

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

455Q0058

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1007** - 2/19/2009

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.

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

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

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

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

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

13 32-5-6.1. License fees for any noncommercial motor home shall be determined by the
14 manufacturer's shipping weight, including accessories, as follows:



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

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

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

11 32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile,
12 pickup truck, or van licensed pursuant to § 32-5-6 shall be determined by the gross weight of
13 the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

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

23 It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this
24 section at a gross weight in excess of the gross weight for which it has been licensed. If the

1 owner chooses to lower the registered weight, the plate shall be returned along with any
2 validation decal and a new plate issued with the correct registered weight.

3 Section 4. That § 32-5-30 be repealed.

4 ~~32-5-30. If any noncommercial motor vehicle, according to the manufacturer's model year~~
5 ~~designation, is five years old or more on January first of the year for which a license fee is~~
6 ~~required, such fee shall be seventy percent of the fee ordinarily prescribed.~~

7 Section 5. That § 32-9-15 be amended to read as follows:

8 32-9-15. In consideration of the unusual use of the public highways, each person, except as
9 otherwise provided in this chapter, desiring to operate a motor vehicle, trailer, or semitrailer,
10 upon the public highways of this state as a motor carrier, shall annually pay the commercial
11 motor vehicle fee as follows, to the county treasurer of the county of which ~~he~~ the person is a
12 resident, if a carrier of property; or to the Department of Revenue and Regulation, if ~~he~~ the
13 person is not a resident of this state:

- 14 (1) Gross weight under 4000 pounds, eighty-five dollars;
- 15 (2) Gross weight of 4001 to 6000 pounds, one hundred dollars;
- 16 (3) Gross weight of 6001 to 8000 pounds, one hundred fifteen dollars;
- 17 (4) Gross weight of 8001 to 10,000 pounds, one hundred thirty dollars;
- 18 (5) Gross weight of 10,001 to 12,000 pounds, one hundred fifty dollars;
- 19 (6) Gross weight of 12,001 to 14,000 pounds, one hundred seventy-five dollars;
- 20 (7) Gross weight of 14,001 to 16,000 pounds, two hundred dollars;
- 21 (8) Gross weight of 16,001 to 18,000 pounds, two hundred twenty-five dollars;
- 22 (9) Gross weight of 18,001 to 20,000 pounds, two hundred fifty dollars;
- 23 (10) For each additional 2000 pounds or major fraction thereof in excess of 20,000
24 pounds, forty dollars.

1 (11) For each vehicle or combination of vehicles as defined in § 32-22-10 with a gross
2 weight in excess of 78,000 pounds, seven dollars in addition to the fee schedule
3 above.

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

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

195Q0239

HOUSE JUDICIARY ENGROSSED NO. **HB 1036** 2/23/2009

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 Judiciary at the request of the Office of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to require the redaction of certain numbers before
2 furnishing copies of information.

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

4 Section 1. That § 57A-9-523 be amended to read as follows:

5 57A-9-523. (a) If a person that files a written record requests an acknowledgment of the
6 filing, the filing office shall send to the person an image of the record showing the number
7 assigned to the record pursuant to § 57A-9-519(a)(1) and the date and time of the filing of the
8 record. However, if the person furnishes a copy of the record to the filing office, the filing office
9 may instead:

10 (1) Note upon the copy the number assigned to the record pursuant to § 57A-9-519(a)(1)
11 and the date and time of the filing of the record; and

12 (2) Send the copy to the person.

13 (b) If a person files a record other than a written record, the filing office shall communicate
14 to the person an acknowledgment that provides:



1 (1) The information in the record;

2 (2) The number assigned to the record pursuant to § 57A-9-519(a)(1); and

3 (3) The date and time of the filing of the record.

4 (c) The filing office shall communicate or otherwise make available in a record the
5 following information to any person that requests it:

6 (1) Whether there is on file on a date and time specified by the filing office, but not a
7 date earlier than three business days before the filing office receives the request, any
8 financing statement that:

9 (A) Designates a particular debtor or, if the request so states, designates a
10 particular debtor at the address specified in the request;

11 (B) Has not lapsed under § 57A-9-515 with respect to all secured parties of record;
12 and

13 (C) If the request so states, has lapsed under § 57A-9-515 and a record of which
14 is maintained by the filing office under § 57A-9-522(a);

15 (2) The date and time of filing of each financing statement; and

16 (3) The information provided in each financing statement. However, if the financing
17 statement contains a social security or employer identification number which has not
18 been supplied by the person requesting the information, such number shall be
19 redacted prior to providing the information. In the case of financing statements
20 recorded in the office of the register of deeds, the requirement for redaction of social
21 security or employer identification numbers only applies to financing statements
22 recorded after July 1, 2009.

23 (d) In complying with its duty under subsection (c), the filing office may communicate
24 information in any medium. However, if requested, the filing office shall communicate

1 information by issuing a record that can be admitted into evidence in the courts of this state
2 without extrinsic evidence of its authenticity.

3 A computer printout from the centralized computer system established by the secretary of
4 state constitutes the certificate of the secretary of state as to whether there is on file, on the date
5 and hour stated thereon, a financing statement covering the following collateral: farm products
6 or accounts, or livestock, or general intangibles arising from or relating to the sale of farm
7 products by a farmer, or crops growing or to be grown, or equipment used in farming operations.

8 The secretary of state shall, upon a telephone request, furnish to any person, company, or
9 corporation, information as to whether a financing statement describing farm collateral has been
10 filed in the Office of the Secretary of State and, if such financing statement has been filed, the
11 secretary of state shall also furnish the name and business address of the secured creditor.
12 However, the secretary of state need not answer telephone inquiries in writing nor send written
13 confirmation from a telephone request. The secretary of state is not responsible for accuracy and
14 completeness of the information furnished verbally in response to a telephone request. ~~The~~
15 ~~secretary of state shall provide a toll-free telephone number to provide access for telephone~~
16 ~~requests.~~

17 (e) The filing office shall perform the acts required by subsections (a) through (d) at the time
18 and in the manner prescribed by filing-office rule, but not later than two business days after the
19 filing office receives the request.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0165

HOUSE EDUCATION ENGROSSED NO. **HB 1067** - 2/23/2009

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 Appropriations at the request of the Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to allow the voters of a school district to discontinue school
2 board representation areas.

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

4 Section 1. That § 13-8-3 be amended to read as follows:

5 13-8-3. The voters of any school district may increase the number of board members to
6 seven or to nine, or establish or discontinue school board representation areas, by a majority
7 vote of all voters voting at an election called and held as hereinafter provided. If a petition
8 signed by ten percent of the registered voters of any school district, based upon the total number
9 of registered voters at the last preceding general election, is presented to the board requesting
10 that an election be called for the purpose of voting upon the question of the change of number
11 of board members, or the establishment or discontinuation of school board representation areas,
12 the board shall call an election. The school board may, by resolution, call for an election for the
13 purpose of voting upon the question of the change of number of board members, or the
14 establishment or discontinuation of school board representation areas. The question shall be



1 submitted to the voters at an election to be held not less than forty-five nor more than sixty days
2 from the date of the filing of such petition with the business manager. If such a petition is filed
3 less than one hundred twenty days prior to the next annual election, the question shall be
4 submitted at the annual election. Such election shall be held upon the same notice and
5 conducted in the same manner as provided by chapter 13-7. Any increase or decrease in the
6 number of board members shall be implemented at the next succeeding annual election.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0204

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1070** - 2/20/2009

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

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

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

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

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

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



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

9 (1) Resident nurseryman: two hundred fifty dollars plus ten dollars for each acre over
10 one acre of inspected plants and ten dollars for each one thousand square feet of
11 growing greenhouse, except the fee for a resident nurseryman with less than five
12 thousand dollars in gross sales of nursery stock is one hundred fifty dollars plus
13 twenty dollars for each acre over one of inspected plants;

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

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

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

20 A dealer who is in business for less than three months in a year and only sells plants obtained
21 from an inspected in-state nursery may obtain a certificate of inspection at the reduced fee of
22 one hundred dollars.

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

24 38-24B-9. Any nurseryman whose location is outside the state may obtain a certificate of

1 inspection to sell nursery stock within the state by filing a certified copy of the official
2 inspection certificate and paying a ~~one hundred fifty~~ an eight hundred dollar fee to the secretary
3 of agriculture. The secretary may waive the payment of the fee if the applicant's state does not
4 require a fee by South Dakota applicants for a like certificate in that state.

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

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

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

14 38-24B-2. The secretary of agriculture may promulgate rules pursuant to the provisions of
15 chapter 1-26 to establish:

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

- 1 (10) Criteria for the implementation and administration of the fee schedule contained in
- 2 § 38-24B-7.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0201

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1071** - 2/20/2009

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

1 FOR AN ACT ENTITLED, An Act to revise certain fees, licenses, and other requirements for
2 milk plants and dairy farms.

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

4 Section 1. That § 40-32-2 be amended to read as follows:

5 40-32-2. Terms as used in this chapter, mean:

6 (1) ~~"Creamery," any place where cream, delivered by two or more persons, is churned~~
7 ~~into butter for commercial purposes;~~

8 ~~(2) "Cream station," any place other than a creamery where deliveries of cream are made~~
9 ~~by two or more producers except to a duly authorized agent of a common carrier~~

10 "Bulk milk pick-up tanker," any vehicle, including the truck, tank, and those
11 appurtenances necessary for the tank's use, used by a bulk milk hauler or sampler to
12 transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving
13 station, or transfer station;

14 ~~(3)~~(2) "Dairy farm," any place or premise where one or more cows, sheep, or goats are kept



1 and from which a part or all of the milk or milk products are produced and sold, or
2 offered for sale to a milk plant;

3 ~~(4)~~(3) "Dairy fieldman," a person employed by the milk plant to determine if a producer is
4 maintaining satisfactory production requirements in accordance with this chapter and
5 the rules adopted thereunder;

6 ~~(5)~~(4) "Department," the Department of Agriculture;

7 ~~(6)~~(5) "Grade A," any milk or milk product that complies with the standards set forth in ~~the~~
8 ~~United States Public Health Service pasteurized milk ordinance in effect on January~~
9 ~~1, 1988, and the requirements stated in chapter 39-6~~ any rules promulgated pursuant
10 to § 39-6-9;

11 ~~(7)~~(6) "Manufacturing grade," any milk or milk product subject to the requirements of
12 chapter 40-32 that is produced for processing and manufacturing into products for
13 human consumption not subject to Grade A requirements stated in chapter 39-6;

14 ~~(8)~~(7) "Marketing organization," an entity established for the purpose of procuring farm
15 produced milk and offering for sale that milk to a milk plant, receiving station, or
16 transfer station;

17 ~~(9)~~(8) "Milk distributor," any person who purchases milk or milk products and transports
18 them to a retail dealer or a consumer;

19 ~~(10)~~(9) "Milk plant," any place where milk or milk products are delivered or
20 processed for commercial purposes;

21 (10) "Milk transport tank," any vehicle, including the truck and tank, used by a bulk milk
22 hauler or sampler to transport bulk shipments of milk and milk products, from a milk
23 plant, receiving station, or transfer station to another milk plant, receiving station, or
24 transfer station;

1 (11) "Pasteurization," the process of heating every particle of milk or milk product in
 2 properly designed and operated equipment, to one of the temperatures given in the
 3 following table and held continuously at or above that temperature for at least the
 4 corresponding specified time:

5	Temperature	Time
6	*145°F (63°C)	30 minutes
7	*161°F (72°C)	15 seconds
8	191°F (89°C)	1 second
9	194°F (90°C)	0.5 second
10	201°F (94°C)	0.1 second
11	204°F (96°C)	0.05 second
12	212°F (100°C)	0.01 second

13 * If the fat content of the milk product is ten percent or more, or if it contains added
 14 sweeteners, the specified temperature shall be increased by 5°F (3°C). However,
 15 eggnog shall be heated to at least the following temperature and time specifications:

16	Temperature	Time
17	155°F (69°C)	30 minutes
18	175°F (80°C)	25 seconds
19	180°F (83°C)	15 seconds

20 Nothing in this definition ~~may be construed as barring~~ bars any other pasteurization
 21 process which has been recognized by the Food and Drug Administration to be
 22 equally efficient and which is approved by the regulatory agency;

23 (12) "Pasteurization unit," a unit of equipment that pasteurizes milk and milk products
 24 that meets the 3-A accepted practices for the sanitary construction, installation,

1 testing, and operation of a pasteurizer;

2 (13) "Producer," any person who operates a dairy farm and provides, sells, or offers milk
3 for sale;

4 (14) "Receiving station," any place, premise, or establishment where raw milk is received,
5 collected, handled, stored, or cooled and prepared for further transporting;

6 (15) "Secretary," the secretary of agriculture;

7 (16) "Single-service article fabricating plant," any plant manufacturing single-service
8 articles expected to be in contact with Grade A milk and milk products;

9 (17) "Transfer station," any place, premise, or establishment where milk or milk products
10 are transferred directly from one milk tank truck to another.

11 Section 2. That § 40-32-4 be amended to read as follows:

12 40-32-4. Any person engaged in the operation of a ~~creamery, cream station,~~ receiving
13 station, transfer station, bulk milk pick-up tanker, milk transport tank, plant fabricating
14 single-service articles or milk distributor in South Dakota, or any person buying milk ~~or cream~~
15 produced in South Dakota, or any person selling milk or milk products, shall, before beginning
16 business, obtain from the secretary a license for each place of business owned or operated by
17 such person in South Dakota, and for each ~~creamery, cream station,~~ milk distributor, or milk
18 plant buying or selling milk or milk products in South Dakota.

19 Section 3. That § 40-32-5 be amended to read as follows:

20 40-32-5. The license fee for the following facilities requiring licenses is as follows:

21 ~~Milk plant~~ \$100.00

22 (1) In-state milk processing plant (by pounds of milk or milk product produced):

23 (a) Less than 100,000 pounds per day - \$250

24 (b) 100,000 to 500,000 pounds, inclusive, per day - \$500

- 1 (c) Over 500,000 pounds per day - \$1,000
- 2 (2) Out-of-state milk processing plants or marketing organization - \$250
- 3 (3) Receiving station ~~100.00~~ - \$250
- 4 (4) Plant fabricating single-service articles ~~100.00~~ - \$250
- 5 (5) Milk distributor ~~50.00~~ - \$250
- 6 (6) Transfer station ~~50.00~~ - \$100
- 7 ~~Cream station 25.0~~
- 8 (7) Bulk milk pick-up tanker or milk transport tank - \$50

9 Section 4. That § 40-32-6 be amended to read as follows:

10 40-32-6. Each license for a ~~creamery, cream station, or~~ milk plant shall record the name of
11 the person owning or operating the ~~place~~ plant licensed, ~~its~~ the plant's place of business, the
12 location ~~thereof~~ of the plant, the name of the manager ~~thereof~~, and the number of the license.
13 Each license so issued shall constitute a license to the manager or agent of the place of business
14 named ~~therein~~ in the license and one license shall be sufficient for all manufacturing processes
15 of milk or milk products, ~~except that a cream station license shall entitle the licensee to operate~~
16 ~~only a cream station~~. Each license issued shall be posted in the office of the plant licensed.

17 Section 5. That § 40-32-7 be amended to read as follows:

18 40-32-7. No license for a ~~creamery, cream station, or~~ milk plant ~~shall be~~ is transferable from
19 one person to another, but may be transferred from one location to another in the same
20 municipality with the approval of the secretary of agriculture.

21 Section 6. That § 40-32-10.1 be amended to read as follows:

22 40-32-10.1. A producer engaged in the business of producing milk and offering for sale such
23 milk to a milk plant, ~~creamery, or cream station~~ for purposes other than Grade A milk as set
24 forth in chapter 39-6 and before ~~such~~ the milk is to be transported from the premises of ~~such~~ the

1 producer, shall obtain a permit from the secretary.

2 Section 7. That § 40-32-10.7 be amended to read as follows:

3 40-32-10.7. Any person performing the duties of a dairy fieldman shall first obtain a license
4 by applying on a form provided by the secretary of agriculture. Upon receipt of the application
5 and a fee of ~~twenty-five~~ fifty dollars, the secretary shall determine if the applicant is competent
6 and qualified before issuing the license. Each license for a dairy fieldman is valid for one year
7 or any fraction thereof and terminates on July first of each year.

8 Section 8. That § 40-32-12 be amended to read as follows:

9 40-32-12. Applications for a tester and grader's license shall be made on forms prescribed
10 and provided by the secretary of agriculture. Upon receipt of an application and a fee of
11 ~~twenty-five~~ fifty dollars, each applicant shall be given an examination prescribed by the
12 secretary. The examination shall determine the applicant's knowledge of South Dakota laws
13 pertaining to the dairy industry and shall contain an actual demonstration by the applicant,
14 sampling, testing, and grading ~~cream and~~ milk.

15 Section 9. That § 40-32-13 be amended to read as follows:

16 40-32-13. ~~Licenses will~~ Applications for a sampling and grading license shall be made on
17 forms prescribed and provided by the secretary of agriculture. A license shall be issued to
18 persons for sampling and grading of ~~cream or milk at a creamery, cream station,~~ milk plant, or
19 for the operator of a bulk tank truck picking up milk at the farm, upon satisfactory completion
20 of that part of the examination pertaining to sampling and grading, and upon receipt of the
21 application and a fee of fifty dollars. These licenses ~~will~~ shall be stamped, "For sampling and
22 grading only."

23 Section 10. That § 40-32-18 be amended to read as follows:

24 40-32-18. The secretary of agriculture may promulgate rules pursuant to chapter 1-26 as may

1 be needed to:

- 2 (1) Determine and define grades of milk ~~and cream~~ and price differentials to be paid
3 between grades;
- 4 (2) Determine and define methods of testing and grading and records to be kept of such
5 testing and grading;
- 6 (3) Define individual milk products and set standards for each;
- 7 (4) Determine and define methods of production, manufacture, and processing of milk
8 and milk products;
- 9 (5) Determine and define construction and sanitation standards for dairy farms;
10 ~~creameries, and~~ milk plants, ~~and cream buying stations~~;
- 11 (6) Determine and define construction and sanitation standards for equipment used on
12 dairy farms, ~~in creameries, and~~ milk plants, ~~and cream buying stations~~, including
13 transportation equipment for milk and milk products;
- 14 (7) Determine and define proper container capacities, labeling, and advertising;
- 15 (8) Determine and define duties and responsibilities of a dairy fieldman; and
- 16 (9) Review and approve plans and specifications prior to construction.

17 Section 11. That § 40-32-25 be amended to read as follows:

18 40-32-25. A milk plant or marketing organization of milk, milk products, sheep milk, or
19 goat milk that processes or markets Manufacturing Grade or Grade A milk shall pay an
20 inspection service fee for each dairy farm. The inspection fee shall be ~~fifty~~ one hundred dollars
21 per Grade A or ~~twenty-five~~ fifty dollars per Manufacturing Grade dairy farm and be paid
22 semiannually by July first and January first to the secretary. In addition, beginning on January 1,
23 2010, each milk buyer shall pay a monthly raw milk assessment fee on all milk purchased from
24 South Dakota producers, which shall be paid by the beginning of each month to the secretary.

1 The secretary of agriculture shall promulgate rules pursuant to chapter 1-26 to establish the raw
2 milk assessment fee which may not exceed one cent per hundredweight on all milk purchased.

3 Section 12. That § 40-32-26 be amended to read as follows:

4 40-32-26. A reinspection fee of ~~seventy-five~~ two hundred dollars per inspection shall be paid
5 to the secretary by the milk plant or marketing organization for each dairy farm inspection
6 exceeding the required biannual Grade A or annual Manufacturing Grade farm facility
7 inspection resulting from adverse actions such as farm permit suspension, degrade, or unsanitary
8 conditions to be corrected within a specified period of time.

9 Section 13. That § 40-32-27 be amended to read as follows:

10 40-32-27. ~~Milk plants~~ Each milk plant requiring inspection service from the department on
11 pasteurization units shall annually pay ~~one hundred~~ two hundred fifty dollars per pasteurization
12 unit to the secretary. The inspection fee shall be paid annually and is due July first of each year.
13 A one-hundred-fifty-dollar resealing fee for any pasteurization unit shall be assessed to the plant
14 and billed at the end of the month for nonroutine equipment checks.

15 Section 14. That § 40-32-29 be amended to read as follows:

16 40-32-29. Funds collected pursuant to §§ ~~40-32-25 to 40-32-27 inclusive~~, this chapter shall
17 be deposited with the state treasurer in a special fund known as the dairy inspection fund.
18 Expenditures of these funds shall be made pursuant to provisions of chapter 4-7, not to exceed
19 ~~thirty~~ fifty percent of the total dairy program budget. The department shall provide the dairy
20 industry and the Legislature an annual report of the previous year's activities.

21 Section 15. That § 40-32-30 be repealed.

22 ~~40-32-30. The payment of the initial inspection fee pursuant to §§ 40-32-25 and 40-32-27~~
23 ~~is due July 30, 1988.~~

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0323

HOUSE TAXATION ENGROSSED NO. **HB 1072** - 2/19/2009

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

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions concerning the delayed
2 remittance of sales and use taxes for certain businesses.

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

4 Section 1. That § 10-45-99 be repealed.

5 ~~— 10-45-99. Terms used in §§ 10-45-99 to 10-45-107, inclusive, mean:~~

6 ~~— (1) — "Department," the Department of Revenue and Regulation;~~

7 ~~— (2) — "Business," a business that has purchased and is installing tangible personal property~~
8 ~~in the form of equipment or machinery for direct use in a manufacturing, fabricating,~~
9 ~~or processing business, which is subject to sales or use tax pursuant to chapter 10-45~~
10 ~~or 10-46;~~

11 ~~— (3) — "Project," the purchase and installation of equipment or machinery;~~

12 ~~— (4) — "Project cost," the amount paid in money for a project;~~

13 ~~— (5) — "Secretary," the secretary of the Department of Revenue and Regulation.~~

14 Section 2. That § 10-45-100 be repealed.



1 ~~10-45-100. Any manufacturing, fabricating, or processing business may apply for and obtain~~
2 ~~an extension for remitting the sales and use tax imposed and due under the provisions of chapter~~
3 ~~10-45 or 10-46 for equipment or machinery that will be for direct use in a manufacturing,~~
4 ~~fabricating, or processing business. The extension shall end after six months.~~

5 Section 3. That § 10-45-101 be repealed.

6 ~~10-45-101. The extension pertains only to equipment and machinery purchased and installed~~
7 ~~after July 1, 2001. No extension may be made unless:~~

8 ~~(1) The project cost exceeds twenty thousand dollars; and~~

9 ~~(2) The business applying for the extension obtains a permit from the secretary as set~~
10 ~~forth in § 10-45-103.~~

11 Section 4. That § 10-45-102 be repealed.

12 ~~10-45-102. The amount of the tax extension shall apply to one hundred percent of the~~
13 ~~equipment and machinery costs and installation fees.~~

14 Section 5. That § 10-45-103 be repealed.

15 ~~10-45-103. Any business desiring an extension pursuant to §§ 10-45-99 to 10-45-107,~~
16 ~~inclusive, shall apply for a permit from the secretary at least thirty days prior to commencement~~
17 ~~of the project. The application for a permit shall be submitted on a form prescribed by the~~
18 ~~secretary. A separate application shall be made and submitted for each project. Upon approval~~
19 ~~of the application, the secretary shall issue a permit entitling the applicant to an extension as~~
20 ~~provided by §§ 10-45-99 to 10-45-107, inclusive. The permit or extension is not assignable or~~
21 ~~transferable.~~

22 Section 6. That § 10-45-104 be repealed.

23 ~~10-45-104. Any extension shall be submitted on forms prescribed by the secretary and shall~~
24 ~~be supported by such documentation as the secretary may require. The secretary may deny any~~

1 ~~extension where the business has failed to provide information or documentation requested or~~
2 ~~considered necessary by the secretary to determine the validity of the extension.~~

3 Section 7. That § 10-45-105 be repealed.

4 ~~— 10-45-105. If any extension has been fraudulently presented or supported as to any item in~~
5 ~~the claim, or if the business fails to meet all the conditions §§ 10-45-99 to 10-45-107, inclusive,~~
6 ~~then the business may be rejected in its entirety and any tax due from the business shall~~
7 ~~constitute a debt to the state and a lien in favor of the state upon all property and rights to~~
8 ~~property whether real or personal belonging to the business and may be recovered in an action~~
9 ~~of debt.~~

10 Section 8. That § 10-45-106 be repealed.

11 ~~— 10-45-106. Any business aggrieved by the denial in whole or in part of a extension requested~~
12 ~~under §§ 10-45-99 to 10-45-107, inclusive, may within thirty days after service of the notice of~~
13 ~~a denial by the secretary, demand and is entitled to a hearing, upon notice, before the secretary.~~
14 ~~The hearing shall be conducted pursuant to chapter 1-26.~~

15 Section 9. That § 10-45-107 be repealed.

16 ~~— 10-45-107. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the~~
17 ~~procedures for filing extensions and the requirements necessary to qualify for an extension.~~

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

880Q0106

SENATE JUDICIARY ENGROSSED NO. **HB 1086** - 2/17/2009

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to provide for and to require the attachment of an affidavit
2 in certain garnishment proceedings.

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

4 Section 1. That § 21-18-31 be amended to read as follows:

5 21-18-31. The plaintiff may in all cases move the court upon the answer of the garnishee and
6 of the defendant, if ~~he~~ the defendant shall also answer, for such judgment order as ~~he shall be~~
7 the plaintiff is entitled to thereon, ~~but such judgment shall be no.~~ Such order is not a bar beyond
8 the facts stated in such answers. The plaintiff shall attach an affidavit to the motion setting forth:

9 (1) Amount that is owed on judgment and daily and accrued interest;

10 (2) Additional costs claimed;

11 (3) Credit for any payments made;

12 (4) Net balance due;

13 (5) Specific request for payment of the garnished amount sufficient to satisfy judgment;

14 and

15 (6) Any surplus shall be returned to defendant.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

975Q0370

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1091** - 2/20/2009

Introduced by: Representatives Rave, Blake, Hunhoff (Bernie), and Tidemann and Senators Gray, Haverly, Hunhoff (Jean), and Miles

1 FOR AN ACT ENTITLED, An Act to make an appropriation to initiate a master of social work
2 degree program in higher education.

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 two dollars (\$2),
5 or so much thereof as may be necessary, to the Board of Regents to develop a master's degree
6 program in social work at the University of South Dakota.

7 Section 2. The executive director of the Board of Regents shall approve vouchers and the
8 state auditor shall draw warrants to pay expenditures authorized by this Act.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

484Q0172

SENATE LOCAL GOVERNMENT ENGROSSED NO. **HB 1108** - 2/18/2009

Introduced by: Representatives Engels, Blake, Burg, Cutler, Dennert, Elliott, Fargen, Feickert, Feinstein, Frerichs, Gibson, Hunt, Killer, Lange, Lucas, Lust, Noem, Peters, Schrempp, Solberg, Sorenson, Street, Vanderlinde, and Wismer and Senators Gant, Abdallah, Bradford, Heidepriem, Jerstad, Miles, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions relating to the purchase of
2 stationery for county officers.

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

4 Section 1. That § 7-28-2 be repealed.

5 ~~— 7-28-2. No bill for the printing of any stationery for any county officer shall be allowed or~~
6 ~~paid unless the same shall have been ordered and the order therefor approved by the county~~
7 ~~auditor as to the form thereof, under the direction of the board of county commissioners, nor~~
8 ~~shall payment be made by any county for any stationery upon which the name of any person is~~
9 ~~printed, whether that of the person holding the office or otherwise.~~



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

624Q0539

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1129** - 2/20/2009

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

Introduced by: Representatives Nygaard, Blake, Dennert, Feickert, Gibson, Juhnke, and Turbiville and Senators Nesselhuf and Bradford

1 FOR AN ACT ENTITLED, An Act to ensure the integrity of pipelines to be used for the
2 transportation of carbon dioxide for the purpose of enhanced oil recovery or geologic carbon
3 sequestration.

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

5 Section 1. That § 49-41B-2 be amended to read as follows:

6 49-41B-2. Terms as used in this chapter mean:

- 7 (1) "AC/DC conversion facility," an asynchronous AC to DC to AC tie that is directly
8 connected to a transmission facility or a facility that connects an AC transmission
9 facility with a DC transmission facility or vice versa;
- 10 (2) "Associated facilities," facilities which include, aqueducts, diversion dams,
11 transmission substations of two hundred fifty kilovolts or more, storage ponds,
12 reservoirs, or cooling ponds;
- 13 (3) "Carbon dioxide," a fluid that consists of more than ninety percent carbon dioxide
14 molecules compressed in a supercritical state;



- 1 (4) "Commission," the Public Utilities Commission;
- 2 ~~(4)~~(5) "Construction," any clearing of land, excavation, or other action that would affect the
3 environment of the site for each land or rights of way upon or over which a facility
4 may be constructed, but not including activities incident to preliminary engineering
5 or environmental studies;
- 6 ~~(5)~~(6) "Energy conversion facility," any new facility, or facility expansion, designed for or
7 capable of generation of one hundred megawatts or more of electricity, but does not
8 include any wind energy facilities;
- 9 ~~(6)~~(7) "Facility," any energy conversion facility, AC/DC conversion facility, transmission
10 facility, or wind energy facility, and associated facilities;
- 11 ~~(7)~~(8) "Permit," the permit issued by the commission under this chapter required for the
12 construction and operation of a facility;
- 13 ~~(8)~~(9) "Person," an individual, partnership, limited liability company, joint venture, private
14 or public corporation, association, firm, public service company, cooperative,
15 political subdivision, municipal corporation, government agency, public utility
16 district, or any other public or private entity, however organized;
- 17 ~~(9)~~(10) "Siting area," that area within ten miles in any direction of a proposed energy
18 conversion facility, AC/DC conversion facility, or which is determined by the
19 commission to be affected by a proposed energy conversion facility;
- 20 ~~(10)~~(11) "Trans-state transmission facility," an electric transmission line and its
21 associated facilities which originates outside the State of South Dakota,
22 crosses this state and terminates outside the State of South Dakota; and which
23 transmission line and associated facilities delivers electric power and energy
24 of twenty-five percent or less of the design capacity of such line and facilities

1 for use in the State of South Dakota;

2 ~~(11)~~(12) "Utility," any person engaged in and controlling the generation or transmission
3 of electric energy and gas or liquid transmission facilities as defined by § 49-
4 41B-2.1;

5 ~~(12)~~(13) "Wind energy facility," a new facility, or facility expansion, consisting of a
6 commonly managed integrated system of towers, wind turbine generators with
7 blades, power collection systems, and electric interconnection systems, that
8 converts wind movement into electricity and that is designed for or capable of
9 generation of one hundred megawatts or more of electricity. A wind energy
10 facility expansion includes the addition of new wind turbines, designed for or
11 capable of generating twenty-five megawatts or more of electricity, which are
12 to be managed in common and integrated with existing turbines and the
13 combined megawatt capability of the existing and new turbines is one hundred
14 megawatts or more of electricity. The number of megawatts generated by a
15 wind energy facility is determined by adding the nameplate power generation
16 capability of each wind turbine.

17 Section 2. That § 49-41B-2.1 be amended to read as follows:

18 49-41B-2.1. For the purposes of this chapter, a transmission facility is:

19 (1) An electric transmission line and associated facilities with a design of two hundred
20 fifty kilovolts or more;

21 (2) An electric transmission line and associated facilities with a design of one hundred
22 fifteen to two hundred fifty kilovolts, if more than one mile in length of the
23 transmission line does not follow section lines, property lines, roads, highways or
24 railroads, or is not reconstruction or modification of existing transmission lines and

1 existing associated facilities located on abandoned railroad rights-of-way; or

2 (3) A gas or liquid transmission line and associated facilities designed for or capable of
3 transporting coal, gas, liquid hydrocarbons, ~~or~~ liquid hydrocarbon products, or carbon
4 dioxide, excluding any gas or liquid transmission lines or associated facilities which
5 meet any of the following criteria:

6 (a) Lines or facilities that are used exclusively for distribution or gathering;

7 (b) Steel pipe and associated facilities operated at a hoop stress of less than twenty
8 percent of specified minimum yield strength as defined by 49 CFR 192.3 as
9 of January 1, 2007, or plastic pipe and associated facilities which operate at
10 less than fifty percent of the design pressure as determined by the formula
11 specified in 49 CFR 192.121 as of January 1, 2007; or

12 (c) Pipe which has nominal diameter ~~under~~ of less than four inches and not more
13 than one mile of the entire line is constructed outside of public right-of-way.

14 Section 3. That § 49-41B-24 be amended to read as follows:

15 49-41B-24. Within twelve months of receipt of the initial application for a permit for the
16 construction of energy conversion facilities, AC/DC conversion facilities, substations of two
17 hundred fifty kilovolts or more, ~~or~~ transmission lines of two hundred fifty kilovolts or more, ~~or~~
18 ~~of transmission lines for~~ coal, gas, liquid hydrocarbons, ~~or~~ liquid hydrocarbon products, or
19 carbon dioxide, the ~~Public Utilities Commission~~ commission shall make complete findings in
20 rendering a decision regarding whether a permit should be granted, denied, or granted upon such
21 terms, conditions or modifications of the construction, operation, or maintenance as the
22 commission ~~may deem~~ deems appropriate."

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

795Q0457

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1142** - 2/20/2009

Introduced by: Representatives Carson, Burg, Cronin, Dennert, Fargen, Frerichs, Hamiel, Juhnke, Noem, Pitts, Putnam, Tidemann, Van Gerpen, Vanneman, and Wink and Senators Vehle, Ahlers, Bartling, Bradford, Haverly, Hundstad, Kloucek, Olson (Russell), Peterson, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to appropriate money for an adult farm and ranch
2 management program.

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 one dollar (\$1),
5 or so much thereof as may be necessary, to the Department of Education for an adult farm and
6 ranch management program.

7 Section 2. The secretary of the Department of Education shall approve vouchers and the
8 state auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by June
10 30, 2010, shall revert in accordance with the procedures prescribed in chapter 4-8.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

922Q0517

HOUSE JUDICIARY ENGROSSED NO. **HB 1156** 2/23/2009

Introduced by: Representatives Cutler, Bolin, Brunner, Feickert, Greenfield, Hoffman, Hunt, Jensen, Juhnke, Kopp, Moser, Novstrup (David), Olson (Betty), Rounds, Schlekeway, Van Gerpen, and Verchio and Senators Rhoden, Abdallah, Fryslie, Gant, Garnos, Hansen (Tom), Howie, Kloucek, Maher, Miles, Novstrup (Al), Peterson, and Schmidt

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of a task force to study
2 human trafficking.

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

4 Section 1. There is established the Task Force on Human Trafficking to study issues of
5 human trafficking, including protection for the victims. The task force shall review state law and
6 federal law, including the William Wilberforce Trafficking Victims Protection Preauthorization
7 Act of 2008, and may recommend legislation to better address human trafficking in South
8 Dakota.

9 Section 2. The task force shall consist of nine members. Three members, no more than two
10 of whom shall be from one political party, shall be appointed by the speaker of the House of
11 Representatives, and the speaker shall designate one member as chair. Three members, no more
12 than two of whom shall be from one political party, shall be appointed by the president pro
13 tempore of the Senate, and the president pro tempore shall designate one member as vice chair.



1 The speaker of the House of Representatives shall also appoint one person who is an advocate
2 for victims of human trafficking. The attorney general shall serve as an ex officio member or
3 appoint a person from the Office of the Attorney General to serve on the task force. The United
4 States Attorney for the District of South Dakota shall serve as an ex officio member or appoint
5 a person from the Office of the United States Attorney to serve on the task force.

6 Section 3. The task force shall be staffed and funded as an interim legislative committee.

7 Section 4. The task force shall submit its final report to the Legislature no later than
8 December 1, 2009.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

808Q0592

HOUSE JUDICIARY ENGROSSED NO. **HB 1166** 2/23/2009

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

Introduced by: Representatives Deadrick, Cutler, Gosch, and Lust and Senators Heidepriem, Abdallah, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

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

4 Section 1. Upon a written motion by any person who has been convicted of a felony offense,
5 the court that entered the judgment of conviction for the felony offense shall order DNA testing
6 of specific evidence if the court finds that all of the following apply:

- 7 (1) The petitioner asserts, under penalty of perjury, that the petitioner is actually innocent
8 of the felony offense for which the petitioner is under a sentence of imprisonment or
9 death;
- 10 (2) The petitioner's conviction is final under chapter 23A-32;
- 11 (3) The petitioner has exhausted any claim for relief under chapter 21-27 or 28 U.S.C.
12 § 2254;
- 13 (4) The specific evidence to be tested was secured in relation to the investigation or
14 prosecution of the felony offense for which the petitioner was convicted;



- 1 (5) The specific evidence was either:
 - 2 (a) Not previously subjected to DNA testing and the petitioner did not:
 - 3 (i) Knowingly and voluntarily waive the right to request DNA testing of
 - 4 that evidence in a court proceeding after the date of enactment of this
 - 5 Act; or
 - 6 (ii) Knowingly fail to request DNA testing of that evidence in a prior
 - 7 petition for relief under chapter 21-27 or 28 U.S.C. § 2254; or
 - 8 (b) Previously subjected to DNA testing and the petitioner is requesting DNA
 - 9 testing using a new method or technology that is substantially more probative
 - 10 than the prior DNA testing;
- 11 (6) The petitioner shows good cause for the failure to request DNA testing of the specific
- 12 evidence at the time of trial;
- 13 (7) The specific evidence to be tested exists, is in the possession of the state, and has
- 14 been subject to a chain of custody and retained under conditions sufficient to ensure
- 15 that such evidence has not been substituted, contaminated, tampered with, replaced,
- 16 or altered in any respect material to the proposed DNA testing;
- 17 (8) The proposed DNA testing is reasonable in scope, uses scientifically sound methods,
- 18 and is consistent with accepted forensic practices;
- 19 (9) The petitioner identifies a theory of defense that:
 - 20 (a) Is consistent with an affirmative defense presented at trial; or
 - 21 (b) Would establish the actual innocence of the petitioner of the felony offense
 - 22 referenced in the petitioner's assertion under subdivision (1); and
- 23 (10) If the petitioner was convicted following a trial, the identity of the perpetrator was
- 24 at issue in the trial.

1 Section 2. Upon the receipt of the petitioner's written motion filed under section 1 of this
2 Act, the court shall:

3 (1) Notify the attorney general and the state's attorney who prosecuted the case resulting
4 in the petitioner's conviction; and

5 (2) Allow the state twenty days from the receipt of notice to respond to the motion.

6 Section 3. The court may not appoint counsel for an indigent petitioner under this Act.
7 However, the court may refer requests for DNA testing to the Innocence Project in South Dakota
8 or such volunteer attorney as the State Bar of South Dakota may designate.

9 Section 4. Nothing in this Act precludes a petitioner from proceeding with privately retained
10 counsel.

11 Section 5. Upon receiving notice from the court that a written motion has been made, the
12 attorney general or the state's attorney who prosecuted the case, shall take all reasonable actions
13 necessary to ensure that all evidence which was collected in connection with the investigation
14 or prosecution of the case, and which remains in the actual or constructive custody of the state
15 or any of its political subdivisions, is preserved pending completion of the proceedings under
16 this Act.

17 Section 6. The court shall direct that any DNA testing ordered pursuant to section 1 of this
18 Act be carried out by the South Dakota Division of Criminal Investigation. However, the court
19 may order DNA testing by another qualified laboratory if the court makes all necessary orders
20 to ensure the integrity of the specific evidence and the reliability of the testing process and test
21 results.

22 Section 7. Nothing in this Act prohibits a convicted person and the state from consenting
23 to and conducting post-conviction DNA testing by agreement of the parties, without filing a
24 motion for post-conviction DNA testing pursuant to this Act.

1 Section 8. The results of any DNA testing ordered pursuant to section 1 of this Act shall be
2 disclosed to the court, the petitioner, and the state.

3 Section 9. The state shall submit any test results relating to the DNA of the petitioner to the
4 State DNA Database.

5 Section 10. If the DNA test results obtained pursuant to this Act are inconclusive or show
6 that the petitioner was the source of the DNA evidence, the DNA sample of the petitioner shall
7 be retained in the State DNA Database.

8 Section 11. If the DNA test results obtained pursuant to this Act exclude the petitioner as
9 the source of the DNA evidence, and a comparison of the DNA sample of the petitioner results
10 in a match between the DNA sample of the petitioner and another offense, the attorney general
11 shall notify the appropriate agency and preserve the DNA sample of the petitioner.

12 Section 12. If DNA test results obtained pursuant to this Act are inconclusive, the circuit
13 court shall deny the petitioner relief.

14 Section 13. If DNA test results obtained pursuant to this Act show that the petitioner was
15 the source of the DNA evidence, the court shall:

16 (1) Deny the petitioner relief; and

17 (2) On motion of the state:

18 (a) Assess the petitioner the cost of any DNA testing carried out pursuant to this
19 Act; and

20 (b) Order that the finding be forwarded to the South Dakota Board of Pardons and
21 Paroles so that the board may consider the finding in reviewing any
22 subsequent parole application submitted by the petitioner.

23 Section 14. In any prosecution of the petitioner pursuant to this Act for false assertions or
24 other conduct in proceedings pursuant to this Act, the court, upon conviction of the petitioner,

1 shall sentence the petitioner to a sentence that runs consecutively to any other term of
2 imprisonment the petitioner is serving.

3 Section 15. If DNA test results obtained pursuant to this Act exclude the petitioner as the
4 source of the DNA evidence, the petitioner may file a motion for a new trial. The court shall
5 establish a reasonable schedule for the petitioner to file such motion for a new trial and for the
6 state to respond to the motion for a new trial.

7 Section 16. The court shall grant the motion of the petitioner for a new trial if the DNA test
8 results, when considered with all other evidence in the case, establish by compelling evidence
9 that a new trial would result in the acquittal of the felony offense, as referenced in section 1 of
10 this Act, for which the petitioner is under a sentence of imprisonment.

11 Section 17. Nothing in this Act provides a basis for relief in any state or federal habeas
12 corpus proceeding.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

723Q0492

HOUSE STATE AFFAIRS
ENGROSSED NO. **HB 1176** - 2/20/2009

Introduced by: Representative Gosch and Senator Haverly

1 FOR AN ACT ENTITLED, An Act to clarify unemployment benefits.

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

3 Section 1. That § 61-6-13.1 be amended to read as follows:

4 61-6-13.1. "Good cause" for voluntarily leaving employment is restricted to leaving
5 employment because:

6 (1) Continued employment presents a hazard to the employee's health. However, this
7 subdivision applies only if:

8 (a) Prior to the separation from the employment the employee is examined by a
9 licensed practitioner of the healing arts, as defined in chapter 36-4 or 36-5, and
10 advised that continued employment presents a hazard to ~~his~~ the employee's
11 health; and

12 (b) The health hazard is supported by a certificate signed by the licensed
13 practitioner of the healing arts.

14 The secretary of labor may request an additional certificate signed by another
15 licensed practitioner of the healing arts, as defined in chapter 36-4 or 36-5;



- 1 (2) The employer required the employee to relocate the employee’s residence to hold the
2 employee’s job;
- 3 (3) The employer’s conduct demonstrates a substantial disregard of the standards of
4 behavior that the employee has a right to expect of an employer or the employer has
5 breached or substantially altered the contract for employment;
- 6 (4) An individual accepted employment while on lay off and subsequently quit the
7 employment to return to work for the individual’s regular employer; or
- 8 (5) The employee’s religious belief mandates it. This provision does not apply, however,
9 if the employer has offered to the employee reasonable accommodations taking into
10 consideration the employee’s religious beliefs if this offer is made before the
11 employee leaves the employment; or
- 12 (6) Leaving is necessary to protect the individual from domestic abuse. However, this
13 subdivision applies only if:
 - 14 (a) The employee reports the abusive situation to law enforcement within
15 forty-eight hours of any occurrence and cooperates fully with law enforcement
16 in any subsequent investigation and criminal charge relating to the abusive
17 situation. Upon request by the department, the law enforcement agency shall
18 complete and return to the department a certification form indicating whether
19 the employee has complied with the requirements of this subdivision;
 - 20 (b) The employee has left the abusive situation and remains separate from the
21 situation; and
 - 22 (c) The employee made reasonable efforts to preserve the employment before
23 quitting.

24 Any person found to have good cause for leaving employment due to domestic abuse

1 as set forth in this subdivision ~~(6)~~ and who returns to the abusive situation is
2 ineligible for benefits.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

948Q0442

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1183** - 2/18/2009

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 authorize the Board of Regents and the South Dakota
2 Building Authority to contract for construction of the Higher Education Center-West River
3 and to make an appropriation therefor.

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

5 Section 1. The Board of Regents may enter into an agreement to acquire a site for the Higher
6 Education Center-West River in Rapid City, Pennington County, South Dakota, through a
7 partial donation and partial sale on the terms herein provided. The real property being described
8 as follows: that part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that
9 part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North,
10 Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South
11 Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway
12 Company in Deed Book 145, Page 192 and as shown on the plat filed in Highway Plat Book 4,
13 Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10,



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

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

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

22 Section 3. The South Dakota Building Authority may contract for the construction,
23 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
24 plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and

1 engineering services, and such other services or actions as may be required to construct, the
2 Higher Education Center-West River in Rapid City, Pennington County, at the estimated cost
3 of thirteen million, four hundred twenty-five thousand dollars and not to exceed fifty-four
4 thousand two hundred forty-one square feet.

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

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

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

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

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

24 Section 9. All courses offered at the Higher Education Center-West River shall be at self-

1 support tuition rates established by the Board of Regents, with the exception of nursing courses
2 through the University of South Dakota and South Dakota State University, which can be
3 offered at state-support rates if authorized by the board.

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

18 Section 11. For the purposes of this Act, the term, gross square footage, means the sum of
19 all areas on all floors of a building included within the outside faces of the building's exterior
20 walls, including floor penetration areas, however insignificant, for circulation and shaft areas
21 that connect one floor to another as computed by physically measuring or scaling measurements
22 from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, etc., which
23 extend beyond the wall faces. The term includes excavated basement area; mezzanines,
24 penthouses, and attics; garages; multiple floor parking structures; enclosed porches, inner or

1 outer balconies whether walled or not, if the balconies are utilized for operational functions; and
2 corridors whether walled or not, if the corridors are within the outside face lines of the building,
3 to the extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on
4 each floor through which the corridors pass. The term does not include open areas such as
5 unenclosed parking lots, playing fields, courts, and light wells, clear span areas not exceeding
6 three feet in height, or portions of upper floors eliminated by rooms or lobbies that rise above
7 single-floor height.

8 Section 12. The expenditures authorized by this Act shall be solely for the purposes of
9 providing a site for the operation of instructional, research and service programs delivered
10 through institutions established by the Legislature and governed by the Board of Regents. The
11 Board of Regents may only use the property for the primary purpose of education or research.
12 It is the intent of the Board of Regents and the Eighty-fourth Legislature that the Board of
13 Regents may not without express legislative authorization:

- 14 (1) Organize the programs delivered at this site into a separate degree-granting
15 institution;
- 16 (2) Erect student residence facilities on the site;
- 17 (3) Construct facilities on the site for use as intercollegiate athletic practice or
18 competition;
- 19 (4) Establish intercollegiate athletic teams at the site;
- 20 (5) Sell any portion of the property acquired pursuant to this Act unless the property is
21 appraised and advertised and offered for sale at public auction. No portion of the
22 property may be sold except at public sale and for an amount less than the appraised
23 value;
- 24 (6) Offer courses taught on the property at any rate other than the self-support tuition

1 rate;

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

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

6 (9) Permit any free-standing commercial facility to be constructed on the property or any
7 commercial facility to be located within any building constructed with state funds
8 unless the commercial facility is reasonably needed to meet the convenience and
9 needs of the students and instructors using the building.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

843Q0660

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1225** - 2/19/2009

Introduced by: Representatives Krebs, Brunner, Dreyer, Gibson, Hunt, Kirkeby, Lucas, Romkema, Schlekeway, Street, Turbiville, Verchio, and Wismer and Senators Jerstad, Ahlers, Hansen (Tom), Miles, and Nelson

1 FOR AN ACT ENTITLED, An Act to require certain authorization for the installation of certain
2 fixtures on rental property and to establish penalties related thereto.

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

4 Section 1. Any person who installs an antenna, a satellite dish, or other receiver on the
5 residential real property of another without the consent of the landlord or the landlord's
6 representative is guilty of a Class 2 misdemeanor. In addition, that person is subject to treble
7 damages for any damage caused by the installation of the fixture and treble damages are deemed
8 to be at least two hundred dollars.

9 Section 2. Any contract for the provision of a service which requires the installation of an
10 antenna, a satellite dish, or other receiver on the residential real property of the customer shall
11 include directly below the signature line for the customer's acceptance of the contract a
12 statement in at least ten-point bold-faced type: "The signature of the landlord or the landlord's
13 representative, not the tenant, is required below for installation. Failure to receive the landlord's
14 or the landlord's representative's signature may subject the tenant and installer to criminal and



1 civil liability." Directly below that statement shall be a signature line for the landlord or the
2 landlord's representative to approve the installation. Directly below that signature line for the
3 landlord or the landlord's representative shall be a statement in at least ten-point bold-faced type:
4 "Signature of landlord or the landlord's representative." Improper signature subjects signer and
5 installer to criminal and civil penalties. Any service provider that fails to include the statements
6 required by this section is subject to a civil penalty of one thousand dollars for each violation.

7 Section 3. Any tenant who signs the landlord's or the landlord's representative's authorization
8 of installation without the consent of the landlord or the landlord's representative, is guilty of
9 a Class 2 misdemeanor. In addition, the tenant is subject to treble damages for any damage
10 caused by the installation and treble damages are deemed to be at least two hundred dollars
11 which may be immediately removed from any damage deposit, which the landlord or the
12 landlord's representative may require replaced as a condition of continuing the lease.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

753Q0685

HOUSE TAXATION ENGROSSED NO. **HB 1229** 2/19/2009

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

Introduced by: Representatives Noem, Faehn, and Rave and Senator Rhoden

1 FOR AN ACT ENTITLED, An Act to increase the gross receipts tax imposed on visitor-related
2 businesses and to revise certain provisions concerning the tourism promotion fund.

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.

14 Section 2. That § 1-42-31 be amended to read as follows:



1 1-42-31. There is hereby established a tourism promotion fund in the Department of
2 Tourism and State Development. The fund shall be used for the purposes and functions set forth
3 in chapter 1-22 for the South Dakota State Arts Council and chapter 1-52 for the Department
4 of Tourism and State Development.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0712

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1251** - 2/20/2009

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 State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to impose an additional tax on the proceeds of Deadwood
2 gaming.

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

4 Section 1. That chapter 42-7B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to the gaming tax imposed by § 42-7B-28, there is hereby imposed an additional
7 one percent tax on the adjusted gross proceeds of gaming allowed by this chapter. The tax shall
8 be paid to the commission and transferred to the general fund on a monthly basis
9 notwithstanding the provisions of §§ 42-7B-48 and 42-7B-48.1.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

947Q0349

HOUSE EDUCATION ENGROSSED NO. **HB 1254** 2/20/2009

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

Introduced by: Representatives McLaughlin, Bolin, Brunner, Dreyer, Gosch, Hunt, Kirkeby, Kopp, Krebs, Lust, Romkema, Schlekeway, Sly, and Turbiville and Senators Adelstein, Haverly, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise the index factor in the state aid to education
2 formula.

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

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

- 6 (1) "Average daily membership," the average number of resident and nonresident
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the
8 school district during the previous regular school year, minus average number of
9 pupils for whom the district receives tuition, except pupils described in subdivision
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the
11 average number of pupils for whom the district pays tuition;
- 12 (1A) Nonresident students who are in the care and custody of the Department of Social
13 Services, the Unified Judicial System, the Department of Corrections, or other state



1 agencies and are attending a public school may be included in the average daily
2 membership of the receiving district when enrolled in the receiving district. When
3 counting a student who meets these criteria in its general enrollment average daily
4 membership, the receiving district may begin the enrollment on the first day of
5 attendance. The district of residence prior to the custodial transfer may not include
6 students who meet these criteria in its general enrollment average daily membership
7 after the student ceases to attend school in the resident district;

8 (2) "Adjusted average daily membership," calculated as follows:

9 (a) For districts with an average daily membership of two hundred or less,
10 multiply 1.2 times the average daily membership;

11 (b) For districts with an average daily membership of less than six hundred, but
12 greater than two hundred, raise the average daily membership to the 0.8293
13 power and multiply the result times 2.98;

14 (c) For districts with an average daily membership of six hundred or more,
15 multiply 1.0 times their average daily membership;

16 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled
17 in all schools operated by the school district on the last Friday of September of the
18 previous school year minus the number of students for whom the district receives
19 tuition, except nonresident students who are in the care and custody of a state agency
20 and are attending a public school and students for whom tuition is being paid
21 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
22 tuition. When computing state aid to education for a school district under the
23 foundation program pursuant to § 13-13-73, the secretary of the Department of
24 Education shall use either the school district's fall enrollment or the average of the

1 school district's fall enrollment and the school district's fall enrollment from the prior
2 year, whichever is higher. However, if a school district qualifies to benefit from both
3 the averaging permitted in this subdivision and the one-time payment provided in
4 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but
5 only from the one that provides the most additional funding to the district;

6 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students
7 enrolled in all schools operated by the school district on the last Friday of September
8 of the current school year minus the number of students for whom the district
9 receives tuition except nonresident students who are in the care and custody of a state
10 agency and are attending a public school and students for whom tuition is being paid
11 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
12 tuition;

13 (2C) "Small school adjustment," calculated as follows:

14 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times
15 \$4,237.72;

16 (b) For districts with a fall enrollment of greater than two hundred, but less than
17 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that
18 result; and multiply the sum obtained times \$4,237.72;

19 (3) "Index factor," is the annual percentage change in the consumer price index for urban
20 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
21 the United States Department of Labor for the year before the year immediately
22 preceding the year of adjustment up to a maximum of four percent or three percent,
23 whichever is ~~less~~ greater;

24 (4) "Per student allocation," for school fiscal year 2009 is \$4,664.66. Each school fiscal

1 year thereafter, the per student allocation is the previous fiscal year's per student
2 allocation increased by the index factor;

3 (5) "Local need," is the sum of:

4 (a) The per student allocation multiplied by the fall enrollment; and

5 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;
6 and

7 (c) The payment distributed pursuant to § 13-13-80, if applicable;

8 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
9 applying the levies established pursuant to § 10-12-42;

10 (7) "General fund balance," the unreserved fund balance of the general fund, less general
11 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
12 out of the general fund for the previous school fiscal year;

13 (8) "General fund balance percentage," is a school district's general fund balance divided
14 by the school district's total general fund expenditures for the previous school fiscal
15 year, the quotient expressed as a percent;

16 (9) "General fund base percentage," is the lesser of:

17 (a) The general fund balance percentage as of June 30, 2000; or

18 (b) The maximum allowable percentage for that particular fiscal year as stated in
19 this subsection.

20 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for
21 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year
22 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five
23 percent. However, the general fund base percentage can never be less than twenty-
24 five percent;

- 1 (10) "Allowable general fund balance," the general fund base percentage multiplied by the
2 district's general fund expenditures in the previous school fiscal year;
- 3 (11) "General fund exclusions," revenue a school district has received from the imposition
4 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
5 from gifts, contributions, grants, or donations; revenue a school district has received
6 under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received
7 as compensation for being a sparse school district under the terms of §§ 13-13-78 and
8 13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable
9 judgment."

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

556Q0521

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

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

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

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

4 Section 1. Terms used in this Act mean:

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



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

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

1 conditions may include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

294Q0635

HOUSE COMMERCE ENGROSSED NO. **HB 1280** 2/23/2009

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 The requirements of section 2 of this Act do not prohibit wholesale or retail dealers from
4 selling their existing inventory of cigarettes on or after January 1, 2011, if a wholesale or retailer
5 dealer can establish that state tax stamps were affixed to the cigarettes before said date and that
6 the inventory was purchased before said date in comparable quantity to the inventory purchased
7 during the same period of the immediately preceding year.

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

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

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

22 The certifications shall be made available to the attorney general and the secretary for
23 purposes consistent with this Act. Each cigarette certified under this section shall be recertified
24 every three years. For each brand family of cigarettes listed in a certification, a manufacturer

1 shall pay to the state fire marshal a fee of one thousand dollars. The fee shall apply to all
2 cigarettes within the brand family certified, and shall include any new cigarette certified within
3 the brand family during the three-year certification period.

4 If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any
5 change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition
6 propensity standards required by this Act, that cigarette may not be sold or offered for sale in
7 this state until the manufacturer retests the cigarette in accordance with the testing standards set
8 forth in this Act. The manufacturer shall maintain records of that retesting as required by this
9 Act. Any altered cigarette which does not meet the performance standard set forth in this Act
10 may not be sold in this state.

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

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

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

23 Section 10. A manufacturer, distributor, wholesaler, or any other person or entity who
24 knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of sections

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

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

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

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

24 Section 14. If any law enforcement officer or the state fire marshal, the attorney general, or

1 the secretary discovers any cigarettes for which no certification and fee has been filed as
2 required by section 8 of this Act or that have not been marked as required by section 9 of this
3 Act, such person is hereby authorized and empowered to seize and take possession of the
4 cigarettes. Any cigarettes seized pursuant to this section shall be destroyed. However, prior to
5 the destruction of any cigarette pursuant to this section, the true holder of the trademark rights
6 in the cigarette brand shall be given notice and a reasonable opportunity to inspect the cigarettes
7 within sixty days of the notification. Nothing in this section shall be construed to require the
8 secretary, the attorney general, or the state fire marshal to confiscate cigarettes in violation of
9 sections 2 to 7, inclusive, of this Act, when there is reason to believe that the owner thereof did
10 not willfully or intentionally sell or offer to sell cigarettes in violation of sections 2 to 7,
11 inclusive, of this Act.

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

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

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

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

1 Section 17. To enforce the provisions of this Act, the attorney general, the secretary, the
2 state fire marshal, and other law enforcement officer are hereby authorized to examine the
3 books, papers, invoices, and other records of any person in possession, control, or occupancy
4 of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock
5 of cigarettes on the premises. Each person in the possession, control, or occupancy of any
6 premises where cigarettes are placed, sold, or offered for sale, is hereby directed and required
7 to give the attorney general, the secretary, the state fire marshal, and other law enforcement
8 officer the means, facilities, and opportunity for the examinations authorized by this section.

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

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

20 Section 20. 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 21. 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 22. 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 23. This Act is effective on January 1, 2011.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

547Q0745

HOUSE JUDICIARY ENGROSSED NO. **HB 1292** 2/23/2009

Introduced by: Representatives Hunt and Krebs and Senators Vehle and Fryslie

1 FOR AN ACT ENTITLED, An Act to provide for the impoundment of certain motor vehicles
2 for failure to maintain liability insurance and driving with a suspended or revoked driver
3 license.

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

5 Section 1. Whenever a criminal prosecution is instituted for failure to maintain motor
6 vehicle liability insurance, and it appears to the court in which such prosecution is instituted or
7 maintained that any vehicle has been operated without proof of financial responsibility pursuant
8 to the provisions of Title 32, the court may impound such vehicle and not permit it to be driven
9 until the owner or operator of the vehicle complies with the requirements of chapter 32-35.

10 Section 2. Whenever a criminal prosecution is instituted, and it appears to the court in which
11 such prosecution is instituted or maintained that any vehicle has been operated by the person to
12 whom the motor vehicle is registered while the driver license of that person is suspended or
13 revoked, the court may impound such vehicle and not permit it to be driven until that person's
14 driver license has been reinstated.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0187

HOUSE TRANSPORTATION ENGROSSED NO. **SB 17** - 2/19/2009

Introduced by: The Committee on Transportation at the request of the Department of Public Safety

1 FOR AN ACT ENTITLED, An Act to revise certain driver licensing provisions.

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

3 Section 1. That § 32-12-1 be amended to read as follows:

4 32-12-1. For purposes of this chapter, terms are defined in § 32-14-1. Terms used in this
5 chapter mean:

6 (1) "Driver license," a document issued by a state or jurisdiction to an individual that
7 authorizes the individual to drive a motor vehicle, including an operator's license,
8 motorcycle operator's license, restricted minor's permit, motorcycle restricted minor's
9 permit, instruction permit, motorcycle instruction permit, and temporary permit; ~~and~~

10 (2) "Operator's license," any document issued by a state or jurisdiction to an individual
11 that bestows full driving privileges upon the individual; and

12 (3) "Principal residence," the location where a person currently resides even if at a
13 temporary address.

14 Section 2. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 For the purposes of this chapter, the term, lawful status, means that a person is a citizen or
3 national of the United States or is an alien who:

4 (1) Is lawfully admitted for permanent or temporary residence in the United States;

5 (2) Has conditional permanent resident status in the United States;

6 (3) Has an approved application for asylum in the United States or has entered into the
7 United States in refugee status;

8 (4) Has a valid nonimmigrant status in the United States;

9 (5) Has a pending application for asylum in the United States;

10 (6) Has a pending or approved application for temporary protected status (TPS) in the
11 United States;

12 (7) Has approved deferred action status; or

13 (8) Has a pending application for lawful permanent residence (LPR) or conditional
14 permanent resident status.

15 Section 3. That § 32-12-3.1 be amended to read as follows:

16 32-12-3.1. Any applicant ~~under~~ as provided for in this chapter shall, on making application
17 for an operator's license, motorcycle operator's license, restricted minor's permit, motorcycle
18 restricted minor's permit, instruction permit, motorcycle instruction permit, or nondriver
19 identification card, present to the examiner a one of the following documents in order to
20 establish identity and date of birth:

21 (1) A certified copy of a United States birth certificate ~~issued in or by a city, county, or~~
22 ~~state, a tribal identification card that provides evidence that a certified birth certificate~~
23 ~~issued by a city, county, or state was used to obtain the tribal identification card and~~
24 ~~is in a form and content acceptable to the Department of Public Safety, a~~

1 ~~naturalization and immigration record authorizing the applicant's presence in the~~
2 ~~United States, or a~~ filed with the state office of vital records or equivalent agency;

3 (2) A consular report of birth abroad (United States Department of State form FS-240,
4 DS-1350, or FS-545;

5 (3) A valid, unexpired permanent resident card (form I-551 issued by the United States
6 Department of Homeland Security or Immigration and Naturalization Services);

7 (4) An unexpired employment authorization document issued by the United States
8 Department of Homeland Security (form I-766 or I-688B);

9 (5) An unexpired foreign passport with a valid, unexpired United States visa affixed
10 accompanied by the approved I-94 form documenting the applicant's most recent
11 entrance into the United States;

12 (6) A certificate of naturalization issued by the United States Department of Homeland
13 Security (form N-550 or N-570);

14 (7) A certificate of citizenship form N-560 or N-561 issued by the United States
15 Department of Homeland Security;

16 (8) A valid driver license issued by this state or another state that meets the requirements
17 of 6 C.F.R. Part 37 as amended through January 1, 2009, and is acceptable by federal
18 agencies for official purposes;

19 (9) Any other document designated by the Department of Homeland Security by
20 publication in the Federal Register; or

21 (10) A valid, unexpired United States passport.

22 ~~If any of the~~ For all documentation offered by the applicant ~~includes a naturalization and~~
23 ~~immigration record or has been issued by a foreign country or jurisdiction~~ to provide evidence
24 of identity, date of birth, social security number or nonwork authorized status, address of

1 principal residence, and lawful status, the department shall make a copy of the documentation
2 and shall retain the copy for ~~one year from the date the copy was made or until the expiration~~
3 ~~of any license, permit, or identification card issued in reliance upon the documentation,~~
4 ~~whichever is later~~ ten years. All documents retained under this section are confidential. The
5 examiner may, as part of a documented exceptions process, accept other evidence of ~~birth~~
6 identity and date of birth of any applicant and lawful status of any United States citizen only if
7 the examiner is satisfied that the applicant cannot, for good reason beyond the applicant's
8 control, produce such primary documents. The examiner shall record the acceptance of any
9 alternative document under the exceptions process. The Department of Public Safety may not
10 require new evidence of birth at the time an application is made by a person holding an
11 operator's license, motorcycle operator's license, restricted minor's permit, motorcycle restricted
12 minor's permit, instruction permit, motorcycle instruction permit, or nondriver identification
13 card, if that person's driver license or nondriver identification card meets the requirements of
14 6 C.F.R. Part 37 as amended through January 1, 2009, is acceptable by federal agencies for
15 official purposes, and is turned in to the department with the application. Any person who
16 obtains a driver license or nondriver identification card pursuant to this section fraudulently or
17 by use of a fraudulently obtained document is guilty of a ~~Class 2~~ Class 1 misdemeanor.

18 Section 4. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 A license issued to an applicant who is not a citizen or a legal permanent resident of the
21 United States expires coterminously with the applicant's authorized duration of stay or the
22 otherwise applicable expiration date of the license issued under the provisions of this chapter,
23 whichever occurs first.

24 Section 5. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any applicant under the provisions of this chapter shall, on making application for an
3 operator's license, motorcycle operator's license, restricted minor's permit, motorcycle restricted
4 minor's permit, instruction permit, motorcycle instruction permit, or nondriver identification
5 card, present to the examiner evidence of lawful status in the United States. If the applicant has
6 presented one of the identity documents listed under subdivision 32-12-3.1(1), (2), (3), (4), (5),
7 (6), (7), or (10), the document is satisfactory evidence of lawful status. If the applicant presents
8 the identity documents listed under subdivision 32-12-3.1(8) or (9), the document is not
9 satisfactory evidence of lawful status. Such applicant shall also present a second document from
10 subdivision 32-12-3.1(1), (2), (3), (4), (5), (6), (7), or (10) or documentation issued by the
11 United States Department of Homeland Security or other federal agencies demonstrating lawful
12 status as determined by the United States Citizenship and Immigration Services through the
13 systematic alien verification for entitlements system or alternate method approved by the United
14 States Department of Homeland Security.

15 Section 6. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any applicant under the provisions of this chapter who has been assigned a social security
18 account number shall, on making application for an operator's license, motorcycle operator's
19 license, restricted minor's permit, motorcycle restricted minor's permit, instruction permit,
20 motorcycle instruction permit, or nondriver identification card, present to the examiner a Social
21 Security Administration account number card. If a Social Security Administration account
22 number card is not available, the applicant may present any of the following documents bearing
23 the applicant's social security number:

24 (1) A W-2 form;

- 1 (2) A SSA-1099 form;
- 2 (3) A non-SSA-1099 form; or
- 3 (4) A pay stub with the applicant's name and social security number.

4 Any applicant lawfully present in a nonimmigrant status who does not present evidence of
5 a social security account number shall present to the examiner documentation which
6 demonstrates a nonwork authorized status.

7 Section 7. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any applicant under the provisions of this chapter shall, on making application for an
10 operator's license, motorcycle operator's license, restricted minor's permit, motorcycle restricted
11 minor's permit, instruction permit, motorcycle instruction permit, or nondriver identification
12 card, present to the examiner at least two documents containing the applicant's name and
13 address of principal residence in order to establish the applicant's address of principal residence.

14 Section 8. That § 32-12-17.2 be amended to read as follows:

15 32-12-17.2. The Department of Public Safety may issue upon application a nondriver
16 identification card, similar in form but distinguishable in color from driver licenses, to any
17 resident of South Dakota. Each applicant for a nondriver identification card shall, as part of the
18 application, present to the department a certified copy of a certificate of birth or another form
19 of evidence of date of birth and identity as allowed by § 32-12-3.1. The fee for an original or
20 reissued nondriver identification card is the same as prescribed for an original driver license in
21 § 32-12-16. Each nondriver identification card expires on the holder's birthday in the fifth year
22 following the issuance of the nondriver identification card, or on the ~~same date as the expiration~~
23 ~~date on the valid documents authorizing the applicant's presence in the United States in~~
24 ~~accordance with § 32-12-3.1~~ date of expiration of the applicant's authorized stay in the United

1 States as determined by the systematic alien verification for entitlements system or alternate
2 method approved by the United States Department of Homeland Security or, if there is no
3 expiration date, for a period no longer than one year from date of issuance, whichever occurs
4 first. Each nondriver identification card is renewable one hundred eighty days before its
5 expiration upon application and payment of the required fee. Any nondriver identification card
6 renewed before its expiration expires five years after the holder's ensuing birthday, or on the
7 same date as the expiration date on the valid documents authorizing the applicant's presence in
8 ~~the United States in accordance with § 32-12-3.1~~ date of expiration of the applicant's authorized
9 stay in the United States as determined by the systematic alien verification for entitlements
10 system or alternate method approved by the United States Department of Homeland Security
11 or, if there is no expiration date, for a period no longer than one year from date of issuance,
12 whichever occurs first. The nondriver identification card shall bear an indication if the holder
13 has a living will pursuant to chapter 34-12D or a durable power of attorney for health care
14 pursuant to chapter 59-7. Any nondriver identification card renewed during the thirty-day period
15 following the date of expiration expires five years from the holder's previous birthday, or on the
16 same date as the expiration date on the valid documents authorizing the holder's presence in the
17 ~~United States in accordance with § 32-12-3.1~~ date of expiration of the applicant's authorized
18 stay in the United States as determined by the systematic alien verification for entitlements
19 system or alternate method approved by the United States Department of Homeland Security
20 or, if there is no expiration date, for a period no longer than one year from date of issuance,
21 whichever occurs first.

22 Section 9. That § 32-12-17.10 be amended to read as follows:

23 32-12-17.10. An operator's license, motorcycle operator's license, restricted minor's permit,
24 motorcycle restricted minor's permit, instruction permit, and motorcycle instruction permit shall

1 bear a distinguishing number assigned to the licensee, the full legal name or any name lawfully
2 taken, date of birth, gender, principal residence address, an indication if the licensee is a donor
3 pursuant to chapter 34-26, an indication if the licensee has a living will pursuant to chapter 34-
4 12D or a durable power of attorney for health care pursuant to chapter 59-7, a ~~color photo, and~~
5 full facial digital photograph, a brief description of the licensee, ~~and~~ the licensee's signature,
6 security features designed to deter forgery and counterfeiting, to promote an adequate level of
7 confidence in the authenticity of the cards, and to facilitate detection of fraudulent cards, the
8 issue date of the license, the expiration date of the license, an indication that the license is
9 temporary or limited term if the holder has temporary lawful status in the United States, the
10 name of this state, and a security marking approved by the United States Department of
11 Homeland Security reflecting the level of compliance with 6 C.F.R. Part 37 as amended through
12 January 1, 2009. The department shall indicate upon each license the general class of vehicles
13 that the licensee may drive. ~~If a barcode, or other means by which information may be retrieved~~
14 ~~electronically, is placed on the license, the data field may contain the information printed on the~~
15 ~~license.~~ The back of the license shall contain a barcode. The department shall include in the
16 barcode the name of this state, the information printed on the license, the card design revision
17 date indicating the most recent change or modification to the visible format of the card, and an
18 indicator if the license is temporary or limited term. No barcode, or other means by which
19 information may be retrieved electronically, may contain the licensee's social security number.

20 Section 10. That § 32-12-42 be amended to read as follows:

21 32-12-42. Each operator's license, motorcycle operator's license, restricted minor's permit,
22 or motorcycle restricted minor's permit expires on the licensee's birthday in the fifth year
23 following the issuance of the license, or on the ~~same date as the expiration date on the valid~~
24 ~~documents authorizing the applicant's presence in the United States in accordance with § 32-12-~~

1 ~~3.1~~ date of expiration of the applicant's authorized stay in the United States as determined by
2 the systematic alien verification for entitlements system or alternate method approved by the
3 United States Department of Homeland Security or, if there is no expiration date, for a period
4 no longer than one year from date of issuance, whichever occurs first. Each operator's license,
5 motorcycle operator's license, restricted minor's permit, or motorcycle restricted minor's permit
6 is renewable one hundred eighty days before its expiration upon application and payment of the
7 required fee. Any license renewed before its expiration expires five years after the licensee's
8 ensuing birthday, or on the ~~same date as the expiration date on the valid documents authorizing~~
9 ~~the applicant's presence in the United States in accordance with § 32-12-3.1~~ date of expiration
10 of the applicant's authorized stay in the United States as determined by the systematic alien
11 verification for entitlements system or alternate method approved by the United States
12 Department of Homeland Security or, if there is no expiration date, for a period no longer than
13 one year from date of issuance, whichever occurs first. However, the department shall waive the
14 knowledge and driving tests for renewal, if the licensee applies and makes payment of the
15 required fee within thirty days following the expiration date. If the licensee applies and makes
16 payment of the required fee thirty-one or more days after the expiration date of the license, the
17 licensee shall take the knowledge test as required by § 32-12-4. Any license renewed during the
18 thirty-day period following the date of expiration expires five years from the licensee's previous
19 birthday, or on the ~~same date as the expiration date on the valid documents authorizing the~~
20 ~~applicant's presence in the United States in accordance with § 32-12-3.1~~ date of expiration of
21 the applicant's authorized stay in the United States as determined by the systematic alien
22 verification for entitlements system or alternate method approved by the United States
23 Department of Homeland Security or, if there is no expiration date, for a period no longer than
24 one year from date of issuance, whichever occurs first.

1 Section 11. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A person may hold a South Dakota driver license and a South Dakota nondriver
4 identification card. However, the person can only have one driver license or nondriver
5 identification card that is acceptable by federal agencies for federal purposes. If a person holds
6 both a driver license and a nondriver identification card, one of the documents shall be clearly
7 marked as not acceptable by federal agencies for federal purposes.

8 Section 12. That chapter 32-12A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Any applicant under the provisions of this chapter shall, on making application for a
11 commercial driver license, present to the examiner at least two documents containing the
12 applicant's name and address of principal residence as defined in § 32-12-1 in order to establish
13 the applicant's address of principal residence.

14 Section 13. That § 32-12A-20 be amended to read as follows:

15 32-12A-20. The commercial driver license shall be marked "Commercial Driver License,"
16 shall be, to the maximum extent practicable, tamper proof, and shall include the following
17 information:

- 18 (1) The full legal name, residential address of principal residence, and mailing addresses
19 address of the licensee;
- 20 (2) ~~The licensee's color photograph~~ A full facial digital photograph of the licensee;
- 21 (3) A distinguishing number assigned to the licensee;
- 22 ~~(3)(4)~~ (4) A physical description of the licensee, including sex, height, weight, and eye color;
- 23 ~~(4)(5)~~ (5) Date of birth;
- 24 ~~(5)(6)~~ (6) An indication if the licensee is a donor pursuant to chapter 34-26;

- 1 ~~(6)~~(7) The licensee's signature;
- 2 ~~(7)~~(8) The class of commercial motor vehicle or vehicles which the licensee is authorized
- 3 to operate, including any endorsements or restrictions;
- 4 ~~(8)~~(9) The name of this state; ~~and~~
- 5 ~~(9)~~(10) The dates between which the commercial driver license is valid;
- 6 (11) A barcode on the back of the license containing the name of this state, the
- 7 information printed on the license, and the card design revision date indicating the
- 8 most recent change or modification to the visible format of the card; and
- 9 (12) A security marking approved by the United States Department of Homeland Security
- 10 reflecting the level of compliance with 6 C.F.R. Part 37 as amended through
- 11 January 1, 2009.

12 Section 14. That § 32-12A-30 be amended to read as follows:

13 32-12A-30. A commercial driver license issued pursuant to this chapter, expires on the

14 licensee's birthday in the fifth year following the issuance of the license. Any nonresident

15 commercial driver license expires on the date of expiration of the applicant's authorized stay in

16 the United States as determined by the systematic alien verification for entitlements system or

17 alternate method approved by the United States Department of Homeland Security or, if there

18 is no expiration date, for a period no longer than one year from date of issuance. However, no

19 nonresident commercial driver license may expire on a date later than the licensee's birthday in

20 the fifth year following the issuance of the license.

21 Section 15. This Act is effective December 31, 2009.