functions or activities.

5 In addition to administrative and school board disciplinary action, any violation of § 13-32-7
6 shall be reported to local law enforcement authorities.

7 The period of expulsion may extend beyond the semester in which the violation,
8 insubordination, or misconduct occurred. Any expulsion for consumption or possession of beer
9 or alcoholic beverages may not extend beyond ninety school days. If a student has intentionally
10 brought a firearm onto school premises, the expulsion may not be for less than twelve months.

11 However, the superintendent or chief administering officer of each local school district or
12 system may increase or decrease the length of a firearm-related expulsion on a case-by-case
13 basis. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 to
14 establish administrative due process procedures for the protection of a student's rights. The
15 administrative due process procedures shall include a requirement that the school give notice
16 of a student's due process rights to the parent or guardian of the student at the time of suspension
17 or expulsion. Each school district board shall provide a procedural due process hearing, if
18 requested, for a student in accordance with such rules if the suspension or expulsion of the
19 student extends into the eleventh school day.

20 This section does not preclude other forms of discipline which may include suspension or
21 expulsion from a class or activity. An individualized education program team decision for an
22 initial placement or a change in placement of a student in need of special education or special
23 education and related services does not constitute a suspension or an expulsion, or a
24 continuation of a suspension or expulsion, if the education provided to that student is in

1 compliance with rules established by the South Dakota Board of Education.

2 This section does not prohibit a local school district from providing educational services to

3 an expelled student in an alternative setting.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

724Q0476

SENATE STATE AFFAIRS
ENGROSSED NO. **HB 1260** - 3/4/2009

Introduced by: Representatives Hamiel, Carson, Cronin, Curd, Dennert, Faehn, Frerichs, Greenfield, Hoffman, Hunhoff (Bernie), Kirkeby, Krebs, Lederman, McLaughlin, Schlekeway, Sly, Vanneman, and Wink and Senators Gant, Abdallah, Hansen (Tom), Heidepriem, Knudson, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to require that a request for proposals be issued for certain
2 state contracts for professional services.

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

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, the term, professional services, means services arising out of
7 a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill,
8 and the labor or skill involved is predominantly mental or intellectual, rather than physical or
9 manual.

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

12 For the purposes of this Act, the term, request for proposals, means the document or
13 publication whereby a state agency solicits proposals for a professional services contract.



1 Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No agency of the state may award or renew a contract for professional services exceeding
4 fifty thousand dollars without complying with the procedures set forth in this Act. Any agency
5 seeking such professional services shall issue a request for proposals. The agency shall publish
6 any request for proposals issued pursuant to this section on the electronic procurement system
7 maintained by the Bureau of Administration. The request for proposals shall include the
8 procedures for the solicitation and award of the contract.

9 Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The request for proposals shall state the relative importance of evaluation criteria to be used
12 in the ranking of prospective contractors. The agency shall include the following evaluation
13 criteria in any request for proposals:

- 14 (1) Specialized expertise, capabilities, and technical competence as demonstrated by the
15 proposed approach and methodology to meet the project requirements;
- 16 (2) Resources available to perform the work, including any specialized services, within
17 the specified time limits for the project;
- 18 (3) Record of past performance, including price and cost data from previous projects,
19 quality of work, ability to meet schedules, cost control, and contract administration;
- 20 (4) Availability to the project locale;
- 21 (5) Familiarity with the project locale;
- 22 (6) Proposed project management techniques; and
- 23 (7) Ability and proven history in handling special project constraints.

24 Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The agency and the highest ranked contractor shall mutually discuss and refine the scope of
3 services for the project and shall negotiate terms, including compensation and performance
4 schedule. The compensation level paid shall be reasonable and fair to the agency, as determined
5 by the agency. If the agency and the highest ranked contractor are unable for any reason to
6 negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency
7 shall, either orally or in writing, terminate negotiations with the contractor. The agency may then
8 negotiate with the next highest ranked contractor. The negotiation process may continue through
9 successive contractors, according to agency ranking, until an agreement is reached or the agency
10 terminates the contracting process.

11 Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 A register of proposals shall be prepared and maintained by any state agency issuing a
14 request for proposals for a professional service contract. The register shall contain the names
15 of any person whose qualifications were considered and the name of the person that was
16 awarded the contract. Any professional service contract and the documentation which was the
17 basis for the contract shall be public except for proprietary information which shall remain
18 confidential. The qualifications and any other documentation of any person not issued a contract
19 shall remain confidential.

20 Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The provisions of this Act do not apply to contracts issued for:

- 23 (1) Services of such a unique nature that the contractor selected is clearly and justifiably
24 the only practicable source to provide the service. Determination that the contractor

1 selected is justifiably the sole source is based on either the uniqueness of the service
2 or sole availability at the location required;

3 (2) Emergency services necessary to meet an urgent or unexpected requirement or when
4 health and public safety or the conservation of public resources is at risk;

5 (3) Services subject to federal law, regulation, or policy or state statute, under which a
6 state agency is required to use a different selection process or to contract with an
7 identified contractor or type of contractor;

8 (4) Services for professional legal services and services of expert witnesses, hearing
9 officers, or administrative law judges retained by state agencies for administrative or
10 court proceedings;

11 (5) Services involving state or federal financial assistance passed through by a state
12 agency to a political subdivision;

13 (6) Medical services and home and community-based services;

14 (7) Services to be performed for a state agency by another state or local government
15 agency or contracts made by a state agency with a local government agency for the
16 direct provision of services to the public; or

17 (8) Services to be provided by entertainers for the state fair and other events.

18 Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Notwithstanding any other provisions of law, an agency that is required to issue a decision
21 in a contested case proceeding in one year or less may increase its statutory deadline for issuing
22 the agency decision by sixty days if the agency seeks to enter into a professional services
23 contract covered by this Act.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

556Q0521

HOUSE JUDICIARY ENGROSSED NO. **HB 1264** 2/23/2009

Introduced by: Representatives Gosch, Cronin, Feinstein, Frerichs, Gibson, Greenfield, Hoffman, Jensen, Kirkeby, Kirschman, Krebs, Lederman, Lust, Moser, Novstrup (David), Rounds, Solum, Van Gerpen, and Verchio and Senators Gant, Ahlers, Haverly, Howie, and Maher

1 FOR AN ACT ENTITLED, An Act to provide for the utilization of conditional early release
2 bonds in regard to certain furloughs and paroles.

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

4 Section 1. Terms used in this Act mean:

- 5 (1) "Releasing authority," the Board of Pardons and Paroles having legal authority to
6 release a prisoner on furlough or parole;
- 7 (2) "Principal," any person to be released on furlough or parole pursuant to this Act;
- 8 (3) "Surety," any insurance company licensed under the laws of the state to execute
9 bonds filed in criminal cases;
- 10 (4) "Bond," the written undertaking delivered by the surety to the releasing authority and
11 describing the terms and conditions of surety's duties;
- 12 (5) "Conditions," such conditions as the releasing authority may impose as a prerequisite
13 to being on release from custody;



- 1 (6) "Breach," any condition of release violated by the principal;
- 2 (7) "Breach penalty," the amount of money to be paid by surety to the state upon the
3 surety's failure to meet the requirements under this Act. The breach penalty is equal
4 to the face amount of the bond. There are two types of breach penalties: an amount
5 of money paid by the surety upon breach of a release condition and an amount of
6 money paid by the surety if the principal is not back in custody within a given
7 amount of time following breach of release condition;
- 8 (8) "Charge," the amount of money the surety charges to write the bond. In no case may
9 the charges be less than ten percent of the aggregate penalty amounts which charge
10 is fully earned when the bond is written;
- 11 (9) "Revocation of bond," the use and effectiveness of the bond has ceased. The
12 releasing authority may revoke the bond upon a breach or continue the bond by
13 nullifying the breach. The decision of the releasing authority is final. The bond may
14 be revoked at any time the releasing authority determines that the principal has failed
15 to abide by the conditions of the bond or is no longer capable of abiding by the
16 conditions of the bond;
- 17 (10) "Mandatory conditions," those nondiscretionary conditions the releasing authority has
18 placed on the principal as a condition to early release by operation of law.

19 Section 2. Upon the decision of the releasing authority to release any person on furlough or
20 parole, the releasing authority may condition the release of a principal by requiring the posting
21 of an early release bond by cash or surety. The releasing authority may set other conditions of
22 release, which conditions shall be appended to and made a part of the bond. The conditions are
23 discretionary with the releasing authority and shall be appropriate to the character and
24 circumstances of the principal and the circumstances of the principal's release. Discretionary

1 conditions may include, but are not limited to:

- 2 (1) The principal shall be drug/alcohol tested as specified;
- 3 (2) The principal shall take part in specified recovery programs;
- 4 (3) The principal may not contact, go about, or communicate directly with any witness
5 involved in the principal's conviction;
- 6 (4) The principal may not contact, go about, or communicate directly or indirectly with
7 any victim involved in the principal's crime;
- 8 (5) The principal shall obtain and keep employment;
- 9 (6) The principal shall be on home arrest via global positioning satellite (GPS)
10 monitoring devices approved by the state;
- 11 (7) The principal shall abide by specified travel restrictions;
- 12 (8) The principal shall make all specified periodic restitution payments;
- 13 (9) The principal shall pay specified fines and court costs;
- 14 (10) The principal shall perform specified community services;
- 15 (11) The principal shall pursue specified education courses;
- 16 (12) The principal shall obtain such education as specified;
- 17 (13) The principal shall participate in such family or third party involvement as specified.

18 Section 3. The following are mandatory conditions and shall be imposed on the principal
19 as a matter of law:

- 20 (1) The principal shall pay the surety's charge; and
- 21 (2) The principal shall personally report to the surety at such time and in such manner
22 as directed by the releasing authority and the surety.

23 Section 4. The early release bond put up by the surety shall be for the term of the parole. The
24 early release bond shall be in favor of and payable to the State.

1 Section 5. The releasing authority shall give the surety written notice of any breach of
2 condition within five calendar days of the releasing authority learning of the breach.

3 If within one hundred eighty calendar days from date of receipt of written notice by releasing
4 authority that the principal has failed to meet one or more of the conditions of the principal's
5 early release, the principal has been placed back into custody, whether by surety or another, then
6 the bond shall be exonerated.

7 Section 6. The surety shall pay a breach penalty:

8 (1) Upon breach of a condition by the principal; or

9 (2) Upon the principal not being back in custody within the prescribed one hundred
10 eighty days.

11 Upon a breach of subdivision (1), the surety shall pay forthwith ten percent of the face
12 amount of the bond directly to the state treasurer to be deposited in the state general fund.

13 Upon a breach of subdivision (2), the surety shall pay forthwith the remaining ninety percent
14 of the face amount of the bond directly to the state treasurer to be deposited in the state general
15 fund.

16 Section 7. At any time after receiving a notice of breach by the principal, the surety may
17 arrest the principal and surrender the principal to the nearest county jail. If the principal is
18 surrendered within one hundred eighty calendar days of receipt of the notice of breach, the bond
19 shall be exonerated.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

628Q0742

SENATE STATE AFFAIRS ENGROSSED NO. **HB 1278** - 3/4/2009

Introduced by: Representatives Kopp, Brunner, Greenfield, Jensen, Kirkeby, Lederman, Olson (Betty), Russell, Steele, and Verchio and Senators Schmidt, Gant, Kloucek, and Maher

1 FOR AN ACT ENTITLED, An Act to revise certain provisions prohibiting political
2 subdivisions from restricting firearms.

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

4 Section 1. That § 8-5-13 be amended to read as follows:

5 8-5-13. ~~No township may pass any ordinance that restricts~~ Except on property owned or
6 leased by the township, other than public highways as defined in §§ 31-1-1 and 31-1-4, no
7 township may in any way restrict the possession, transportation, sale, transfer, ownership,
8 manufacture, or repair of firearms or ammunition or their components. Any ordinances existing
9 restrictions prohibited by this section are null and void. On any property on which firearms or
10 ammunition are restricted pursuant to this section, the township shall post signs sufficient to
11 notify the public of the restriction.

12 Section 2. That § 7-18A-36 be amended to read as follows:

13 7-18A-36. ~~No county may pass any ordinance that restricts~~ Except on property owned or
14 leased by the county, other than public highways as defined in §§ 31-1-1 and 31-1-4, no county



1 may in any way restrict the possession, transportation, sale, transfer, ownership, manufacture,
2 or repair of firearms or ammunition or their components. Any ~~ordinances~~ existing restrictions
3 prohibited by this section are null and void. On any property on which firearms or ammunition
4 are restricted pursuant to this section, the county shall post signs sufficient to notify the public
5 of the restriction. Nothing in this section prohibits a county from regulating the commercial or
6 industrial use of real property through duly enacted zoning ordinances.

7 Section 3. That § 9-19-20 be amended to read as follows:

8 9-19-20. ~~No municipality may pass any ordinance that restricts~~ Except on property owned
9 or leased by the municipality, other than public highways as defined in §§ 31-1-1 and 31-1-4,
10 no municipality may in any way restrict the possession, transportation, sale, transfer, ownership,
11 manufacture, or repair of firearms or ammunition or their components. Any ~~ordinances~~ existing
12 restrictions prohibited by this section are null and void. On any property on which firearms or
13 ammunition are restricted pursuant to this section, the municipality shall post signs sufficient
14 to notify the public of the restriction. Nothing in this section prohibits a municipality from
15 regulating the commercial or industrial use of real property through duly enacted zoning
16 ordinances.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

951Q0509

SENATE TRANSPORTATION

ENGROSSED NO. **HB 1281** - 3/4/2009

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Kirkeby, Brunner, Feickert, Kopp, Krebs, Lange, Street, and Verchio and Senators Schmidt, Dempster, and Rhoden

1 FOR AN ACT ENTITLED, An Act to enhance funding for state highways by increasing fees
2 on certain signs, displays, or devices.

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

4 Section 1. That § 31-29-71.1 be amended to read as follows:

5 31-29-71.1. Any application for the permit required by § 31-29-71 shall be accompanied by
6 the fee specified by the following schedule:

7 (1) If the advertising area does not exceed fifty square feet, the fee is ~~eight~~ twelve
8 dollars;

9 (2) If the area exceeds fifty square feet but does not exceed three hundred square feet, the
10 fee is ~~twelve~~ eighteen dollars;

11 (3) If the area exceeds three hundred square feet but does not exceed five hundred square
12 feet, the fee is ~~sixteen~~ twenty-four dollars;

13 (4) If the area exceeds five hundred square feet but does not exceed six hundred square
14 feet, the fee is ~~twenty~~ thirty dollars;



- 1 (5) If the area exceeds six hundred square feet, the fee is ~~thirty-two~~ forty-eight dollars.
- 2 A sign less than sixty-five square feet owned and maintained by a church is exempt from
- 3 the fees under this section.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0270

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 55** - 3/3/2009

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise the requirements regarding the licensing and
2 regulation of grain buyers.

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

4 Section 1. That § 49-45-1.1 be amended to read as follows:

5 49-45-1.1. Terms used in this chapter mean:

6 (1) "Commission," the Public Utilities Commission;

7 (2) "Grain," grain, grain sorghums, beans, and oil seeds. However, the term does not
8 include grain that has been cleaned, processed, and specifically identified for an
9 intended use of planting for reproduction or grain purchased to feed livestock;

10 (3) "Grain buyer," any person who purchases grain for the purpose of reselling the
11 unprocessed grain or who purchases three hundred thousand dollars worth or more
12 of grain directly from producers in a calendar year. However, nothing in this chapter
13 applies to the isolated ~~or occasional~~ resale of grain by a ~~person~~ producer who does
14 not hold himself or herself out as engaging in the business of reselling grain;



1 (4) "Person," any natural person, firm, corporation, company, limited liability company,
2 partnership, association, joint stock company or the lessee, trustee, or receiver
3 appointed by any court for any one of the foregoing;

4 (5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to
5 be paid more than thirty days after the delivery or release of the grain for sale,
6 including those contracts commonly referred to as deferred-payment contracts,
7 deferred-pricing contracts and price-later contracts; and

8 (6) "Producer," a person engaged in the business of grain production.

9 Section 2. That § 49-45-9 be amended to read as follows:

10 49-45-9. Before any grain buyer license is issued by the commission, the applicant shall file
11 with the commission a bond conditioned to secure the faithful performance of the applicant's
12 obligations as a grain buyer and full and unreserved compliance with the laws of this state and
13 the rules of the commission, relating to the purchase of grain by the grain buyer. The bond is for
14 the specific purpose of protecting persons selling grain to the grain buyer. However, the bond
15 may not benefit any person entering into a voluntary credit sale with a grain buyer. Any person
16 who does business as a grain buyer without a bond is guilty of a Class 1 misdemeanor. Each day
17 a person conducts the business of a grain buyer without a bond is a separate offense.

18 The amount of the bond for a Class A or Class B grain buyer's license shall be based on a
19 rolling average of the dollar amount of grain purchased by the applicant in South Dakota during
20 the last three calendar years. For a new grain buyer, the first year's bond shall be based on
21 projected purchases. For a grain buyer with less than three years experience as a grain buyer, the
22 bond shall be based on the average actual purchases made by the grain buyer in all of its
23 previous years as a grain buyer. The bond applies to all grain purchases for all of the grain
24 buyer's business locations.

1 The amount of the bond for a Class A grain buyer's license is:

2	Dollar Amount of Grain Purchased	Bond Requirement
3	<\$2,000,000 <u>Less than \$2,000,001</u>	\$50,000
4	\$2,000,001--\$10,000,000	\$75,000 <u>100,000</u>
5	\$10,000,001-- \$50,000,000 <u>25,000,000</u>	\$100,000 <u>200,000</u>
6	\$50,000,001 <u>25,000,001</u> --\$100,000,000	\$200,000 <u>350,000</u>
7	<u>60,000,000</u>	
8	>\$100,000,000	\$300,000 <u>500,000</u>
9	<u>\$60,000,001--\$100,000,000</u>	

10 Bond requirements are increased twenty-five thousand dollars for each additional ten million
11 dollars in purchases above one hundred million dollars.

12 The amount of the bond for a Class B grain buyer's license is:

13	Dollar Amount of Grain Purchased	Bond Requirement
14	<\$2,000,000 <u>Less than \$2,000,001</u>	\$50,000
15	\$2,000,001--\$10,000,000	\$75,000 <u>100,000</u>

16 The grain buyer may stipulate to a higher bond amount requested by the commission or may
17 post additional security in another form.

18 Section 3. That § 49-45-15 be repealed.

19 ~~—49-45-15. Authorized inspectors employed by the commission or agents of the Department~~
20 ~~of Public Safety pursuant to § 32-2-7 may place a person under arrest without warrant for a~~
21 ~~violation of any provision of this chapter which is committed in the presence of the inspector.~~
22 ~~Any commission inspector or agent having such limited arrest powers is not a law enforcement~~
23 ~~officer for the purposes of § 23-3-27.~~

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

543Q0412

HOUSE ENGROSSED NO. **SB 115** - 3/5/2009

Introduced by: Senators Hanson (Gary), Abdallah, Bartling, Fryslie, Haverly, Heidepriem, Howie, Kloucek, Peterson, Rhoden, and Vehle and Representatives Noem, Burg, Dennert, Feinstein, Juhnke, Pitts, Rausch, Street, and Wink

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the initiation of
2 modifications to county comprehensive plans.

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

4 Section 1. That § 11-2-28 be amended to read as follows:

5 11-2-28. The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter
6 may be amended, supplemented, changed, modified, or repealed by action of the board. Any
7 such modification or repeal shall be proposed in a resolution or ordinance, as appropriate,
8 presented to the board for adoption in the same manner and upon the same notice as required
9 for the adoption of the original resolution or ordinance. The amendment, supplement, change,
10 modification, or repeal may be requested through a petition by thirty percent of the landowners
11 registered to vote in the zoning district or districts requesting change. For purposes of this
12 section, the term, landowner, means any ~~person who~~ natural person, partnership, corporation,
13 limited liability company, or limited liability partnership that owns land in the county as
14 evidenced by records in the offices of the register of deeds and clerk of courts. If the land is



1 owned by a corporation, limited liability company, or limited liability partnership, the
2 corporation, limited liability company, or limited liability partnership may designate one person
3 who has a ten percent or more interest in the corporation, limited liability company, or limited
4 liability partnership and who is registered to vote in the zoning district to be treated as a
5 landowner. For the purposes of this section, the corporation, limited liability company, or
6 limited liability partnership may provide documentation to the register of deeds designating the
7 person who may act on its behalf. If land is sold under a contract for deed that is of record in the
8 office of the register of deeds in the county, both the landowner and the individual purchaser of
9 the land, as named in the contract, are treated as landowners.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

733Q0531

HOUSE ENGROSSED NO. **SB 126** - 3/5/2009

Introduced by: Senators Knudson, Adelstein, Bradford, Brown, Fryslie, Gant, Gray, Hansen (Tom), Haverly, Howie, Hunhoff (Jean), Jerstad, Merchant, Schmidt, Tieszen, Turbak Berry, and Vehle and Representatives Sly, Hamiel, Killer, Lange, Lucas, McLaughlin, Romkema, Sorenson, Steele, Vanderlinde, and Verchio

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding school attendance.

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

3 Section 1. That § 13-27-1 be amended to read as follows:

4 13-27-1. ~~Every~~ Any person having control of a child, who is six years old by the first day
5 of September and who has not exceeded the age of eighteen, shall cause the child to regularly
6 and annually attend some public or nonpublic school for the entire term during which the public
7 school in the district in which the person resides, or the school to which the child is assigned
8 to attend, is in session, until the child reaches the age of eighteen years, unless the child has
9 graduated or is excused as provided in this chapter. However, the requirements of this section
10 are met if a child who is at least sixteen years of age enrolls in a general education development
11 test preparation program that is school-based or for which a school contracts and the child
12 successfully completes the test or reaches the age of eighteen years.

13 A child is eligible to enroll in a school-based or school-contracted general education



1 development test preparation program or take the general education development test if the child
2 is sixteen or seventeen years of age, and the child presents written permission from the child's
3 parent or guardian and one of the following:

4 (1) Verification from a school administrator that the child will not graduate with the
5 child's cohort class because of credit deficiency;

6 (2) Authorization from a court services officer;

7 (3) A court order requiring the child to enter the program;

8 (4) Verification that the child is under the direction of the Department of Corrections;
9 or

10 (5) Verification that the child is enrolled in Job Corps as authorized by Title I-C of the
11 Workforce Investment Act of 1998, as amended to January 1, 2009.

12 Any child who is sixteen or seventeen years of age and who completes the general education
13 development test preparation program may take the general education development test
14 immediately following release from the school program or when ordered to take the test by a
15 court. Any such child who fails to successfully complete the test shall re-enroll in the school
16 district and may continue the general education development preparation program or other
17 suitable program as determined by the school district.

18 Any child under age six enrolled in any elementary school or kindergarten program is
19 subject to the compulsory attendance statutes of this state. A waiver of the compulsory
20 attendance requirement for children under the age of seven years of age shall be granted by the
21 school district upon the request of the parents.

22 Section 2. That section 1 of chapter 80 of the 2006 Session Laws be repealed.

23 Section 3. That § 13-27-1 be amended to read as follows:

24 13-27-1. ~~Every~~ Any person having control of a child, who is not younger than five or older

1 than six years old by the first day of September and, or any child who, by the first day of
2 September, is at least six years old, but who has not exceeded the age of eighteen, shall cause
3 the child to regularly ~~and annually~~ attend some public or nonpublic school for the entire term
4 during which the public school in the district in which the person resides, or the school to which
5 the child is assigned to attend, is in session, until the child reaches the age of eighteen years,
6 unless the child has graduated or is excused as provided in this chapter. However, the
7 requirements of this section are met if a child who is at least sixteen years of age enrolls in a
8 general education development test preparation program that is school-based or for which a
9 school contracts and the child successfully completes the test or reaches the age of eighteen
10 years.

11 A child is eligible to enroll in a school-based or school-contracted general education
12 development test preparation program or take the general education development test if the child
13 is sixteen or seventeen years of age, and the child presents written permission from the child's
14 parent or guardian and one of the following:

- 15 (1) Verification from a school administrator that the child will not graduate with the
16 child's cohort class because of credit deficiency;
- 17 (2) Authorization from a court services officer;
- 18 (3) A court order requiring the child to enter the program;
- 19 (4) Verification that the child is under the direction of the Department of Corrections;
20 or
- 21 (5) Verification that the child is enrolled in Job Corps as authorized by Title I-C of the
22 Workforce Investment Act of 1998, as amended to January 1, 2009.

23 Any child who is sixteen or seventeen years of age and who completes the general education
24 development test preparation program may take the general education development test

1 immediately following release from the school program or when ordered to take the test by a
2 court. Any such child who fails to successfully complete the test shall re-enroll in the school
3 district and may continue the general education development preparation program or other
4 suitable program as determined by the school district.

5 ~~Any child under age six enrolled in any elementary school or kindergarten program is~~
6 ~~subject to the compulsory attendance statutes of this state. A waiver of the compulsory~~
7 ~~attendance requirement for children under the age of seven years of age shall be granted by the~~
8 ~~school district upon the request of the parents. All children shall attend kindergarten prior to age~~
9 ~~seven. Any child who transfers from another state may proceed in a continuous educational~~
10 ~~program without interruption if the child has not previously attended kindergarten.~~

11 Section 4. The provisions of section 3 of this Act are effective July 1, 2010.

12 Section 5. The Department of Education may promulgate rules pursuant to chapter 1-26 to
13 establish general education development testing procedures for children who take the test
14 pursuant to § 13-27-1.