

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

400Q0229

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1038** - 3/9/2009

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

1 FOR AN ACT ENTITLED, An Act to increase the license fees for coin-operated washers and
2 dryers, to increase the brand registration fees on certain alcoholic beverages, to increase the
3 fees for certain malt beverage and wine licenses, and to revise the distribution of certain
4 malt beverage and wine license fees.

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

6 Section 1. That § 10-45-5.1 be amended to read as follows:

7 10-45-5.1. The annual license fee for each coin operated washer and dryer in this state is ~~ten~~
8 twenty dollars. However, in municipalities having a population of one thousand persons or less,
9 the annual license fee is ~~eight~~ sixteen dollars. The license fee is in lieu of any sales or gross
10 receipts taxes from the operation or ownership of coin operated washers and dryers. Any person
11 who fails to pay the fee is guilty of a Class 2 misdemeanor. Any person who fails to pay the fee
12 prescribed on or before December thirty-first of the year prior to the year for which the fee is
13 due is subject to an interest charge on the unpaid fee at the rate of two percent per month or part
14 thereof. The interest charge commences immediately after the date the fee becomes due and is



1 payable immediately. The secretary of revenue and regulation shall promulgate rules pursuant
2 to chapter 1-26 concerning:

- 3 (1) The procedure for license application;
- 4 (2) The collection of the license fee;
- 5 (3) The placement of the license or decalcomania; and
- 6 (4) The transfer of a license to a new owner.

7 Section 2. That § 39-13-4 be amended to read as follows:

8 39-13-4. There shall be paid to the secretary of revenue and regulation a registration fee
9 according to the following schedule:

10 (1) On malt and cereal beverages of all descriptions, ~~and on wines, for one brand,~~
11 ~~twenty-five dollars and for each additional brand registered by the same person, ten~~
12 ~~dollars;~~

13 (2) On wines, for one brand, twenty-five dollars and for each additional brand registered
14 by the same person seventeen dollars and fifty cents;

15 ~~(2)(3) On alcoholic cordials, liqueurs, cocktails, and similar all other alcoholic beverages,~~
16 ~~for one brand, fifty dollars and for each additional brand registered by the same~~
17 ~~person, fifteen dollars;~~

18 ~~(3) On whiskeys, gins, and all other distilled liquors, for one brand, one hundred dollars~~
19 ~~and for each additional brand registered by the same person, twenty-five dollars.~~

20 ~~All fees received by the~~The secretary of revenue ~~as provided for in this chapter and~~
21 regulation shall be properly recorded by him and forwarded record all fees received pursuant
22 to this chapter and shall forward the fees monthly to the state treasurer, who. The state treasurer
23 shall deposit the same fees in the general fund.

24 Section 3. That § 35-4-2 be amended to read as follows:

1 35-4-2. Classes of licenses, with the fee of each class, follow:

2 (1) Distillers--four thousand dollars. However, no license fee is required for
3 manufacturers of alcohol for use in industry as a nonbeverage. If ~~such~~ the
4 manufacturer of industrial alcohol shall at any time manufacture, produce, distill, sell,
5 barter, or dispose of alcohol for any use other than an industrial use, the license fee
6 required by this section shall be allocated to and payable for the portion of the year
7 the manufacturer devoted to such other use for each calendar month or fraction
8 thereof while so engaged, but in no case less than one-twelfth of ~~said~~ the license fee;

9 (2) Wholesalers of alcoholic beverages--five thousand dollars;

10 (3) Off-sale--not less than five hundred dollars in municipalities of the first class, not
11 more than four hundred dollars in municipalities of the second class, and not more
12 than three hundred dollars in municipalities of the third class. The renewal fee for
13 such licenses may not exceed five hundred dollars in municipalities of the first class,
14 four hundred dollars in municipalities of the second class, and three hundred dollars
15 in municipalities of the third class;

16 (4) On-sale--in municipalities of various classes: municipalities of the first class, not less
17 than one dollar for each person residing within the municipality as measured by the
18 last preceding federal census, the renewal fee for such license is fifteen hundred
19 dollars; municipalities of the second class, no more than twelve hundred dollars;
20 municipalities of the third class, no more than nine hundred dollars;

21 (5) Off-sale licenses issued to municipalities under local option--not less than two
22 hundred fifty dollars;

23 (6) On-sale licenses issued outside municipalities--except as provided in § 35-4-11.9, not
24 less than the maximum that the municipality to which the applicant is nearest is

1 charging for a like license in that municipality, the renewal fee shall be the same as
2 is charged for a like license in the nearest municipality. However, if the nearest
3 municipality is more than fifteen miles from the on-sale license, the fee shall be
4 established pursuant to § 35-4-11.10. If the municipality to which the applicant is
5 nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a
6 specified fee, then the fee shall be the maximum amount that could be charged as if
7 the municipality had not been authorized to obtain on-sale licenses pursuant to § 35-
8 3-13. However, if the nearest municipality is a municipality of the first class and is
9 authorized to hold an on-sale license pursuant to § 35-3-13, such fee may not be more
10 than one hundred fifty percent of the minimum a municipality not so authorized may
11 charge for a like license. The renewal fee shall be the same as could be charged for
12 a like license in the nearest municipality;

- 13 (7) Solicitors--twenty-five dollars;
- 14 (8) Transportation companies--twenty-five dollars;
- 15 (9) Carrier--one hundred dollars, which fee entitles the licensee to sell or serve alcoholic
16 beverages on all conveyances the licensee operates within the state;
- 17 (10) Dispensers--ten dollars;
- 18 (11) On-sale dealers at publicly operated airports--two hundred fifty dollars;
- 19 (12) Wine retailers, being both package dealers and on-sale dealers--five hundred dollars;
- 20 (13) Convention facility on-sale--not less than one dollar for each person residing within
21 the municipality as measured by the last preceding federal census, the renewal fee for
22 such license, in municipalities of the first class, is fifteen hundred dollars; the
23 renewal fee for such license, in municipalities of the second class, is no more than
24 twelve hundred dollars; the renewal fee for such license, in municipalities of the third

1 class, is no more than nine hundred dollars;

2 (14) Manufacturers of malt beverages--five hundred dollars;

3 (15) Wholesalers of malt beverages--four hundred dollars;

4 (16) Malt beverage retailers, being both package dealers and on-sale dealers--~~two hundred~~
5 fiftythree hundred dollars;

6 (17) Malt beverage package dealers--~~one hundred fifty~~two hundred dollars;

7 (17A) Malt beverage and wine produced pursuant to chapter 35-12 package dealers--~~one~~
8 hundred seventy-fivetwo hundred twenty-five dollars;

9 (18) On-sale dealers in light wine containing not more than six percent alcohol by weight
10 for each day of the week between the hours of seven a.m. and two a.m. to nonprofit
11 corporations established pursuant to chapter 7-27--two hundred dollars; and

12 (19) Off-sale package wine dealers in table wines, sparkling wines, sacramental wine, and
13 distilled spirits produced from product provided to an artisan distiller by the
14 respective farm winery to be operated in conjunction with a farm winery established
15 pursuant to chapter 35-2--one hundred fifty dollars.

16 Section 4. That § 35-5-21.1 be amended to read as follows:

17 35-5-21.1. Fifty percent of all license and transfer fees received under the provisions of
18 subdivisions ~~35-4-2(16) and (17)~~ 35-4-2(16), (17), and (17A) shall remain in the municipality
19 in which the licensee paying the fee is located, or if outside the corporate limits of a
20 municipality, then in the county in which the licensee is located. In addition, fifty percent of
21 wholesaler license fees received under subdivision 35-4-2(15) shall revert to the municipality
22 ~~where in which~~ where in which the licensee is located, or if outside the corporate limits of a municipality, then
23 to the county in which the licensee is located. The remainder of all license and transfer fees and
24 penalties received shall be credited to the state general fund. All revenue received from the levy

1 in carrying out § 35-5-3 shall be credited to the alcoholic beverage fund.

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

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

400Q0366

SENATE JUDICIARY ENGROSSED NO. **HB 1079** 3/9/2009

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the sex offender
2 registry.

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

4 Section 1. That § 22-24B-2 be amended to read as follows:

5 22-24B-2. Any person who has been convicted for commission of a sex crime, as defined
6 in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea
7 of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been
8 discharged pursuant to § 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older
9 shall register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in
10 § 22-22-7.2, 22-24B-1(1), or 22-24B-1(9), or of an out-of-state or federal offense that is
11 comparable to the elements of these three sex crimes or any crime committed in another state
12 if the state also requires a juvenile adjudicated of that crime to register as a sex offender in that
13 state. The sex offender shall register within five days of coming into any county to reside,
14 temporarily domicile, attend school, attend postsecondary education classes, or work.



1 Registration shall be with the chief of police of the municipality in which the sex offender
2 resides, temporarily domiciles, attends school, attends postsecondary education classes, or
3 works, or, if no chief of police exists, then with the sheriff of the county. If the sex offender is
4 not otherwise registered in the state, the sex offender shall register within five days of coming
5 into any county when the sex offender applies for or receives a South Dakota driver license,
6 registers a motor vehicle, establishes a postal address, or registers to vote. A violation of this
7 section is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after
8 July 1, 1995, shall forward a certified copy of such formal discharge by certified mail to the
9 Division of Criminal Investigation and to local law enforcement where the person is then
10 registered under this section. Upon receipt of such notice, the person shall be removed from the
11 sex offender registry open to public inspection and shall be relieved of further registration
12 requirements under this section.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

481Q0170

SENATE JUDICIARY ENGROSSED NO. **HB 1163** 3/5/2009

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

Introduced by: Representatives Van Gerpen, Boomgarden, Carson, Feickert, Gibson, Hunhoff (Bernie), Jensen, Juhnke, Moser, Novstrup (David), Putnam, Sly, Steele, Thompson, Vanderlinde, and Verchio and Senators Hanson (Gary), Bartling, Fryslie, and Miles

1 FOR AN ACT ENTITLED, An Act to provide for excusing certain elderly persons from jury

2 duty upon request.

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

4 Section 1. That chapter 16-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person eighty years of age or older may request to be excused from jury duty. The judge
7 shall give substantial weight to the person's request to be relieved from jury duty, balancing the
8 request with the need to impanel a jury.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

948Q0442

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1183** - 3/9/2009

Introduced by: Representatives Lust, Boomgarden, Cronin, Curd, Dreyer, Feinstein, Gosch, Jensen, Kopp, McLaughlin, Olson (Ryan), Romkema, Rounds, Sly, Thompson, Turbiville, Verchio, and Wink and Senators Haverly, Abdallah, Adelstein, Dempster, Knudson, Nelson, Rhoden, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to leverage public investments in higher education facilities
2 and grant programs with private moneys, to authorize the Board of Regents and the South
3 Dakota Building Authority to contract for construction of the Higher Education Center-West
4 River, to fund certain postsecondary education grant programs, to authorize the use of higher
5 education facilities funds to construct the new dairy manufacturing plant at South Dakota
6 State University in Brookings, and to make an appropriation therefor.

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

8 Section 1. The Board of Regents may enter into an agreement to acquire a site for the Higher
9 Education Center-West River in Rapid City, Pennington County, South Dakota, through a
10 partial donation and partial sale on the terms herein provided. The real property being described
11 as follows: that part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that
12 part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North,
13 Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South



1 Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway
2 Company in Deed Book 145, Page 192 and as shown on the plat filed in Highway Plat Book 4,
3 Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10,
4 Page 4; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in Block 1 of Heartland Retail
5 Center located in the SW1/4SW1/4 of Section 27, as shown on the plat filed in Plat Book 31,
6 Page 111; -AND- the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of Section
7 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the city of Rapid City,
8 Pennington County, South Dakota; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in
9 Block 1 located in the NW1/4NW1/4 of said Section 34, and all of Lots 1 and 2 in Block 2 of
10 Heartland Retail Center and Cheyenne Boulevard, all as shown on the plat filed in Plat Book
11 31, Page 111; and EXCEPTING therefrom the East 200 feet of the NW1/4NW1/4 of said
12 Section 34 and EXCEPTING therefrom Lot H3 of the N1/2 of said Section 34, as shown on the
13 plat filed in Highway Plat Book 11, Page 162.

14 The real property has an appraised value of three million six hundred forty-five thousand
15 dollars, and it encompasses the twelve-acre tract whose donation was the subject of chapter 94
16 of the 2008 Session Laws. The Board of Regents may purchase the entire tract for two million
17 two hundred thirty-three thousand seven hundred fifty-five dollars, which sum represents the
18 value of buildable property adjoining the twelve-acre tract that will be donated. The difference
19 between the appraised value and the sale price, one million four hundred eleven thousand two
20 hundred forty-five dollars, may be recognized as a donation by the seller.

21 Section 2. There is hereby appropriated the sum of two million two hundred thirty-three
22 thousand seven hundred fifty-five dollars (\$2,233,755), or so much thereof as may be necessary,
23 of other fund expenditure authority, payable from funds donated for the purposes of sections 1
24 to 12, inclusive, of this Act, to the Board of Regents for the purchase of the land described in

1 section 1 of this Act.

2 Section 3. The South Dakota Building Authority may contract for the construction,
3 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
4 plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and
5 engineering services, and such other services or actions as may be required to construct, the
6 Higher Education Center-West River in Rapid City, Pennington County, at the estimated cost
7 of thirteen million, four hundred twenty-five thousand dollars and not to exceed fifty-four
8 thousand two hundred forty-one square feet.

9 Section 4. The South Dakota Building Authority may finance up to thirteen million, four
10 hundred twenty-five thousand dollars of the construction costs through the issuance of revenue
11 bonds, in accordance with this Act and chapter 5-12.

12 Section 5. There is hereby appropriated the sum of two million five hundred seventy-five
13 thousand dollars (\$2,575,000), or so much thereof as may be necessary, of other fund
14 expenditure authority, payable from funds donated for the purposes of sections 1 to 12,
15 inclusive, of this Act, to the Board of Regents for the construction authorized by sections 1 to
16 12, inclusive, of this Act.

17 Section 6. No indebtedness, bond, or obligation incurred or created under the authority
18 of this Act may be or may become a lien, charge, or liability against the State of South Dakota,
19 nor against the property or funds of the State of South Dakota within the meaning of the
20 Constitution or statutes of the state.

21 Section 7. The Board of Regents may make and enter into a lease agreement with the South
22 Dakota Building Authority and make rental payments under the terms thereof, pursuant to
23 chapter 5-12, from the higher education facilities fund for the purposes of sections 1 to 12,
24 inclusive, of this Act.

1 Section 8. The design and construction of the Higher Education Center-West River shall be
2 under the general supervision of the Bureau of Administration as provided in chapter 5-14. The
3 executive director of the Board of Regents and the executive secretary of the South Dakota
4 Building Authority, shall approve vouchers and the state auditor shall draw warrants to pay
5 expenditures authorized by sections 1 to 12, inclusive, of this Act.

6 Section 9. All courses offered at the Higher Education Center-West River shall be at self-
7 support tuition rates established by the Board of Regents, with the exception of nursing courses
8 through the University of South Dakota and South Dakota State University, which can be
9 offered at state-support rates if authorized by the board.

10 Section 10. Notwithstanding any other restriction in this Act to the contrary, the total project
11 cost authorized for the project identified in sections 4 and 5 of this Act may be increased by
12 donations and grants received by the Board of Regents for the purposes of sections 1 to 12,
13 inclusive, of this Act, and the Building Authority and the Board of Regents are hereby
14 authorized to expend such grants and donations for the construction, completion, furnishing,
15 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
16 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
17 roofing and structures, and such other services and improvements as may be required to erect.
18 However, no adjustments to any cost estimate may exceed one hundred twenty-five percent of
19 the authorized expenditure authority stated in sections 4 and 5 of this Act or one hundred ten
20 percent of the gross square footage authorized by sections 4 and 5 of this Act; provided that
21 increases in gross square footage estimates may be made only to accommodate design changes
22 needed to comply with building code requirements, to address unforeseeable structural, subsoil,
23 or environmental conditions, or to accommodate building program changes in the facility design
24 plan.

1 Section 11. For the purposes of this Act, the term, gross square footage, means the sum of
2 all areas on all floors of a building included within the outside faces of the building's exterior
3 walls, including floor penetration areas, however insignificant, for circulation and shaft areas
4 that connect one floor to another as computed by physically measuring or scaling measurements
5 from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, etc., which
6 extend beyond the wall faces. The term includes excavated basement area; mezzanines,
7 penthouses, and attics; garages; multiple floor parking structures; enclosed porches, inner or
8 outer balconies whether walled or not, if the balconies are utilized for operational functions; and
9 corridors whether walled or not, if the corridors are within the outside face lines of the building,
10 to the extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on
11 each floor through which the corridors pass. The term does not include open areas such as
12 unenclosed parking lots, playing fields, courts, and light wells, clear span areas not exceeding
13 three feet in height, or portions of upper floors eliminated by rooms or lobbies that rise above
14 single-floor height.

15 Section 12. The expenditures authorized by sections 1 to 12, inclusive, of this Act shall be
16 solely for the purposes of providing a site for the operation of instructional, research and service
17 programs delivered through institutions established by the Legislature and governed by the
18 Board of Regents. The Board of Regents may only use the property for the primary purpose of
19 education or research. It is the intent of the Board of Regents and the Eighty-fourth Legislature
20 that the Board of Regents may not without express legislative authorization:

- 21 (1) Organize the programs delivered at this site into a separate degree-granting
22 institution;
- 23 (2) Erect student residence facilities on the site;
- 24 (3) Construct facilities on the site for use as intercollegiate athletic practice or

1 competition;

2 (4) Establish intercollegiate athletic teams at the site;

3 (5) Sell any portion of the property acquired pursuant to sections 1 to 12, inclusive, of
4 this Act unless the property is appraised and advertised and offered for sale at public
5 auction. No portion of the property may be sold except at public sale and for an
6 amount less than the appraised value;

7 (6) Offer courses taught on the property at any rate other than the self-support tuition
8 rate;

9 (7) Lease for nonagricultural purposes more than ten percent of the surface area of the
10 property to third parties;

11 (8) Lease to third parties more than ten percent of the useable space within any building
12 constructed with state funds appropriated by the Legislature;

13 (9) Permit any free-standing commercial facility to be constructed on the property or any
14 commercial facility to be located within any building constructed with state funds
15 unless the commercial facility is reasonably needed to meet the convenience and
16 needs of the students and instructors using the building; or

17 (10) Establish a research park on the site.

18 Section 13. There is hereby appropriated the sum of one hundred thousand dollars
19 (\$100,000), or so much thereof as may be necessary, in other fund expenditure authority to the
20 Board of Regents to provide state student incentive grants pursuant to chapter 13-55A and
21 tuition equalization grants pursuant to chapter 13-55B. The grant program authorized by this Act
22 shall operate as a pilot program during fiscal year 2010. Notwithstanding any provision of
23 chapter 13-55A or 13-55B to the contrary, the Board of Regents shall administer the program
24 during its initial year. Grants shall be provided to qualified students in regionally-accredited

1 postsecondary schools and institutions. Funding under this section shall be provided on a
2 matching basis with federal funding under the Leveraging Educational Assistance Partnership
3 Program pursuant to the Higher Education Act of 1965, as amended to January 1, 2009, and 34
4 C.F.R. 692, Subpart A, as amended to January 1, 2009.

5 Section 14. The executive director of the Board of Regents shall approve vouchers and the
6 state auditor shall draw warrants to pay expenditures authorized by section 13 of this Act.

7 Section 15. Any amounts appropriated in section 13 of this Act not lawfully expended or
8 obligated by June 30, 2010, shall revert in accordance with the procedures prescribed in chapter
9 4-8.

10 Section 16. That section 2 of chapter 93 of the 2006 Session Laws be amended to read as
11 follows:

12 Section 2. There is hereby appropriated to the Board of Regents ~~four million dollars~~
13 ~~(\$4,000,000), or so much thereof as may be necessary, four million eight hundred fifty-two~~
14 thousand dollars (\$4,852,000) from private donations and grants received by South Dakota State
15 University and one million dollars (\$1,000,000) from the higher education facilities fund, or so
16 much thereof as may be necessary, to construct the facility described in section 1 of this Act.

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

473Q0417

SENATE TRANSPORTATION ENGROSSED NO. **HB 1227** - 3/9/2009

Introduced by: Representatives Krebs, Hunt, Kopp, Lange, McLaughlin, Novstrup (David), Solum, Sorenson, Steele, Street, Turbiville, and Verchio and Senators Vehle, Adelstein, Dempster, Jerstad, and Merchant

1 FOR AN ACT ENTITLED, An Act to increase license fees for certain noncommercial motor
2 homes and trailers.

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

4 Section 1. That § 32-5-6.1 be amended to read as follows:

5 32-5-6.1. License fees for any noncommercial motor home shall be determined by the
6 manufacturer's shipping weight, including accessories, as follows:

- 7 (1) Six thousand pounds or less, inclusive, ~~sixty~~ sixty-nine dollars;
- 8 (2) From 6,001 to 8,000 pounds, inclusive, ~~eighty~~ ninety-two dollars;
- 9 (3) From 8,001 to 10,000 pounds, inclusive, one hundred fifteen dollars;
- 10 (4) For each additional 2,000 pounds or major fraction thereof, in excess of 10,000
11 pounds, ~~twenty~~ twenty-three dollars.

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



1 completed vehicle.

2 Section 2. That § 32-5-8 be amended to read as follows:

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

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

1 pounds, ~~ten~~ eleven dollars and fifty cents.

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

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0316

HOUSE ENGROSSED NO. **HB 1237** - 2/23/2009

Introduced by: The Committee on Appropriations at the request of the Office of the
Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund certain property and sales
2 tax refunds for elderly persons and persons living with a disability.

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

4 Section 1. There is hereby appropriated from the general fund the sum of six hundred fifty
5 thousand dollars (\$650,000), or so much thereof as may be necessary, to the Department of
6 Revenue and Regulation to provide refunds for real property tax and sales tax to elderly persons
7 and persons living with a disability pursuant to chapters 10-18A and 10-45A. An amount not
8 to exceed twenty thousand dollars in fiscal year 2010 may be used for the administrative costs
9 of this Act.

10 Section 2. The secretary of revenue and regulation shall approve vouchers and the state
11 auditor shall draw warrants to pay expenditures authorized by this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall
13 revert in accordance with the procedures prescribed in chapter 4-8.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

934Q0499

HOUSE JUDICIARY ENGROSSED NO. **HB 1246** 2/13/2009

Introduced by: Representatives Gosch, Cutler, Hunt, and Schlekeway and Senators Hansen (Tom), Nesselhuf, Turbak Berry, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to service of garnishee
2 summons, affidavit, and garnishment disclosure.

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

4 Section 1. That § 21-18-11 be amended to read as follows:

5 21-18-11. Such garnishee summons, affidavit, and garnishment disclosure may be served
6 by certified mail, return receipt requested, or personally by the sheriff of the county where any
7 garnishee or defendant may be found, or by any other person not a party to the action. If, after
8 reasonable diligence, service by certified mail or personal service by the sheriff is unsuccessful
9 within the time period provided for in § 21-18-10, the plaintiff may file an affidavit stating that
10 fact and may serve such garnishee summons, affidavit, and garnishment disclosure on the
11 defendant by mailing a copy of the documents, together with a copy to the garnishee, to the
12 defendant's last known address by registered mail. The service shall be made and the same
13 returned, with proof of the service, to the person whose name is subscribed thereto, with
14 reasonable diligence. The person subscribing such garnishee summons may, at his option, by



1 an endorsement thereon fix a time for the service thereof, and the service shall then be made
2 accordingly. The garnishee may proceed by complying with either § 21-18-32 or § 21-18-33
3 and, by such compliance, is exonerated from any further liability to any party to the
4 garnishment.

5 Section 2. That § 21-18-10 be amended to read as follows:

6 21-18-10. The garnishee summons and affidavit shall also be served on the defendant to the
7 action, either before or within thirty days after service on a garnishee, ~~except when~~ unless
8 service of the summons in the action is made without the state or by publication. If the
9 defendant appears in the action by attorney, such service may be made upon such attorney or
10 upon the defendant. ~~Unless the garnishee summons is served on the defendant or the defendant's~~
11 ~~attorney in accordance with the provisions of this section, the service on the garnishee is void~~
12 ~~and of no effect from the beginning."~~

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

727Q0760

HOUSE ENGROSSED NO. **HB 1271** - 2/24/2009

Introduced by: Representative Pitts and Senator Bartling

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Building Authority and the
2 Department of Corrections to provide for the purchase, design, construction, and equipping
3 of a combined minimum security/parole facility in Rapid City for the Department of
4 Corrections.

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

6 Section 1. It is in the public interest that the South Dakota Building Authority contract for
7 the acquisition of land and buildings, the construction, completion, furnishing and equipping,
8 including heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks,
9 parking, landscaping, architectural and engineering services, removal of any existing
10 improvements and such other services or actions as may be required to provide for a minimum
11 security/parole facility in Rapid City, South Dakota, all at the estimated cost of six million
12 dollars. The South Dakota Building Authority may finance up to six million dollars of the costs
13 described in this section through the issuance of revenue bonds in accordance with this Act and
14 chapter 5-12.

15 Section 2. The authorizations granted under section 1 of this Act, and all necessary



1 appropriations required to finance and to complete such project, remain effective through
2 June 30, 2015.

3 Section 3. No indebtedness, bond, or obligation incurred or created under the authority of
4 this Act may become a lien, charge, or liability against the State of South Dakota, or against the
5 property or funds of the State of South Dakota within the meaning of the Constitution or statutes
6 of the state.

7 Section 4. The Building Authority and Department of Corrections may accept, transfer, and
8 expend any property or funds obtained for these purposes from federal sources, gifts,
9 contributions, or any other source, all of which shall be deemed appropriated to the project
10 authorized by this Act in addition to the amounts otherwise authorized by this Act.

11 Section 5. The administration of the design and construction of the projects authorized in
12 this Act shall be under the general charge and supervision of the Bureau of Administration as
13 provided in chapter 5-14. The secretary of the Department of Corrections and the executive
14 secretary of the Building Authority, or their designees, shall approve vouchers and the state
15 auditor shall draw warrants to pay expenditures authorized by this Act.

16 Section 6. The Department of Corrections may make and enter into a lease agreement with
17 the Building Authority and make rental payments under the terms thereof pursuant to chapter
18 5-12, for the purposes of this Act.

19 Section 7. The sale of bonds or utilization of other mechanisms to fund the purchase or
20 renovation of the property located at the corner of Homestead Street and Elk Vale Road in
21 Rapid City, Pennington County, South Dakota, as legally described in the agreement dated
22 February 6, 2009, executed by the State of South Dakota through its secretary of the Department
23 of Corrections, is hereby expressly rejected and approval therefor is likewise denied.

24 Section 8. Prior to purchasing any property with the proceeds of the revenue bonds described

1 in section 1, the secretary of the Department of Corrections shall conduct public meetings to
2 solicit input from and share information with citizens, business owners, and school
3 administrators located within two miles of the property to be purchased.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

294Q0635

SENATE COMMERCE

ENGROSSED NO. **HB 1280** - 3/5/2009

Introduced by: Representatives Boomgarden, Bolin, Engels, Faehn, Feickert, Gosch, Kirkeby, Krebs, Novstrup (David), Nygaard, Rave, and Turbiville and Senators Hansen (Tom), Abdallah, Ahlers, Fryslie, Jerstad, Miles, Peterson, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to create reduced ignition propensity standards for
2 cigarettes, to authorize the state fire marshal to monitor such standards, and to provide
3 penalties therefor.

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

5 Section 1. Terms used in this Act mean:

6 (1) "Brand family," all styles of cigarettes sold under the same trademark and
7 differentiated from one another by means of additional modifiers or descriptors,
8 including, but not limited to, menthol, lights, kings, and 100s. "Brand family"
9 includes cigarettes sold under a brand name, whether that name is used alone, or in
10 conjunction with any other word, trademark, logo, symbol, motto, selling message,
11 recognizable pattern or colors, or other indicia of product identification identical or
12 similar to, or identifiable with, a previous brand of cigarette;

13 (2) "Cigarette," any roll of tobacco wrapped in paper or in any substance not containing



1 tobacco, or any roll of tobacco wrapped in any substance containing tobacco which,
2 because of its appearance, the type of tobacco used in the filler, or its packaging and
3 labeling, is likely to be offered to, or purchased by, consumers as a cigarette;

4 (3) "Dealer," or "retailer," any person other than a distributor or wholesaler who is
5 engaged in this state in the business of selling cigarettes or tobacco products at retail;

6 (4) "Distributor," any person engaged in this state in the business of producing or
7 manufacturing cigarettes, or importing into the state cigarettes, at least seventy-five
8 percent of which are purchased directly from the manufacturers thereof;

9 (5) "Manufacturer," any entity which manufactures or otherwise produces cigarettes or
10 causes cigarettes to be manufactured or produced anywhere that the manufacturer
11 intends to be sold in this state, including cigarettes intended to be sold in the United
12 States through an importer or any entity that becomes a successor of a manufacturer;

13 (6) "Person," any individual, firm, fiduciary, partnership, limited liability company,
14 corporation, trust, or association;

15 (7) "Quality control and quality assurance program," the laboratory procedures
16 implemented to ensure that operator bias, systematic and nonsystematic
17 methodological errors, and equipment-related problems do not affect the results of
18 the testing. Such a program ensures that the testing repeatability remains within the
19 required repeatability values stated in section 2 of this Act for all test trials used to
20 certify cigarettes in accordance with this Act;

21 (8) "Repeatability," the range of values within which the repeat results of cigarette test
22 trials from a single laboratory will fall ninety-five percent of the time;

23 (9) "Sale," any transfer of title or possession or both, exchange or barter, conditional or
24 otherwise, in any manner or by any means whatever or any agreement therefor. In

1 addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts,
2 and the exchanging of cigarettes for any consideration other than money, are
3 considered sales;

4 (10) "Secretary," the secretary of revenue and regulation;

5 (11) "Sell," to sell, or to offer or agree to do the same;

6 (12) "State fire marshal," the state fire marshal designated pursuant to chapter 34-29B.

7 Section 2. Except as provided in section 7 of this Act, no cigarettes may be sold or offered
8 for sale in this state or offered for sale or sold to persons located in this state unless the
9 cigarettes have been tested in accordance with the test method and meet the performance
10 standard specified in this section, a written certification has been filed by the manufacturer with
11 the state fire marshal in accordance with section 8 of this Act, and the cigarettes have been
12 marked in accordance with section 9 of this Act.

13 Testing of cigarettes shall be conducted in accordance with the American Society of Testing
14 and Materials (ASTM) standard E2187-04, Standard Test Method for Measuring the Ignition
15 Strength of Cigarettes as of January 1, 2009, and shall be conducted on ten layers of filter paper.

16 No more than twenty-five percent of the cigarettes tested in a test trial in accordance with
17 this section may exhibit full-length burns. Forty replicate tests shall comprise a complete test
18 trial for each cigarette tested. The performance standard required by this section only applies to
19 a complete test trial. Written certifications shall be based upon testing conducted by a laboratory
20 that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization
21 for Standardization (ISO), or other comparable accreditation standard required by the state fire
22 marshal.

23 Any laboratory conducting testing in accordance with this section shall implement a quality
24 control and quality assurance program that includes a procedure that will determine the

1 repeatability of the testing results. No repeatability value may be greater than nineteen
2 hundredths.

3 This section does not require additional testing if cigarettes are tested consistent with this
4 Act for any other purpose. Any testing performed or sponsored by the state fire marshal to
5 determine a cigarette's compliance with the performance standard required shall be conducted
6 in accordance with this section.

7 Section 3. Each cigarette listed in a certification submitted pursuant to section 8 of this Act
8 that uses lowered permeability bands in the cigarette paper to achieve compliance with the
9 performance standard set forth in this section shall have at least two nominally identical bands
10 on the paper surrounding the tobacco column. At least one complete band shall be located at
11 least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands
12 are positioned by design, there shall be at least two bands fully located at least fifteen
13 millimeters from the lighting end and ten millimeters from the filter end of the tobacco column,
14 or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

15 Section 4. A manufacturer of a cigarette that the state fire marshal determines cannot be
16 tested in accordance with the test method prescribed in section 2 of this Act shall propose a test
17 method and performance standard for the cigarette to the state fire marshal. Upon approval of
18 the proposed test method and a determination by the state fire marshal that the performance
19 standard proposed by the manufacturer is equivalent to the performance standard prescribed in
20 section 2 of this Act, the manufacturer may employ such test method and performance standard
21 to certify such cigarette pursuant to section 8 of this Act. If the state fire marshal determines that
22 another state has enacted reduced cigarette ignition propensity standards that include a test
23 method and performance standard that are the same as those contained in this Act, and the state
24 fire marshal finds that the officials responsible for implementing those requirements have

1 approved the proposed alternative test method and performance standard for a particular
2 cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or
3 regulation under a legal provision comparable to this section, then the state fire marshal shall
4 authorize that manufacturer to employ the alternative test method and performance standard to
5 certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable
6 basis why the alternative test may not be accepted under this Act. All other applicable
7 requirements of this Act apply to the manufacturer.

8 Section 5. Each manufacturer shall maintain copies of the reports of all tests conducted on
9 all cigarettes offered for sale for a period of three years and shall make copies of these reports
10 available to the state fire marshal and the attorney general upon written request. Any
11 manufacturer who fails to make copies of these reports available within sixty days of receiving
12 a written request is subject to a civil penalty by the state fire marshal not to exceed ten thousand
13 dollars for each day after the sixtieth day that the manufacturer does not make the copies
14 available.

15 Section 6. The state fire marshal may adopt a subsequent ASTM Standard Test Method for
16 Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does
17 not result in a change in the percentage of full-length burns exhibited by any tested cigarette
18 when compared to the percentage of full-length burns the same cigarette would exhibit when
19 tested in accordance with ASTM Standard E2187-04 and the performance standard in section
20 2 of this Act.

21 Section 7. The requirements of section 2 of this Act do not prohibit the sale of cigarettes
22 solely for the purpose of consumer testing. For purposes of this section, the term, consumer
23 testing, means an assessment of cigarettes that is conducted by a manufacturer or under the
24 control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of

1 the cigarettes. The manufacturer may only utilize the quantity of cigarettes that is reasonably
2 necessary for the assessment.

3 Section 8. Each manufacturer shall submit to the state fire marshal a written certification
4 attesting that each cigarette listed in the certification has been tested in accordance with this Act
5 and meets the performance standard set forth in this Act.

6 Each cigarette listed in the certification shall be described with the following information:

- 7 (1) Brand or trade name on the package;
- 8 (2) Style, such as light or ultra light;
- 9 (3) Length in millimeters;
- 10 (4) Circumference in millimeters;
- 11 (5) Flavor, such as menthol or chocolate, if applicable;
- 12 (6) Filter or nonfilter;
- 13 (7) Package description, such as soft pack or box;
- 14 (8) Marking pursuant to section 9 of this Act;
- 15 (9) The name, address, and telephone number of the laboratory; and
- 16 (10) The date that the testing occurred.

17 The certifications shall be made available to the attorney general and the secretary for
18 purposes consistent with this Act. Each cigarette certified under this section shall be recertified
19 every three years. For each brand family of cigarettes listed in a certification, a manufacturer
20 shall pay to the state fire marshal a fee of one thousand five hundred dollars. The fee shall apply
21 to all cigarettes within the brand family certified, and shall include any new cigarette certified
22 within the brand family during the three-year certification period.

23 If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any
24 change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition

1 propensity standards required by this Act, that cigarette may not be sold or offered for sale in
2 this state until the manufacturer retests the cigarette in accordance with the testing standards set
3 forth in this Act. The manufacturer shall maintain records of that retesting as required by this
4 Act. Any altered cigarette which does not meet the performance standard set forth in this Act
5 may not be sold in this state.

6 Section 9. Cigarettes that are certified by a manufacturer in accordance with this Act shall
7 be marked to indicate compliance with the requirements of this Act. The marking shall be in
8 eight point type or larger and consist of the letters, FSC, which signifies Fire Standard
9 Compliant, permanently printed, stamped, engraved, or embossed on the package at or near the
10 UPC Code.

11 A manufacturer may only use one marking, and shall apply this marking uniformly for all
12 packages, including packs, cartons, and cases, and brands marketed by that manufacturer.

13 Any manufacturer certifying cigarettes in accordance with this Act shall provide a copy of
14 the certifications to each distributor, wholesaler, and retailer to which the manufacturer sells
15 cigarettes. Each distributor, wholesaler, and retailer shall permit the state fire marshal, the
16 secretary, and the attorney general to inspect markings of cigarette packaging marked in
17 accordance with this section.

18 Section 10. A manufacturer, distributor, wholesaler, or any other person or entity who
19 knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of sections
20 2 to 7, inclusive, of this Act is subject to a civil penalty by the state fire marshal not to exceed
21 one hundred dollars for each pack of such cigarettes sold or offered for sale. However, in no
22 case may the penalty against any such person or entity exceed one hundred thousand dollars
23 during any thirty-day period. Beginning on January 1, 2011, any person who sells or offers to
24 sell cigarettes, other than through retail sale, that have not been marked as required by section

1 9 of this Act is deemed to have knowingly sold or offered for sale such cigarettes in violation
2 of sections 2 to 7, inclusive, of this Act.

3 Section 11. A retailer who knowingly sells or offers to sell cigarettes in violation of sections
4 2 to 7, inclusive, of this Act shall be subject to a civil penalty by the state fire marshal not to
5 exceed one hundred dollars for each pack of such cigarettes sold or offered for sale. However,
6 in no case may the penalty against any retailer exceed twenty-five thousand dollars for such
7 sales or offers to sell during any thirty-day period. Beginning on January 1, 2011, a retailer who
8 sells or offers to sell cigarettes that have not been marked as required by section 9 of this Act
9 is deemed to have knowingly sold or offered for sale such cigarettes in violation of sections 2
10 to 7, inclusive, of this Act.

11 Section 12. In addition to any penalty prescribed by law, any manufacturer that knowingly
12 makes a false certification pursuant to section 8 of this Act is subject to a civil penalty by the
13 state fire marshal of at least seventy-five thousand dollars and not to exceed two hundred and
14 fifty thousand dollars for each false certification.

15 Section 13. Any person violating any other provision in this Act is subject to a civil penalty
16 for a first offense not to exceed one thousand dollars, and for a subsequent offense subject to
17 a civil penalty by the state fire marshal not to exceed five thousand dollars for each subsequent
18 violation.

19 Section 14. If any law enforcement officer or the state fire marshal, the attorney general, or
20 the secretary discovers any cigarettes for which no certification and fee has been filed as
21 required by section 8 of this Act or that have not been marked as required by section 9 of this
22 Act, such person is hereby authorized and empowered to seize and take possession of the
23 cigarettes. Any cigarettes seized pursuant to this section shall be destroyed. However, prior to
24 the destruction of any cigarette pursuant to this section, the true holder of the trademark rights

1 in the cigarette brand shall be given notice and a reasonable opportunity to inspect the cigarettes
2 within sixty days of the notification. Nothing in this section shall be construed to require the
3 secretary, the attorney general, or the state fire marshal to confiscate cigarettes in violation of
4 sections 2 to 7, inclusive, of this Act, when there is reason to believe that the owner thereof did
5 not willfully or intentionally sell or offer to sell cigarettes in violation of sections 2 to 7,
6 inclusive, of this Act.

7 Section 15. In addition to any other remedy provided by law, the state fire marshal or
8 attorney general may file an action for a violation of this Act, including:

- 9 (1) Petitioning for preliminary or permanent injunctive relief against any manufacturer,
10 importer, distributor, wholesaler, retailer, or any other person or entity to enjoin such
11 entity from selling, offering to sell, or affixing tax stamps to any cigarette that does
12 not comply with the requirements of this Act;
- 13 (2) Recover any costs or damages suffered by the state because of a violation of this Act,
14 including enforcement costs relating to the specific violation and attorney's fees.

15 Each violation of this Act or of rules or regulations adopted under this Act constitutes a
16 separate civil violation for which the state fire marshal or attorney general may obtain relief.

17 Section 16. For purposes of determining compliance with, and enforcing the provisions of,
18 this Act, the secretary, the attorney general, and the state fire marshal may disclose to each other
19 any information received under this Act.

20 Section 17. To enforce the provisions of this Act, the attorney general, the secretary, the
21 state fire marshal, and other law enforcement officer are hereby authorized to examine the
22 books, papers, invoices, and other records of any person in possession, control, or occupancy
23 of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock
24 of cigarettes on the premises. Each person in the possession, control, or occupancy of any

1 premises where cigarettes are placed, sold, or offered for sale, is hereby directed and required
2 to give the attorney general, the secretary, the state fire marshal, and other law enforcement
3 officer the means, facilities, and opportunity for the examinations authorized by this section.

4 Section 18. There is hereby established in the state treasury a special fund to be known as
5 the cigarette fire safety standard act fund. The fund shall consist of all certification fees paid
6 under this Act and all moneys recovered as penalties under this Act. The moneys shall be
7 deposited to the credit of the fund and shall, in addition to any other moneys made available for
8 such purpose, be made available to the Department of Public Safety, Department of Revenue
9 and Regulation, and the Office of Attorney General for administering the provisions of this Act.

10 Section 19. Nothing in this Act prohibits any person or entity from manufacturing or selling
11 cigarettes that do not meet the requirements of sections 2 to 7, inclusive, of this Act if the
12 cigarettes are or will be stamped for sale in another state or are packaged for sale outside the
13 United States and that person or entity has taken reasonable steps to ensure that such cigarettes
14 will not be sold or offered for sale to any person located in this state.

15 Section 20. Nothing in this Act prohibits any distributor, wholesaler, or dealer from selling
16 its existing inventory of cigarettes on or after January 1, 2011, if the distributor, wholesaler, or
17 dealer establishes that the state tax stamps were affixed to the cigarettes before January 1, 2011.
18 In addition, the inventory of cigarettes must have been purchased in a comparable quantity to
19 the inventory that was purchased during the same period for the preceding year.

20 Section 21. This Act preempts any local law, ordinance, or regulation that conflicts with any
21 provision of this Act or any policy of the state implemented in accordance with this Act and,
22 notwithstanding any other provision of law, a governmental unit of this state may not enact or
23 enforce an ordinance, local law, or regulation conflicting with or preempted by this Act.

24 Section 22. The provisions of this Act are repealed if a federal reduced cigarette ignition

1 propensity standard that expressly preempts this Act is adopted and become effective.

2 Section 23. It is the intent of the Legislature that this Act be construed consistent with

3 comparable reduced ignition propensity laws enacted by other states.

4 Section 24. This Act is effective on January 1, 2011.

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

929Q0466

HOUSE COMMERCE ENGROSSED NO. **SB 90** 3/4/2009

Introduced by: Senators Olson (Russell), Gant, Hanson (Gary), Maher, Nelson, and Nesselhuf and Representatives Rounds, Blake, Dennert, Jensen, Krebs, Novstrup (David), Nygaard, Solberg, Street, and Thompson

1 FOR AN ACT ENTITLED, An Act to increase the number of varieties of malt beverages, wine,
2 distilled spirits, liqueur, and cordials that an off-sale alcoholic beverage licensee may offer
3 for sampling in one day.

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

5 Section 1. That § 35-4-10.2 be amended to read as follows:

6 35-4-10.2. A licensee holding a license pursuant to subdivision 35-4-2(3) or (5) may provide
7 samples of malt beverages, wine, distilled spirits, liqueurs, and cordials to the general public
8 without obtaining an additional license. The licensee may only offer as samples the malt
9 beverages, wine, distilled spirits, liqueurs, and cordials that the licensee currently has in stock
10 and is offering for sale to the general public. The malt beverage, wine, distilled spirits, liqueur,
11 and cordial samples shall be dispensed at no charge and shall be consumed on the licensed
12 premises during the permitted hours of off-sale. No sample of malt beverage may be larger than
13 three fluid ounces. No sample of wine may be larger than fifty milliliters and no sample of
14 distilled spirits, liqueur, or cordial may be larger than twenty-five milliliters. No more than ~~one~~



1 ~~variety of malt beverage, one variety of wine, and one variety of distilled spirits, liqueur, or~~
2 ~~cordial~~ three varieties of malt beverages, three varieties of wines, and three varieties of distilled
3 spirits, liqueurs, or cordials may be offered for sampling in any one day. No more than ~~one~~
4 ~~sample of malt beverage, no more than one sample of wine, and no more than one sample of~~
5 ~~distilled spirits, liqueur, or cordial~~ three samples may be offered or dispensed to any individual.
6 ~~No malt beverage, wine, distilled spirits, liqueur, or cordial may be offered for sampling on any~~
7 ~~Sunday.~~ A violation of this section is a Class 1 misdemeanor.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

951Q0393

HOUSE COMMERCE ENGROSSED NO. **SB 159** 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: Senators Gray, Abdallah, Dempster, Garnos, Gillespie, Howie, Rhoden, and Turbak Berry and Representatives Rounds, Dennert, Feickert, Juhnke, Lederman, Olson (Betty), Rausch, and Street

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding bank names.

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

3 Section 1. That § 51A-3-2 be amended to read as follows:

4 51A-3-2. For a bank organized as a corporation, the articles of incorporation of a bank shall
5 state, and for a bank organized as a limited liability company, the articles of organization of a
6 bank shall state:

7 (1) That the corporation or limited liability company is formed for the purpose of
8 engaging in the business of banking, or as a bank and trust company, or as a bank and
9 trust department;

10 (2) The period for which such corporation or limited liability company is organized, not
11 exceeding twenty years.

12 ~~The name of such bank shall be different from the name of any other bank or trust company~~
13 ~~in the county of its place of business.~~ The capital stock of a bank organized as a corporation



1 shall be divided into shares of not less than ten nor more than one hundred dollars each. The
2 members' equity of a bank organized as a limited liability company shall be divided into units
3 of not less than ten nor more than one hundred dollars each.

4 The name of a bank organized under this title shall be different from the name of any other
5 bank or trust company in the county of its place of business. However, the name of the bank is
6 not required to be different if the majority of the bank's outstanding stock is owned by a bank
7 holding company that also owns a majority of the outstanding stock of another bank or trust
8 company in the county of the bank's place of business and such other bank or trust company has
9 given its prior written consent.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

474Q0580

HOUSE COMMERCE ENGROSSED NO. **SB 202** 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: Senators Garnos and Kloucek

1 FOR AN ACT ENTITLED, An Act to require the Bureau of Administration to prepare a report
2 regarding the energy efficiency of state agencies.

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

4 Section 1. The Bureau of Administration shall prepare and submit a report to the Legislature
5 regarding the energy efficiency of state agencies no later than December 1, 2009. The report
6 shall:

- 7 (1) Quantify current energy consumption levels of state agencies;
- 8 (2) Identify the energy efficiency measures that may be taken by state agencies to achieve
9 a reduction in energy consumption by a date certain; and
- 10 (3) Estimate the costs associated with the energy efficiency measures.

11 Each state agency and the Board of Regents shall provide all reasonable assistance and
12 cooperation requested by the Bureau of Administration in the implementation of this Act.

