

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

519R0283

SENATE LOCAL GOVERNMENT ENGROSSED NO. **HB 1053** - 3/3/2010

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning campaign finance.

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

3 Section 1. That subdivision (16) of § 12-27-1 be amended to read as follows:

4 (16) "Organization," any business corporation, limited liability company, nonprofit
5 corporation, limited liability partnership, limited partnership, partnership,
6 cooperative, trust except a trust account representing or containing only a
7 contributor's personal funds, business trust, association, club, labor union, collective
8 bargaining organization, local, state, or national organization to which a labor
9 organization pays membership or per capita fees, based upon its affiliation and
10 membership, trade or professional association that receives its funds from
11 membership dues or service fees, whether organized inside or outside the state, any
12 entity organized in a corporate form under federal law or the laws of this state, or any
13 group of persons acting in concert which is not defined as a political committee or
14 political party in this chapter;



1 Section 2. That § 12-27-3 be amended to read as follows:

2 12-27-3. The treasurer for a political action committee or ballot question committee shall
3 file a statement of organization with the secretary of state not later than fifteen days after the
4 date upon which the committee made contributions, received contributions, or paid expenses
5 in excess of five hundred dollars unless such activity falls within thirty days of any statewide
6 election in which case the statement of organization shall be filed within forty-eight hours. A
7 candidate shall file a statement of organization for a candidate campaign committee with the
8 secretary of state not later than fifteen days after becoming a candidate pursuant to this chapter.
9 Notwithstanding the provisions of § 12-27-41, the statement of organization shall include the
10 original signature of each person filing the statement. A political committee that regularly files
11 a campaign finance disclosure statement with another state or the Federal Election Commission
12 or a report of contributions and expenditures with the Internal Revenue Service is not required
13 to file a statement of organization. A violation of this section is a Class 2 misdemeanor.

14 Section 3. That § 12-27-22 be amended to read as follows:

15 12-27-22. A campaign finance disclosure statement shall be filed with the secretary of state
16 by the treasurer of every:

- 17 (1) Candidate or candidate campaign committee for any statewide or legislative office;
- 18 (2) Political action committee;
- 19 (3) Political party; and
- 20 (4) Ballot question committee.

21 The statement shall be signed and filed by the treasurer of the political committee or
22 political party. The statement shall be received by the secretary of state and filed by 5:00 p.m.
23 each February first and shall cover the contributions and expenditures for the preceding calendar
24 year. The statement shall also be received by the secretary of state and filed by 5:00 p.m. on the

1 second Friday prior to each primary and general election complete through the fifteenth day
2 prior to that election. Any statement filed pursuant to this section shall be consecutive and shall
3 cover contributions and expenditures since the last statement filed.

4 The following are not required to file a campaign finance disclosure statement:

- 5 (1) A candidate campaign committee for legislative or county office on February first
6 following a year in which there is not an election for the office;
- 7 (2) A county, local, or auxiliary committee of any political party, qualified to participate
8 in a primary or general election, prior to a statewide primary election;
- 9 (3) A candidate campaign committee without opposition in a primary election, prior to
10 a primary election;
- 11 (4) A ballot question committee prior to a primary election unless the committee is
12 involved in a ballot question voted on at the primary;
- 13 (5) A candidate campaign committee whose name is not on the general election ballot,
14 prior to the general election; and
- 15 (6) A political committee that regularly files a campaign finance disclosure statement
16 with another state or the Federal Election Commission or a report of contributions
17 and expenditures with the Internal Revenue Service.

18 A violation of this section is a Class 1 misdemeanor.

19 Section 4. That subdivision (11) of § 12-27-1 be amended to read as follows:

- 20 (11) "Independent expenditure," an expenditure, including the payment of money or
21 exchange of other valuable consideration or promise, made by a person, organization,
22 political committee, or political party to expressly advocate the election or defeat of
23 a clearly identified candidate or the placement of a ballot question on the ballot or the
24 adoption or defeat of any ballot question, but which is not made to, controlled by,

1 coordinated with, requested by, or made upon consultation with a candidate, political
2 committee, or agent of a candidate or political committee. The term does not include
3 administration and solicitation of any contribution for a political action committee
4 established by an organization and associated expenses, nor the use of an
5 organization's real or personal property located on its business premises for such
6 purposes. The term does not include any communication by a person made in the
7 regular course and scope of the person's business or ministry or any communication
8 made by a membership organization solely to any member of the organization and
9 the member's family;

10 Section 5. That subdivision (22) of § 12-27-1 be amended to read as follows:

11 (22) ~~"Qualified nonprofit corporation," any nonprofit corporation, subject to the~~
12 ~~provisions of chapters 47-22 to 47-28, inclusive, that was organized for the purpose~~
13 ~~of promoting political ideas and cannot engage in business activities, has no~~
14 ~~shareholders or other persons affiliated so as to have a claim on the assets or~~
15 ~~earnings, was not established by a corporation, and has not accepted more than de~~
16 ~~minimus amount of funds from any corporation~~ "Recognized business entity," any:

17 (a) Domestic corporation, limited liability company, nonprofit corporation,
18 limited liability partnership, or cooperative duly registered with the secretary
19 of state as of the first day of January of the current calendar year, and which
20 is currently in good standing;

21 (b) Foreign corporation, limited liability company, nonprofit corporation, limited
22 liability partnership, or cooperative duly registered with the secretary of state
23 as of the first day of January of the current calendar year, and which is
24 currently in good standing; or

1 (c) Entity organized in a corporate form under federal law.
2 A political committee or political party is not a recognized business entity. An
3 organization which was established by or is controlled, in whole or in part, by a
4 candidate, political committee, or agent of a candidate or political committee is not
5 a recognized business entity;

6 Section 6. That § 12-27-16 be amended to read as follows:

7 12-27-16. The following apply to independent expenditures by individuals and organizations
8 related to communications advocating for or against candidates, public office holders, ballot
9 questions, or political parties, and expenditures by individuals and organizations within sixty
10 days of an election that clearly identify a candidate or public office holder but do not expressly
11 advocate the election of the candidate or public office holder:

12 (1) Any person or ~~qualified nonprofit corporation~~ organization that makes an
13 independent expenditure for a communication which expressly advocates for or
14 against a candidate, public office holder, ballot question, or political party ~~totaling~~
15 ~~one thousand dollars or more shall file a statement with the secretary of state that is~~
16 ~~received within forty-eight hours of the time that the communication is disseminated,~~
17 ~~broadcast, or otherwise published.~~

18 ~~Any organization that makes an independent expenditure for a communication which~~
19 ~~expressly advocates for or against a public office holder, ballot question, or political party~~
20 ~~totaling one thousand dollars or more shall file a statement with the secretary of state that is~~
21 ~~received within forty-eight hours of the time that the communication is disseminated, broadcast,~~
22 ~~or otherwise published. , regardless of the amount of the expenditure, shall append to or include~~
23 in each communication a disclaimer that clearly and forthrightly:

24 (a) Identifies the person or organization making the independent expenditure for

1 that communication;

2 (b) States the address or website address of the person or organization; and

3 (c) States that the communication is independently funded and not made in
4 consultation with any candidate, party, or political committee.

5 A violation of this subdivision is a Class 1 misdemeanor;

6 (2) Any person or organization that makes an expenditure, including the payment of
7 money or exchange of other valuable consideration or promise, for a communication
8 that clearly identifies a candidate or public office holder, but does not expressly
9 advocate the election or defeat of the candidate or public office holder, and that is
10 disseminated, broadcast, or otherwise published within sixty days of an election shall
11 append to or include in the communication a disclaimer that clearly and forthrightly:

12 (a) Identifies the person or organization making the expenditure for that
13 communication; and

14 (b) States the address or website address of the person or organization.

15 A violation of this subdivision is a Class 1 misdemeanor;

16 (3) Any organization which is not a recognized business entity and which makes an
17 expenditure for a communication described in subdivision (1) or (2) shall file a
18 statement within forty-eight hours of the time that the communication is
19 disseminated, broadcast, or otherwise published;

20 (4) Any person or recognized business entity that makes expenditures in excess of two
21 thousand dollars during any calendar year for communications described in
22 subdivision (1) or (2) shall file a statement with the secretary of state that is received
23 within forty-eight hours of the time that the person's or organization's expenditures
24 exceed two thousand dollars, and thereafter, within forty-eight hours of the time that

1 any such subsequent communication is disseminated, broadcast, or otherwise
2 published during the remainder of that calendar year;

3 (5) The ~~statement~~ statements required by this section shall include the name, street
4 address, city, and state of the person, ~~qualified nonprofit corporation,~~ or organization
5 and its ~~street address, city, and state,~~ for any expenditures made for communications
6 described in subdivision (1) or (2) during that calendar year but not yet reported on
7 a ~~prior statement,~~ the name of each candidate, public office holder, ballot question,
8 or political party mentioned ~~or identified~~ in ~~the~~ each communication, the amount
9 spent on ~~the~~ each communication, and a description of the content of ~~the~~ each
10 communication.

11 ~~— Further, if the independent expenditure is made by~~ For an organization, the statement shall
12 also include the name and title of the person filing the report, the name of its chief executive,
13 if any, and the name of the person who authorized the expenditures on behalf of the
14 organization;

15 (6) For an organization whose majority ownership is owned by, controlled by, held for
16 the benefit of, or comprised of ~~twenty thirty~~ or fewer persons, partners, owners,
17 trustees, beneficiaries, participants, members, or shareholders, the statement shall
18 ~~include the~~ identify by name and address of each person, partner, owner, trustee,
19 beneficiary, participant, shareholder, or member who owns, controls, or comprises
20 ten percent or more of the organization;

21 (7) An organization shall also provide supplemental statements for any of its partners,
22 owners, trustees, beneficiaries, participants, members, or shareholders identified
23 pursuant to subdivision (6) which are owned by, controlled by, held for the benefit
24 of, or comprised of thirty or fewer persons, partners, owners, trustees, beneficiaries,

1 participants, members, or shareholders, until no organization identified in the
2 supplemental statements meets the ownership test set forth in subdivision (6);

3 (8) For the purposes of this section, the term, communication, does not include:

4 (1)(a) Any news articles, editorial endorsements, opinion, or commentary writings,
5 or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or
6 other periodical not owned or controlled by a candidate, political committee,
7 or political party;

8 (2)(b) Any editorial endorsements or opinions aired by a broadcast facility not owned
9 or controlled by a candidate, political committee, or political party;

10 (3)(c) Any communication by a person made in the regular course and scope of the
11 person's business or ministry or any communication made by a membership
12 organization solely to members of the organization and the members' families;
13 and

14 (4)(d) Any communication that refers to any candidate only as part of the popular
15 name of a bill or statute.

16 Section 7. That § 12-27-17 be amended to read as follows:

17 12-27-17. Any ~~person, political committee, or political party, or organization~~ that makes a
18 payment or promise of payment totaling one thousand dollars or more for a communication that
19 clearly identifies a candidate or public office holder, but does not expressly advocate the
20 election or defeat of the candidate or public office holder, and that is disseminated, broadcast,
21 or otherwise published within sixty days of an election, shall file a statement with the secretary
22 of state disclosing the name, street address, city, and state of such ~~person, political committee,~~
23 ~~or political party, or organization~~. The statement shall also include the name of the candidate
24 or public office holder mentioned in the communication, the amount spent on the

1 communication, and a description of the content of the communication. The statement shall be
2 received and filed within forty-eight hours of the time that the communication is disseminated,
3 broadcast, or otherwise published.

4 For the purposes of this section, the term, communication, does not include:

- 5 (1) Any news articles, editorial endorsements, opinion or commentary writings, or letter
6 to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical
7 not owned or controlled by a candidate, political committee, or political party;
- 8 (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or
9 controlled by a candidate, political committee, or political party;
- 10 (3) Any communication by a person made in the regular course and scope of the person's
11 business or ministry or any communication made by a membership organization
12 solely to members of the organization and the members' families; and
- 13 (4) Any communication that refers to any candidate only as part of the popular name of
14 a bill or statute.

15 Section 8. That § 12-27-18 be amended to read as follows:

16 12-27-18. No organization may make a contribution to a candidate committee, political
17 action committee, or political party ~~or make an independent expenditure expressly advocating~~
18 ~~the election or defeat of a candidate.~~ An organization may make a contribution to a ballot
19 question committee organized solely for the purpose of influencing an election on a ballot
20 question and independent expenditures regarding the placement of a ballot question on the ballot
21 or the adoption or defeat of a ballot question. Any organization making expenditures, equal to
22 or exceeding fifty percent of the organization's annual gross income, for the adoption or defeat
23 of a ballot measure is a ballot question committee. ~~The prohibitions of this section do not apply~~
24 ~~to independent expenditures expressly advocating the election or defeat of a candidate by a~~

1 ~~qualified nonprofit corporation from its treasury funds.~~ An organization may create a political
2 action committee. A violation of this section is a Class 1 misdemeanor.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0365

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1060** - 3/8/2010

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 Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the refunds for new
2 or expanded agricultural facilities and the refunds for new or expanded business facilities,
3 to repeal the contractors' excise tax on new or expanded power production facilities, and to
4 make certain transfers to the revolving economic development and initiative fund.

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

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

7 10-45B-2. ~~Any person~~ As provided in this chapter, any person holding a permit issued
8 pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes
9 imposed and paid under the provisions of chapter 10-46A for the construction of a new
10 agricultural processing facility and for sales or use taxes imposed and paid by such person under
11 the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing
12 equipment.

13 Section 2. That § 10-45B-4 be repealed.

14 ~~10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to~~



1 ~~project costs incurred and paid after April 1, 1997, and within thirty-six months of the~~
2 ~~construction date as stated on the application required by § 10-45B-6. No refund may be made~~
3 ~~unless:~~

4 ~~— (1) — The project cost exceeds the sum of four million five hundred thousand dollars; and~~

5 ~~— (2) — The person applying for the refund obtains a permit from the secretary as set forth in~~
6 ~~§ 10-45B-6.~~

7 Section 3. That § 10-45B-4.1 be repealed.

8 ~~— 10-45B-4.1. The refund of taxes pursuant to § 10-45B-2.1 pertains only to project costs~~
9 ~~incurred and paid after February 1, 2005, up to and including thirty-six months from the~~
10 ~~construction date if the project costs are sixty million dollars or less and after February 1, 2005,~~
11 ~~up to and including seventy-two months from the construction date if the project costs are more~~
12 ~~than sixty million dollars. There is no refund if the person applying for the refund does not~~
13 ~~obtain a permit from the secretary as set forth in § 10-45B-6.~~

14 ~~— Upon a showing of good cause, the time limits prescribed by this section may be extended~~
15 ~~by the secretary for a period not to exceed twenty-four months.~~

16 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs
19 incurred and paid after January 1, 2008, up to and including thirty-six months from the
20 construction date. No refund may be paid unless the person applying for the refund obtains a
21 permit from the secretary as set forth in § 10-45B-6.

22 Section 5. That § 10-45B-5 be repealed.

23 ~~— 10-45B-5. If the project cost for a new agricultural processing facility exceeds four million~~
24 ~~five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed~~

1 to the project cost.

2 Section 6. That § 10-45B-5.1 be repealed.

3 ~~10-45B-5.1. The amount of the tax refund for a new business facility shall be a percentage~~
4 ~~of the taxes paid, as follows:~~

5 ~~(1) For project costs of less than ten million dollars, there shall be no refund;~~

6 ~~(2) For project costs of ten or more million dollars but less than fifteen million dollars~~
7 ~~there shall be a refund of twenty-five percent of the taxes paid;~~

8 ~~(3) For project costs of fifteen or more million dollars but less than twenty million~~
9 ~~dollars there shall be a refund of thirty-three percent of the taxes paid;~~

10 ~~(4) For project costs of twenty or more million dollars but less than forty million dollars~~
11 ~~there shall be a refund of fifty percent of the taxes paid;~~

12 ~~(5) For project costs of forty or more million dollars but less than sixty million dollars~~
13 ~~there shall be a refund of sixty-seven percent of the taxes paid;~~

14 ~~(6) For project costs of sixty million dollars or more but less than six hundred million~~
15 ~~dollars there shall be a refund of seventy-five percent of the taxes paid; and~~

16 ~~(7) For project costs of six hundred million dollars and greater there shall be a refund of~~
17 ~~ninety percent of the taxes paid.~~

18 Section 7. That § 10-45B-6.1 be repealed.

19 ~~10-45B-6.1. Any person issued a permit pursuant to this chapter prior to March 31, 1997,~~
20 ~~may continue to submit claims for the project.~~

21 Section 8. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Notwithstanding any provision of chapter 10-45B or this Act, this section controls the
24 amount of refunds payable under chapter 10-45B for any new agricultural processing facility

1 or new business facility that has a construction date on or after January 1, 2010. For project cost
2 incurred and paid from January 1, 2010, to December 31, 2012, inclusive, the amount of the
3 refund shall be determined by applying the provisions of chapter 10-45B in effect on July 1,
4 2010. The amount of the tax refund for a new agricultural processing facility or new business
5 facility shall be a percentage of the taxes paid, as follows:

- 6 (1) For project costs of less than ten million dollars, there shall be no refund;
- 7 (2) For project costs of ten or more million dollars but less than four hundred million
8 dollars, there shall be a refund of fifty percent of the taxes paid; and
- 9 (3) For projects costs of four hundred million or more dollars, there shall be no refund.

10 No tax refund may be given for any project cost incurred and paid on or after January 1,
11 2013.

12 Section 9. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The provisions of chapter 10-45B in effect prior to January 1, 2010, apply to any project
15 where the construction date was before January 1, 2010.

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

17 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for
18 refund to the department no more frequently than on or before the last day of each month and
19 no less frequently than on or before the last day of each month following each calendar quarter.

20 The secretary shall determine and pay the amount of the tax refund within ninety days of receipt
21 of the claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant
22 in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
23 department. No interest may be paid on the refund amount. ~~If electronic funds transfer is~~
24 ~~available to the secretary, the secretary shall pay the refund by electronic funds transfer if~~

1 ~~requested by the claimant. The secretary shall pay the refund by electronic funds transfer.~~

2 Section 11. That § 10-45B-8.1 be repealed.

3 ~~—10-45B-8.1. No claim for refund pursuant to this chapter may be considered by the~~
4 ~~department if the claim for refund is received after the following applicable time period:~~

5 ~~—(1)—Twelve months after the thirty-six month time period of § 10-45B-4;~~

6 ~~—(2)—Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
7 ~~with project costs of sixty million dollars or less;~~

8 ~~—(3)—Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
9 ~~with project costs of more than sixty million dollars; or~~

10 ~~—(4)—Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
11 ~~obtained a time limit extension from the secretary.~~

12 ~~Moreover, any such claim is barred from any future refund eligibility.~~

13 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
14 as follows:

15 No claim for refund pursuant to this chapter may be considered by the department if the
16 claim for refund is received twelve months after the thirty-six month time period of section 4
17 of this Act. Moreover, any such claim is barred from any future refund eligibility.

18 Section 13. That § 10-45B-8.2 be repealed.

19 ~~—10-45B-8.2. No document or record in support of any claim for refund may be considered~~
20 ~~by the department if the documents or records in support of any claim for refund are received~~
21 ~~after the following applicable time period:~~

22 ~~—(1)—Twelve months after the thirty-six month time period of § 10-45B-4;~~

23 ~~—(2)—Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
24 ~~with project costs of sixty million dollars or less;~~

1 ~~—(3)—~~ Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects
2 with project costs of more than sixty million dollars; or

3 ~~—(4)—~~ Twelve months after the extended time period of § 10-45B-4.1 for projects that have
4 obtained a time limit extension from the secretary.

5 Moreover, any such document or record is barred from any future consideration.

6 ~~—~~ However, if the department requests any additional document or record from the project
7 owner after a review of the claim for refund, and the request is made after the applicable time
8 period provided by this section has expired, the project owner has sixty days to provide the
9 requested document or record. No document or record received after this sixty-day period may
10 be considered by the department. Moreover, any such document or record is barred from any
11 future consideration.

12 Section 14. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
13 as follows:

14 No document or record in support of any claim for refund may be considered by the
15 department if the document or record in support of any claim for refund is received twelve
16 months after the thirty-six month time period of section 4 of this Act. Moreover, any such
17 document or record is barred from any future consideration.

18 However, if the department requests any additional document or record from the project
19 owner after a review of the claim for refund, and the request is made after the applicable time
20 period provided by this section has expired, the project owner has sixty days to provide the
21 requested document or record. No document or record received after this sixty-day period may
22 be considered by the department. Moreover, any such document or record is barred from any
23 future consideration.

24 Section 15. That § 10-45B-8.3 be repealed.

1 ~~10-45B-8.3. The provisions of §§ 10-45B-8.1 and 10-45B-8.2 apply to refunds for projects~~
2 ~~only if the permit was applied for after June 30, 2009.~~

3 Section 16. That § 10-45B-9 be amended to read as follows:

4 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be
5 retained until the project has been completed and the claimant has met all the conditions of §~~10-~~
6 ~~45B-4 or 10-45B-4.1~~ section 4 of this Act, at which time all sums retained shall be paid to
7 claimant.

8 Section 17. That chapter 10-46C be repealed.

9 Section 18. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The department shall transfer to the revolving economic development and initiative fund
12 established by § 1-16G-3 an amount equal to ten percent per fiscal year of the sales, use, and
13 contractors' excise taxes paid on projects receiving a refund under section 8 of this Act. The
14 total amount transferred pursuant to this section per fiscal year may not exceed ten million
15 dollars.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

934R0424

SENATE JUDICIARY ENGROSSED NO. **HB 1110** - 3/4/2010

Introduced by: Representatives Engels, Cutler, Feinstein, Gibson, Gosch, Hoffman, Killer,
and Turbiville and Senators Turbak Berry, Abdallah, Gant, and Jerstad

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to statutory rape.

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

3 Section 1. That § 22-22-7 be amended to read as follows:

4 22-22-7. Any person, sixteen years of age or older, who knowingly engages in sexual contact
5 with another person, other than that person's spouse if the other person is under the age of
6 sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the
7 actor is less than ~~three~~ five years older than the ~~other person~~ victim, the actor is guilty of a Class
8 1 misdemeanor. ~~If an adult has a previous conviction for a felony violation of this section, any~~
9 ~~subsequent felony conviction for a violation under this section, is a Class 2 felony.~~

10 Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at
11 any time before the victim becomes age twenty-five or within seven years of the commission
12 of the crime, whichever is longer.

13 Section 2. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
14 follows:



1 If an adult has a previous conviction for violation of subdivision 22-22-1(5), or a previous
2 conviction for a felony violation of § 22-22-7, or a previous misdemeanor conviction of § 22-
3 22-7 for a violation committed as an adult, any subsequent conviction of subdivision 22-22-1(5)
4 or § 22-22-7, is a Class 2 felony.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

744R0682

SENATE TAXATION ENGROSSED NO. **HB 1202** 3/3/2010

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

Introduced by: Representative Noem and Senator Peterson

1 FOR AN ACT ENTITLED, An Act to require the director of equalization to use certain factors
2 and adjustments to assess agricultural land, to allow the Department of Revenue and
3 Regulation to assess certain agricultural land, and to transfer certain county funds to the
4 Department of Revenue and Regulation.

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

6 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For the 2011 assessed valuation of agricultural land and each subsequent year, the director
9 of equalization shall make the same adjustments to each parcel of agricultural land as was made
10 pursuant to § 10-6-33.1 prior to its repeal on July 1, 2009. Before removing or modifying any
11 of these adjustments, a director of equalization shall request permission from the department.
12 The secretary may require the director of equalization to remove or modify any adjustment by
13 a written order to the director of equalization.

14 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 If any complaint is filed by the secretary pursuant to § 10-1-31, then notwithstanding the
3 provisions of chapter 10-6 requiring each county director of equalization to assess agricultural
4 land within the county, the department may elect to assess all land classified as agricultural
5 property in the county which is subject of the complaint pending resolution of the complaint.
6 The department shall assess agricultural land within the affected county pursuant to the
7 applicable provisions of chapter 10-6 to determine its agricultural income value.

8 Section 3. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If the department elects to assess agricultural land pursuant to section 2 of this Act, the
11 affected county shall transfer funds to the department to assess agricultural land on behalf of the
12 county. The county auditor shall transfer an amount of funds that is equal to the total taxable
13 value of agricultural land divided by the total taxable value of all property within the county
14 times the amount of funds budgeted by the county for the office of the director of equalization.
15 The county shall transfer fifty percent of such funds by December first of each year and the
16 remaining fifty percent by the following June first.

17 Section 4. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 If the department elects to assess agricultural land pursuant to section 2 of this Act, the
20 department shall notify the owners of agricultural property in the county with a special notice
21 of the election by the department to calculate the agricultural assessments and shall recite the
22 allegations set forth in the complaint. Within five days of the receipt of the proof and expense
23 of mailing from the department, the county auditor shall transfer an amount equal to such cost
24 to the department.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

861R0554

SENATE LOCAL GOVERNMENT

ENGROSSED NO. **HB 1227** - 3/8/2010

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

Introduced by: Representatives Solberg, Blake, Feinstein, Gibson, Killer, Schlekeway, and Vanderlinde and Senators Gant and Ahlers

1 FOR AN ACT ENTITLED, An Act to permit townships to enroll in certain health, life, and
2 disability income insurance benefits.

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

4 Section 1. That chapter 8-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A township may enroll in any group health insurance plan, group life insurance plan, or
7 group disability income insurance plan permitted by law to be offered in this state for township
8 officers and any employee of the township who is employed for a minimum of one thousand
9 forty hours per year by the township. However, no township may pay the premiums or any
10 portion thereof for the insurance programs allowed by this section.



State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

580R0275

SENATE JUDICIARY ENGROSSED NO. **HB 1231** - 3/4/2010

Introduced by: Representatives Lust, Blake, Boomgarden, Conzet, Curd, Cutler, McLaughlin, Moser, Novstrup (David), Peters, Pitts, Rausch, Rave, Schlekeway, Sly, Steele, Vanderlinde, and Vanneman and Senators Miles, Adelstein, Dempster, Hunhoff (Jean), Knudson, Nelson, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for the monitoring of the prescribing and
2 dispensing of controlled substances.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Administer," the direct application of a controlled substance to the body of a patient.

6 The term does not include the prescribing of a controlled substance for administration
7 by the patient or someone other than the health care provider;

8 (2) "Board," the Board of Pharmacy;

9 (3) "Central repository," a place where electronic data related to the prescribing and
10 dispensing of controlled substances is collected;

11 (4) "Controlled substance," any drug, substance, or immediate precursor as provided in
12 schedules II through IV pursuant to §§ 34-20B-11 to 34-20B-26, inclusive;

13 (5) "De-identified information," health information that is not individually identifiable



1 information because an expert has made that determination pursuant to 45 C.F.R.
2 164.514, or direct identifiers and specified demographic information have been
3 removed in accordance with the requirements of that section;

4 (6) "Dispense," to deliver a controlled substance to an ultimate user by or pursuant to the
5 lawful order of a health care provider, including the prescribing, administering,
6 packaging, labeling, or compounding necessary to prepare the substance for delivery;

7 (7) "Dispenser," any person who delivers a controlled substance to the ultimate user, but
8 does not include:

9 (a) A licensed hospital pharmacy that provides a controlled substance for the
10 purpose of inpatient hospital care;

11 (b) A licensed health care provider or other authorized individual in those
12 instances when the practitioner administers a controlled substance to a patient;
13 or

14 (c) A licensed veterinarian;

15 (8) "Individually identifiable health information," the meaning set forth in 45 C.F.R.
16 160.103;

17 (9) "Patient," any individual or owner of an animal who is the ultimate user of a
18 controlled substance for whom a prescription is issued and for whom a controlled
19 substance is dispensed;

20 (10) "Prescriber," an individual licensed, registered, or otherwise authorized by the
21 jurisdiction in which the individual is practicing to prescribe drugs in the course of
22 professional practice. The term does not include a veterinarian;

23 (11) "Program," the prescription drug monitoring program established by this Act.

24 Section 2. The board shall establish and maintain a prescription drug monitoring program

1 to monitor the prescribing and dispensing of all controlled substances. The program shall utilize
2 a central repository, to which each dispenser shall submit, by electronic means, information
3 regarding each prescription dispensed for a controlled substance. The information submitted for
4 each prescription shall include specifically identified data elements adopted by the board and
5 contained in the 2005 version of the electronic reporting standard for prescription monitoring
6 programs, version 003, release 000, of the American Society for Automation in Pharmacy.

7 Section 3. Each dispenser shall submit the information required by this Act to the central
8 repository at least once each week unless the board waives this requirement for good cause
9 shown by the dispenser.

10 Section 4. The board may grant an extension of the time in which a dispenser must report
11 the information required by section 2 of this Act to any dispenser that is unable to submit
12 prescription information by electronic means because of one of the following occurrences:

- 13 (1) The dispenser suffers a mechanical or electronic failure or cannot report within the
14 required time for other reasons beyond the dispenser's control;
- 15 (2) The central repository is unable to receive electronic submissions; or
- 16 (3) Good cause shown by a dispenser.

17 Section 5. Information submitted to the central repository is confidential and may not be
18 disclosed except as provided in section 7 of this Act.

19 Section 6. The board shall establish and maintain procedures to ensure that the privacy,
20 confidentiality, and security of patient information collected, recorded, transmitted, and
21 maintained is not disclosed except as provided in section 7 of this Act.

22 Section 7. Unless disclosure is prohibited by law, the board may provide data in the central
23 repository to:

- 24 (1) Any prescriber for the purpose of providing medical care to a patient, a dispenser for

1 the purpose of filling a prescription or providing pharmaceutical care for a patient,
2 a prescriber or dispenser inquiring about the prescriber's or dispenser's own
3 prescribing activity, or a prescriber or dispenser in order to further the purposes of
4 the program;

5 (2) Any individual who requests the prescription information of the individual or the
6 individual's minor child;

7 (3) Any state board or regulatory agency that is responsible for the licensing of
8 individuals authorized to prescribe or dispense controlled substances if the board or
9 regulatory agency is seeking information from the central repository that is relevant
10 to an investigation of an individual who holds a license issued by that board or
11 regulatory agency;

12 (4) Any local, state, and federal law enforcement or prosecutorial officials engaged in the
13 enforcement of laws relating to controlled substances who seek information for the
14 purpose of an investigation or prosecution of the drug-related activity or probation
15 compliance of an individual;

16 (5) The Department of Social Services for purposes regarding the utilization of
17 controlled substances by a medicaid recipient;

18 (6) Any insurer for purposes regarding the utilization of controlled substances by a
19 claimant;

20 (7) Any judicial authority under grand jury subpoena or court order or equivalent judicial
21 process for investigation of criminal violations of controlled substances laws;

22 (8) Any public or private entity for statistical, research, or educational purposes after the
23 information is de-identified with respect to any prescriber, dispenser, or patient who
24 received a prescription for a controlled substance; or

1 (9) Any peer review committee, which means any committee of a health care
2 organization, composed of health care providers, employees, administrators,
3 consultants, agents, or members of the health care organization's governing body,
4 which conducts professional peer review.

5 Section 8. The board may charge a fee of ten dollars to any individual who requests
6 information from the central repository pursuant to subdivision (2) of section 7 of this Act. The
7 board may charge a fee of one hundred dollars to any person who requests information from the
8 central repository pursuant to subdivision (8) of section 7 of this Act.

9 Section 9. The board shall maintain a record of each request for information from the central
10 repository. The board may use the records to document and report statistics and outcomes. The
11 board may provide records of the requests for information to:

12 (1) Any board or regulatory agency responsible for the licensing of individuals
13 authorized to prescribe or dispense controlled substances that is engaged in an
14 investigation of the individual who submitted the request for information from the
15 central repository; and

16 (2) Any local, state, and federal law enforcement or prosecutorial official engaged in the
17 enforcement of laws relating to controlled substances for the purpose of an active
18 investigation of an individual who requested information from the central repository.

19 Section 10. The board may contract with another agency of this state, with an agency of
20 another state, or with a private vendor to facilitate the effective operation of the prescription
21 drug monitoring program. Any contractor is bound to comply with the provisions regarding
22 confidentiality of prescription drug information in this Act and is subject to termination or
23 sanction, or both, for unlawful acts.

24 Section 11. Nothing in this Act requires a prescriber or dispenser to obtain information about

1 a patient from the central repository prior to prescribing or dispensing a controlled substance.
2 A prescriber, dispenser, or other health care provider may not be held liable in damages to any
3 person in any civil action on the basis that the prescriber, dispenser, or other health care provider
4 did or did not seek to obtain information from the central repository. Unless there is shown a
5 lack of good faith, the board, a prescriber, dispenser, or any other person in proper possession
6 of information provided under this Act is not subject to any civil liability by reason of:

- 7 (1) The furnishing of information under the conditions provided in this Act;
- 8 (2) The receipt and use of, or reliance on, such information;
- 9 (3) The fact that any such information was not furnished; or
- 10 (4) The fact that such information was factually incorrect or was released by the board
11 to the wrong person or entity.

12 Section 12. The board shall review the information received by the central repository to
13 determine if there is reason to believe:

- 14 (1) A prescriber or dispenser may have engaged in an activity that may be a basis for
15 disciplinary action by the board or regulatory agency responsible for the licensing of
16 the prescriber or dispenser; or
- 17 (2) A patient may have misused, abused, or diverted a controlled substance.

18 If the board determines that there is reason to believe that any of the acts described in this
19 section may have occurred, the board may notify the appropriate law enforcement agency or the
20 board or regulatory agency responsible for the licensing of the prescriber or dispenser. The
21 advisory council established in section 15 of this Act shall recommend guidelines to the board
22 for reviewing data and making determinations with respect to the referral of patients,
23 prescribers, or dispensers to law enforcement or appropriate regulatory authorities.

24 Section 13. Any patient, dispenser, or prescriber may request that erroneous information

1 contained in the central repository be corrected or deleted. The board shall review the request
2 to determine if the information is erroneous with respect to the patient, prescriber, or dispenser.
3 The board shall correct any erroneous information the board discovers due to the request for
4 review by a patient, prescriber, or dispenser.

5 Section 14. The board shall adopt a procedure to allow information contained in the central
6 repository to be shared with officials in other states acting for the purpose of controlled
7 substance monitoring and for requesting and receiving similar controlled substance monitoring
8 information from other states.

9 Section 15. An advisory council is established to advise and make recommendations to the
10 board regarding how to best use the program to improve patient care and foster the goal of
11 reducing misuse, abuse, and diversion of controlled substances; to encourage cooperation and
12 coordination among state, local, and federal agencies and other states to reduce the misuse,
13 abuse, and diversion of controlled substances; and to provide advice and recommendations to
14 the board regarding any other matters as requested by the board. The advisory council shall
15 serve without compensation. The advisory council may have access to central repository
16 information to fulfill its duties.

17 Section 16. The advisory council shall consist of:

- 18 (1) One dispenser selected by the board;
- 19 (2) One prescriber selected by the Board of Medical and Osteopathic Examiners;
- 20 (3) One prescriber selected by the Board of Nursing;
- 21 (4) One prescriber selected by the Board of Dentistry;
- 22 (5) One prescriber selected by the Board of Examiners in Optometry;
- 23 (6) One prescriber selected by the South Dakota Academy of Physician Assistants;
- 24 (7) One member selected by the South Dakota Association of Healthcare Organizations;

- 1 (8) One member of the South Dakota State Medical Association;
- 2 (9) One member of the South Dakota Nurses Association;
- 3 (10) One member of the South Dakota Pharmacists Association;
- 4 (11) A designee of the attorney general;
- 5 (12) A designee of the Department of Health; and
- 6 (13) Any other prescriber or dispenser determined by the board to be necessary to meet
7 a mandate of, or avoid a delay in implementing, an appropriations measure. The
8 number of additional members that the board may select is limited to the number
9 necessary to meet the mandate or avoid the delay of an appropriation.

10 Section 17. The advisory council shall make recommendations to the board regarding:

- 11 (1) Safeguards for the release of information to persons who have access to the
12 information contained in the central repository;
- 13 (2) The confidentiality of program information and the integrity of the patient's
14 relationship with the patient's health care provider;
- 15 (3) Advancing the purposes of the program, including enhancement of the quality of
16 health care delivery in this state; and
- 17 (4) The continued benefits of maintaining the program in relationship to the cost and
18 other burdens to the state.

19 Section 18. Any dispenser who knowingly fails to submit prescription monitoring
20 information to the board as required by this Act or knowingly submits incorrect prescription
21 information may be reported by the board to the dispenser's licensing board.

22 Section 19. Any person authorized to have prescription monitoring information pursuant to
23 this Act who knowingly discloses such information in violation of this Act is subject to a Class
24 6 felony.

1 Section 20. The board shall promulgate rules, pursuant to chapter 1-26, for the operation
2 of the program. Any rule promulgated shall be designed to assure the fair, equitable, and
3 efficient operation of the program. The rules may address the following:

- 4 (1) Criteria, procedures, and forms for submitting data to the program;
- 5 (2) Standards for information collection;
- 6 (3) Guidelines for reviewing data and making determinations with respect to the referral
7 of patients, prescribers, or dispensers to law enforcement or appropriate regulatory
8 authorities based upon an open case;
- 9 (4) Safeguards for the release of information to individuals who have access to the
10 information contained in the central repository;
- 11 (5) Guidelines for maintaining the confidentiality of program information and the
12 integrity of the patient's relationship with the patient's health care provider; and
- 13 (6) Policies for the compilation and release of statistics and outcomes for advancing the
14 purposes of the program, including enhancement of the quality of health care delivery
15 in this state.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

474R0003

HOUSE COMMERCE ENGROSSED NO. **SB 2-** **3/1/2010**

Introduced by: Senators Nelson, Maher, and Tieszen and Representatives Rounds, Carson, Faehn, Kirkeby, Lederman, Sorenson, and Turbiville at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding alcoholic beverage
2 control and licensing laws.

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

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

5 35-1-1. Terms used in this title, ~~unless the context otherwise plainly requires, shall~~ mean:

- 6 (1) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this
7 title;
- 8 (2) "Bulk container," any package, or any container within which container are one or
9 more packages;
- 10 (3) "Carrier," a person who for hire transports passengers and who sells or furnishes to
11 passengers for consumption alcoholic beverages aboard any means of conveyance;
- 12 (3A) "Cider," any alcoholic beverage obtained by the fermentation of the juice of apples
13 that contains not less than one-half of one percent of alcohol by volume and not more
14 than ten percent of alcohol by weight, including flavored, sparkling, or carbonated



1 cider;

2 (3B) "Controlling interest in," a controlling interest in the licensee is an ownership interest
3 of ten percent or more;

4 (4) "Department," the Department of Revenue and Regulation of the State of South
5 Dakota;

6 (5) "Dispenser," a duly licensed physician, dentist, veterinarian, osteopath, podiatrist,
7 chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational
8 institution, industrial company, or industrial corporation who purchases alcohol for
9 scientific and medicinal purposes only;

10 (6) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey,
11 rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures
12 thereof, for nonindustrial use containing not less than one-half of one percent of
13 alcohol by weight;

14 (7) "Distiller," any person who owns, ~~or who himself or through others, directly or~~
15 ~~indirectly~~ has a controlling interest in, operates, or aids in operating any distillery or
16 other establishment for the production, rectifying, blending, or bottling of distilled
17 spirits;

18 (8) "Malt beverage," a beverage made by the alcoholic fermentation of an infusion or
19 decoction, or combination of both, in potable brewing water, of malted barley with
20 hops, or their parts, or their products, and with or without other malted cereals, and
21 with or without the addition of unmalted or prepared cereals, other carbohydrates or
22 products prepared therefrom, and with or without the addition of carbon dioxide, and
23 with or without other wholesome products suitable for human consumption
24 containing not less than one-half of one percent of alcohol by weight;

- 1 (9) "Manufacturer," any person who owns, ~~or who himself or through others, directly or~~
2 ~~indirectly~~ has a controlling interest in, operates, or aids in operating any
3 establishment for the brewing, production, bottling, or blending of malt beverages or
4 wine;
- 5 (10) "Minibar," any closed container, either refrigerated or nonrefrigerated, access to the
6 interior of which is restricted by means of a locking device which requires the use of
7 a key, magnetic card, or similar device, or controlled by the licensee at all times;
- 8 (11) "Municipality," any incorporated city or town, and any unincorporated platted town
9 having a United States post office, ~~provided that. However, the subsequent~~
10 ~~withdrawal of a United States post office from any of the herein described~~
11 ~~municipalities shall~~ does not affect the right of established liquor licenses to be
12 continued, renewed, or transferred; and ~~shall~~ does not prevent the owner or bona fide
13 lessee of the licensed premises from receiving a renewal or reissuance of such
14 license;
- 15 (12) "Off-sale," the sale of any alcoholic beverage, for consumption off the premises
16 where sold;
- 17 (13) "On-sale," the sale of any alcoholic beverage for consumption only upon the premises
18 where sold;
- 19 (14) "On-sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for
20 consumption on the premises where sold;
- 21 (15) "Package," the bottle or immediate container of any alcoholic beverage;
- 22 (16) "Package dealer," any person other than a distiller, manufacturer, or wholesaler, who
23 sells, or keeps for sale, any alcoholic beverage for consumption off the premises
24 where sold;

- 1 (17) "Population," number of inhabitants as determined by the last preceding federal
2 census;
- 3 (17A) "Relative," any person who is a husband, wife, son, daughter, brother, sister, father,
4 mother, uncle, aunt, nephew, niece, brother-in-law, sister-in-law, father-in-law,
5 mother-in-law, son-in-law, or daughter-in-law;
- 6 (18) "Retail license," an on- or off-sale license issued under the provisions of this title;
- 7 (19) "Retailer," or "retail dealer," any person who sells alcoholic beverages for other than
8 resale;
- 9 (20) "Sale," the transfer, for a consideration, of title to any alcoholic beverage;
- 10 (21) "Secretary," the secretary of revenue and regulation of the State of South Dakota;
- 11 (22) "Solicitor," any person employed by a licensed wholesaler within this state, or by any
12 distiller or manufacturer within or without this state, who contacts a wholesaler or
13 retail dealer within this state for the purpose of selling, promoting, or advertising
14 alcoholic beverages or for any other reason connected with the alcoholic beverage
15 industry but ~~shall~~ does not include employees of wholesale or transporter licensees
16 who only deliver such beverages;
- 17 (23) "Transportation company," or "transporter," any common carrier or operator of a
18 private vehicle transporting or accepting for transportation any alcoholic beverages,
19 but not including transportation by carriers in interstate commerce where the
20 shipment originates outside of the state and is destined to a point outside of the state;
- 21 (24) "Wholesaler," any person who sells alcoholic beverages to retailers for resale;
- 22 (25) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage
23 purposes, and obtained by the fermentation of the natural sugar content of fruits or
24 other agricultural products containing sugar and containing not less than one-half of

1 one percent of alcohol by weight but not more than twenty-four percent of alcohol
2 by weight.

3 Section 2. That § 35-1-7 be amended to read as follows:

4 35-1-7. Any person who, in any application, report, or statement filed with the secretary of
5 ~~revenue~~, knowingly makes a false statement as to any matter required by any provision of this
6 title to be set forth in the application, report, or statement, is guilty of a Class 6 felony.

7 Section 3. That § 35-1-5.3 be amended to read as follows:

8 35-1-5.3. It is a Class 2 misdemeanor for any person to consume any ~~intoxicating liquor or~~
9 ~~to mix or blend any alcoholic beverage with any other beverage, regardless of whether the~~
10 ~~beverage is an alcoholic beverage, distilled spirits in any public place, other than upon the~~
11 ~~premises of a licensed on-sale dealer where the alcoholic beverage was purchased from the~~
12 ~~dealer for on-sale purposes. For purposes of this section, the term, public place, means any~~
13 ~~place, whether in or out of a building, commonly and customarily open to or used by the general~~
14 ~~public, and any street or highway. However, this section does not apply if the county~~
15 ~~commissioners or the governing body of the municipality, charged with the approval of~~
16 ~~alcoholic beverage license issuance, in their respective jurisdictions, give prior authorization for~~
17 ~~persons to consume or blend alcoholic beverages, but not to engage in the sale of the alcoholic~~
18 ~~beverages, in or upon property described by the authorizing governmental subdivision, and if~~
19 ~~the property is publicly owned, or owned by a nonprofit corporation.~~

20 The board of county commissioners may permit the consumption, but not the sale, of any
21 alcoholic beverage on property owned by the public or by a nonprofit corporation within the
22 county, but outside the limits of any municipality. The governing body of a municipality may
23 permit the consumption, but not the sale, of any alcoholic beverage on the property owned by
24 the public or by a nonprofit corporation within the municipality. The permit period may not

1 exceed twenty-four hours, and hours of authorized consumption may not exceed those permitted
2 for on-sale licensees.

3 It is a Class 2 misdemeanor for any person to consume any alcoholic beverage upon the
4 premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-
5 sale dealer.

6 Section 4. That § 35-1-5.2 be repealed.

7 ~~— 35-1-5.2. No licensee regularly licensed to do business before July 1, 1971, may be denied~~
8 ~~renewal of a license in subsequent years solely by reason of any reduction in the number of~~
9 ~~licenses that may be authorized or established within any municipality by reason of chapter 211~~
10 ~~of the Session Laws of 1971. Any person holding an on-sale dealer's retail license of any of the~~
11 ~~existing classes or holding a Class Q license issued under the provisions of former subdivision~~
12 ~~35-4-2(17) on July 1, 1971, may be issued an on-sale license from the appropriate governing~~
13 ~~board having jurisdiction, upon application to the governing board for an on-sale license within~~
14 ~~appropriate classifications established.~~

15 Section 5. That § 35-1-10 be repealed.

16 ~~— 35-1-10. If any section, part, or provision of this title, or the application thereof to any party~~
17 ~~or class, or to any circumstance, shall be held to be invalid for any cause whatsoever, the~~
18 ~~remainder of this title or the application to parties or circumstances other than those as to which~~
19 ~~it is held to be invalid, shall not be affected thereby and shall remain in full force and effect as~~
20 ~~though no part thereof had been declared to be invalid.~~

21 Section 6. That § 35-1-11 be repealed.

22 ~~— 35-1-11. For the purposes of § 35-1-12, a keg is an eight or sixteen gallon reusable plastic~~
23 ~~or metal container.~~

24 Section 7. That § 35-1-12 be amended to read as follows:

1 35-1-12. No keg of malt beverage may be sold at retail in this state unless the licensee who
2 sold ~~such~~ the keg records the name and address of the person to whom the keg is sold and has
3 provided for the identification of the keg. Each licensee shall maintain such sales records for one
4 year and shall make ~~such~~ the sales records available to any law enforcement agency upon
5 request.

6 The identification provided for in this section ~~shall~~ may not be permanent or damaging to
7 the structure of the keg. For the purposes of this section, the term, keg, means an eight or sixteen
8 gallon reusable plastic or metal container.

9 Section 8. That § 35-2-1 be amended to read as follows:

10 35-2-1. ~~Applications for licenses~~ Any application for a license provided for by this title shall
11 be made on forms prescribed by the secretary ~~of revenue~~; and shall be verified by the oath of the
12 applicant, ~~if an individual, and, if a corporation,~~ If the applicant is not an individual, the oath
13 of applicant shall be verified by an officer of ~~such corporation.~~ Such the entity applying for the
14 license. The application must shall contain such information as the secretary requires; and ~~must~~
15 shall show that the applicant is eligible for the license for which application is made.

16 Section 9. That § 35-2-2 be amended to read as follows:

17 35-2-2. Every application for a license directed to the secretary ~~of revenue~~ as provided by
18 § 35-2-1.1 shall be accompanied by payment of the required fee for ~~such license except license~~
19 ~~fees for~~ the license. However, the license fee for a municipal off-sale licenses which license
20 shall be retained by the municipality. If the application is rejected, ~~such~~ the fee shall be promptly
21 returned by the secretary to the applicant. If the application is granted, the secretary shall deposit
22 ~~such~~ the fee in the state treasury.

23 Section 10. That § 35-2-5.1 be amended to read as follows:

24 35-2-5.1. ~~In the event of refusal by~~ If the governing board of the municipality or county ~~to~~

1 ~~does not~~ approve the application, ~~such the governing~~ board shall endorse on the application the
2 reasons ~~therefor~~ for the denial and return the application and fee to the applicant. No further
3 application may be received from ~~a person~~ the applicant until after the expiration of one year
4 from the date of a ~~refused~~ denied application. However, if the application was denied based on
5 the suitability of the location for the license, no further application may be received from the
6 applicant until after the expiration of three months from the date of the denied application only
7 if the application is for a different location.

8 Section 11. That § 35-2-5.2 be amended to read as follows:

9 35-2-5.2. ~~In the event of the approval of such~~ If the governing board of the municipality or
10 county approves the application, the approval shall be endorsed thereon and also upon the
11 present license and the governing board shall endorse the approval on the application. The
12 licensee shall thereupon be is entitled to operate under the license for the succeeding licensing
13 year if the license is approved by the secretary. However, if any transfer of ownership or
14 location occurs, or if the licensee ~~shall have~~ has been convicted of any criminal offense during
15 the past licensing year, the application together with the approval of the ~~local governing body~~
16 board shall be forwarded to the secretary ~~of revenue who shall have discretion to~~ who may
17 approve or disapprove the ~~same~~ application. The license fee shall be deposited in the general
18 fund of the ~~first or second class~~ municipality or county.

19 Section 12. That § 35-2-6.5 be repealed.

20 ~~35-2-6.5. The term "relative" as used in this title means husband, wife, son, daughter,~~
21 ~~brother, sister, father, mother, brother-in-law, sister-in-law, father-in-law, mother-in-law,~~
22 ~~son-in-law, or daughter-in-law.~~

23 Section 13. That § 35-2-9 be amended to read as follows:

24 35-2-9. Any licensee authorized to deal in alcoholic beverages, upon termination of the

1 license, may at any time within thirty days after the termination of the license sell the whole or
2 any part of the alcoholic beverages included in the licensee's stock in trade at the time of the
3 termination to any wholesaler licensed under this title to deal in the alcoholic beverages so
4 purchased by the wholesaler. The wholesaler shall make a complete report of the purchase to
5 the secretary ~~of revenue and regulation~~.

6 Section 14. That § 35-2-10 be amended to read as follows:

7 35-2-10. The secretary, in compliance with chapter 1-26, may revoke or suspend any license
8 issued under this title upon proof of violation by the licensee, by the licensee's agents or
9 employees, or by the manager or contractual operators of retail establishments and their agents
10 or employees operating under a county or municipal license, of any of the following:

- 11 (1) Any provision of this title;
- 12 (2) Any rule promulgated pursuant to this title; or
- 13 (3) Any ordinance or regulation relevant to alcoholic beverage control that has been
14 adopted by the political subdivision issuing the license.

15 For any licensee with multiple alcoholic beverage licenses for the same premises, upon
16 suspension or revocation of any license pursuant to this ~~chapter~~ title, the licensee shall cease
17 operation under all alcoholic beverage licenses held by the licensee for the same premises for
18 the same period as the suspension or revocation.

19 Section 15. That § 35-2-11.1 be amended to read as follows:

20 35-2-11.1. The governing board of the municipality or the board of county commissioners
21 which approved the application for license under § 35-2-1.2 shall recommend to the secretary
22 ~~of revenue~~ following a hearing that any license issued under this title be suspended or revoked
23 for violation of any of the provisions of this ~~chapter~~ title or for violations of any ordinance or
24 regulation of the governing body issuing the license relevant to alcoholic beverage control

1 which occurs on the premises of the licensee. Upon receipt of the recommendation, the secretary
2 shall proceed in accordance with the provisions of §§ 35-2-10 and 35-2-21.

3 Section 16. That § 35-2-13 be amended to read as follows:

4 35-2-13. An applicant or licensee under this title, or any person or governing board
5 interested therein, ~~shall have~~ has a right ~~of to a~~ hearing in relation to any action taken upon the
6 application or license, which hearing shall be held in the county where the license has been
7 applied for or has been issued, in accordance with the provisions of chapter 1-26. However, if
8 the parties agree, a hearing to determine whether the secretary ~~of revenue~~ may suspend or revoke
9 a license may be held at a location other than the county where the license has been applied for
10 or has been issued. Such hearing may be held ~~by telecommunications technologies~~ pursuant to
11 § 1-25-1.

12 Section 17. That § 35-2-20 be amended to read as follows:

13 35-2-20. No licensee under this title, whose license is revoked, may be granted any license
14 under this title for one year after the revocation. If any relative of any such former licensee, ~~as~~
15 ~~relative is defined by § 35-2-6.5~~, or any of the former licensee's employees or former employees,
16 applies for any such license before the one-year period has elapsed, the license may be granted
17 only upon affirmative and satisfactory proof that the former licensee has no interest in the
18 business.

19 Section 18. That § 35-2-21 be amended to read as follows:

20 35-2-21. If in any proceeding under this ~~chapter~~ title a violation is established, but the
21 secretary is satisfied that the nature and the circumstances of the violation were such that a
22 suspension of the license would be adequate, the secretary may, instead of revoking the license,
23 suspend it for a period not exceeding sixty days. The suspension is effective twenty-four hours
24 after service of notice of the suspension upon the licensee. During the period of the suspension,

1 the licensee may not exercise any rights or privileges under the license. The secretary may, in
2 lieu of suspending or revoking the license, accept a monetary offer in compromise in settlement
3 of any proceeding under this ~~chapter~~ title. The amount of the offer in compromise may not
4 exceed seventy-five thousand dollars. The secretary may also recover the actual costs of
5 investigation and prosecution.

6 Section 19. That § 35-2-25 be amended to read as follows:

7 35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), ~~and~~
8 ~~(17), and (17A)~~ and §§ 35-12-2 and 35-13-2 may be issued unless the applicant has first
9 obtained a sales tax license pursuant to chapter 10-45, or, if applicable, a use tax license
10 pursuant to chapter 10-46. ~~The provisions of this section do not apply to a municipality which~~
11 ~~has procured a retail alcoholic beverage license pursuant to chapter 35-3.~~

12 Section 20. That § 35-4-2.3 be repealed.

13 ~~35-4-2.3. No more than one wholesale license may be issued under subdivision 35-4-2(15)~~
14 ~~for every twenty on- and off-sale licenses issued under subdivisions 35-4-2(16) and (17).~~

15 Section 21. That § 35-4-2.4 be amended to read as follows:

16 35-4-2.4. Any municipality which holds an off-sale license under subdivision 35-4-2(5) is
17 eligible for a retailer's or package dealer license under subdivisions 35-4-2(16) ~~and~~, (17), and
18 (17A). Any municipality which holds an on-sale license under chapter 35-4 is eligible for a
19 retailer's license under subdivision 35-4-2(16). Upon termination of any such license the
20 governing board of ~~such~~ the municipality is authorized ~~to proceed~~ to liquidate the business
21 operated ~~thereunder~~ pursuant to the license and the assets of ~~such~~ the business in ~~such~~ a manner
22 as may be determined by resolution of ~~such~~ the governing board, not inconsistent with the
23 provisions of this title.

24 Section 22. That § 35-4-2.5 be amended to read as follows:

1 35-4-2.5. ~~The~~ Notwithstanding the provisions of § 35-4-41, the period covered by licenses
2 issued pursuant to subdivisions 35-4-2(14), (15), (16), ~~and (17), and (17A)~~ shall be from twelve
3 midnight on the thirtieth day of June to twelve midnight on the thirtieth day of the next June.

4 Section 23. That § 35-4-5.1 be amended to read as follows:

5 35-4-5.1. No distributor of distilled spirits, manufacturer, rectifier, distiller, or jobber, ~~or~~
6 ~~distributor of distilled spirits~~, or a copartner or a majority stockholder of a parent or subsidiary
7 corporation ~~directly or indirectly interested~~ or holder of a controlling interest in any of them may
8 be granted a wholesale license or be granted a renewal of such a license under this chapter.

9 Section 24. That § 35-4-5.5 be repealed.

10 ~~— 35-4-5.5. The provisions of § 35-4-5.1, as to the granting of a wholesale license and the~~
11 ~~renewal of a wholesale license do not apply to any individual, copartnership, or corporation who~~
12 ~~or which on July 1, 1970, was the holder of a wholesaler's license.~~

13 Section 25. That § 35-4-6 be amended to read as follows:

14 35-4-6. Except as provided in subdivisions 35-4-2(12), (16), (17), (17A), and (19), off-sale
15 licenses may be issued under this chapter only to operate within a municipality.

16 Section 26. That § 35-4-10 be amended to read as follows:

17 35-4-10. No more than two off-sale licenses may be issued under this chapter to operate in
18 a municipality of one thousand or less and not exceeding one license for every additional fifteen
19 hundred of population or fraction thereof. The number of off-sale licenses may not be less than
20 the total number of licenses allowable or issued as of July 1, 1981.

21 The quotas established in this section do not apply to the licenses issued pursuant to
22 subdivisions 35-4-2(12), (16) ~~and~~, (17), and (17A).

23 Section 27. That § 35-4-11 be amended to read as follows:

24 35-4-11. If not fixed by ordinance, the governing board of any municipality may, on or

1 before the first of September in each year, by resolution, determine the number of on-sale and
2 off-sale licenses it that the board will approve for the ensuing calendar year, and the fees to be
3 charged for the various classifications of licenses. The number of on-sale licenses issued may
4 not exceed three each for the first one thousand of population or fraction thereof and not exceed
5 one each of such licenses for each additional one thousand five hundred of population or
6 fraction thereof. The number of licenses allowable may not be less than the total number of
7 licenses allowable or issued as of July 1, 1981. The municipal governing board shall at such
8 meeting establish the fee for on-sale licenses pursuant to subdivisions 35-4-2(4) and (13). The
9 fee applies to all such on-sale licenses issued in the ensuing calendar year. The quotas
10 established in this section do not apply to licenses issued pursuant to subdivisions 35-4-2(12),
11 (~~16~~)and, (~~17~~), and (~~17A~~).

12 For the purposes of this section, population is equal to ninety percent of the population
13 estimates published by the United States Census Bureau for each even-numbered year, except
14 for the decennial year. For a decennial year, population is equal to the amount determined by
15 the decennial federal census. No license issued pursuant to this section which exceeds the
16 number of licenses that would have been issued upon the decennial federal census may be
17 denied solely by reason that the license exceeds the number of licenses authorized by the
18 decennial federal census.

19 Section 28. That § 35-4-11.1 be amended to read as follows:

20 35-4-11.1. If not previously fixed by ordinance or continuing resolution, the board of county
21 commissioners shall, on or before the first of September in each year, determine the number of
22 on-sale licenses it will approve for the ensuing calendar year and the fees to be charged for the
23 various classifications of licenses. The number of licenses issued may not exceed three for the
24 first one thousand of population and may not exceed one for each additional fifteen hundred of

1 population or fraction thereof, the population to include only those residing within the county
2 but outside the incorporated municipalities and improvement districts, created pursuant to
3 chapter 7-25A, within the county. However, any license issued in an improvement district prior
4 to July 1, 2000, shall be included when calculating the total number of licenses that may be
5 issued by the county where the improvement district is located. No licensee regularly licensed
6 to do business on July 1, 1981, may be denied reissuance of a license in subsequent years solely
7 by reason of any limitations, based upon population quotas, of the number of licenses authorized
8 or established under the provisions of this title. Licenses issued to concessionaires, and lessees
9 of the State of South Dakota, within the boundaries of state parks, prior to January 1, 1983, may
10 be subtracted when calculating the total number of licenses permitted in this section. The quotas
11 established in this section do not apply to licenses issued pursuant to subdivisions 35-4-2(12),
12 (16), (17), (17A), and (19).

13 Section 29. That § 35-4-11.2 be amended to read as follows:

14 35-4-11.2. Notwithstanding the provisions of § 35-4-11, each municipality may issue two
15 convention facility on-sale licenses for convention facilities substantially constructed within the
16 two years following issuance of such license or previously completed. If located in a first class
17 municipality, the hotel-motel convention facility shall be used and kept open for the hosting of
18 large groups of guests for compensation and shall have at least one hundred rooms which are
19 suitable lodging accommodations and convention facilities with seating for at least four hundred
20 persons. If located in a second or third class municipality, the hotel-motel convention facility
21 shall have at least forty rooms which are suitable lodging accommodations and convention
22 facilities with seating for at least one hundred fifty persons.

23 If a municipality's classification changes from one class to another class, the facility is only
24 required to meet the criteria established by this section for the license at the time it was

1 originally issued.

2 Section 30. That § 35-4-11.3 be repealed.

3 ~~—35-4-11.3. The provisions of § 35-4-11.2 apply to any municipality that was a municipality~~
4 ~~of the first class on December 31, 1979.~~

5 Section 31. That § 35-4-19 be amended to read as follows:

6 35-4-19. No retailer license under this chapter, except for licenses issued pursuant to
7 subdivisions 35-4-2(12), (16)~~and~~, (17), and (17A), other than to the municipality, may be
8 granted to operate in any municipality which has obtained a license under this chapter except
9 that:

10 (1) If a municipality has been issued an off-sale license only, then the governing board
11 may approve or disapprove applications for on-sale licenses as may be provided in
12 Title 35; and

13 (2) If a municipality has been issued an on-sale and off-sale license, then the governing
14 board may by resolution enter into an operating agreement with any person for the
15 specific purpose of operating the on-sale establishment or the off-sale establishment,
16 or both for the municipality.

17 Section 32. That § 35-4-46 be amended to read as follows:

18 35-4-46. A distiller in business outside of South Dakota ~~and who is~~ not licensed under this
19 title may, ~~by payment of an annual fee of one hundred dollars to the state treasurer, receive~~
20 purchase a permit from the secretary, a permit to ship alcoholic beverages into South Dakota
21 to a bonded warehouses under warehouse pursuant to § 35-4-45. The permit may be purchased
22 for an annual fee of one hundred dollars, and the fee shall be deposited in the general fund. Any
23 alcoholic beverages to be stored in such a bonded warehouses and to warehouse may only be
24 delivered therefrom to a distiller or wholesaler licensees only licensee.

1 Section 33. That § 35-4-60.2 be amended to read as follows:

2 35-4-60.2. A licensee licensed under subdivision 35-4-2(16) ~~or (17), or (17A)~~ shall
3 purchase the malt beverages that the licensee sells from the municipality if the municipality in
4 which the licensee is located is licensed under subdivision 35-4-2(5) and if the municipality has
5 by ordinance required that such purchases be made from the municipality. A municipality
6 selling malt beverages to any licensee licensed under subdivision 35-4-2(16) ~~or (17), or (17A)~~
7 may not charge the licensee more than five percent above the municipality's cost for malt
8 beverages plus freight unless the municipality has operating agreements in effect on April 1,
9 1988, for its on-sale alcoholic beverage licensees licensed pursuant to subdivision 35-4-2(4) and
10 imposes a mark-up higher than five percent for malt beverages. The municipality shall charge
11 all such licensees the same price for malt beverages.

12 Section 34. That § 35-4-78 be amended to read as follows:

13 35-4-78. No licensee may sell any alcoholic beverage:

14 ~~—(1)—To any person under the age of twenty-one years; or~~

15 ~~—(2)—To to any person who is obviously intoxicated at the time. A violation of this section~~
16 is a Class 1 misdemeanor.

17 However, no licensee is civilly liable to any injured person or ~~his~~ the injured person's estate
18 for any injury suffered, including any action for wrongful death, or property damage suffered
19 because of the intoxication of any person due to the sale or consumption of any alcoholic
20 beverage in violation of the provisions of this section.

21 Section 35. That § 35-9-1 be amended to read as follows:

22 35-9-1. It is a Class 1 misdemeanor to sell or give for use as a beverage any alcoholic
23 beverage to any person under the age of eighteen years unless:

24 (1) It is done in the immediate presence of a parent or guardian or spouse, who is at least

1 twenty-one years of age, while not on the premises of an establishment licensed for
 2 the retail sale of alcoholic beverages pursuant to § 35-4-2 or at a special event for
 3 which an alcoholic beverage license has been issued pursuant to § 35-4-11.4; or

4 (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the
 5 healing arts for medicinal purposes.

6 However, no licensee is civilly liable to any injured person or the injured person's estate for
 7 any injury suffered, including any action for wrongful death, or property damage suffered
 8 because of the sale or consumption of any alcoholic beverage in violation of the provisions of
 9 this section.

10 Section 36. That § 35-9-1.1 be amended to read as follows:

11 35-9-1.1. It is a Class 2 misdemeanor to sell or give for use as a beverage any alcoholic
 12 beverage to any person who is eighteen years of age or older but less than twenty-one years of
 13 age unless it is done in the immediate presence of a parent or guardian or spouse over
 14 twenty-one years of age or by prescription or direction of a duly licensed practitioner or nurse
 15 of the healing arts for medicinal purposes.

16 However, no licensee is civilly liable to any injured person or the injured person's estate for
 17 any injury suffered, including any action for wrongful death, or property damage suffered
 18 because of the sale or consumption of any alcoholic beverage in violation of the provisions of
 19 this section.

20 Section 37. That § 35-4-78.1 be repealed.

21 ~~—35-4-78.1. A licensee, licensed pursuant to subdivision 35-4-2(3), (4), (5), (6), (11), (12),~~
 22 ~~(13), (16), (17), or (18), is not in violation of § 35-4-78, and no criminal penalty may be~~
 23 ~~imposed on the licensee if:~~

24 ~~—(1) The person making the sale in violation of § 35-4-78 is an employee or agent of the~~

1 licensee;

2 ~~—(2)—The employee or agent does not own a controlling interest in the licensee; and~~

3 ~~—(3)—The licensee or person having a controlling interest in the licensee is not present at~~
4 ~~the time of the sale.~~

5 Section 38. That § 35-4-78.2 be repealed.

6 ~~—35-4-78.2. If a sale is in violation of § 35-4-78 and does not constitute a criminal offense~~
7 ~~against the licensee, the state's attorney for the county in which the sale took place may as part~~
8 ~~of any proceeding against the person making the sale request that the court require the licensee~~
9 ~~to pay a fine in accordance with §§ 35-4-78.1 to 35-4-78.4, inclusive.~~

10 Section 39. That § 35-4-78.3 be repealed.

11 ~~—35-4-78.3. Upon a request from the state's attorney and notice to the licensee, the court shall~~
12 ~~conduct a hearing to determine if the licensee is liable under §§ 35-4-78.1 to 35-4-78.4,~~
13 ~~inclusive, and upon a finding that the licensee is liable, the court may order the licensee to pay~~
14 ~~a fine not to exceed:~~

15 ~~—(1)—Five hundred dollars upon the first violation within two years;~~

16 ~~—(2)—Seven hundred fifty dollars upon the second violation within two years; and~~

17 ~~—(3)—One thousand dollars for the third violation within two years.~~

18 Section 40. That § 35-4-78.4 be repealed.

19 ~~—35-4-78.4. For the purpose of §§ 35-4-78.1 to 35-4-78.4, inclusive, a controlling interest in~~
20 ~~the licensee means an ownership interest of ten percent or more.~~

21 Section 41. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 No criminal penalty may be imposed on a licensee licensed pursuant to this title if:

24 (1) The person making the sale in violation of § 35-9-1 or 35-9-1.1 is an employee or

1 agent of the licensee;

2 (2) The employee or agent does not own a controlling interest in the licensee; and

3 (3) The licensee or person having a controlling interest in the licensee is not present at
4 the time of the sale.

5 Section 42. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 If a sale is in violation of § 35-9-1 or 35-9-1.1 and does not constitute a criminal offense
8 against the licensee, the state's attorney for the county in which the sale took place may as part
9 of any proceeding against the person making the sale request that the court require the licensee
10 to pay a fine in accordance with sections 41 to 43, inclusive, of this Act.

11 Section 43. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Upon a request from the state's attorney and notice to the licensee, the court shall conduct
14 a hearing to determine if the licensee is liable under sections 41 to 43, inclusive, of this Act and
15 upon a finding that the licensee is liable, the court may order the licensee to pay a fine not to
16 exceed:

17 (1) Five hundred dollars upon the first violation within two years;

18 (2) Seven hundred fifty dollars upon the second violation within two years; and

19 (3) One thousand dollars for the third violation within two years.

20 Section 44. That § 35-4-86 be repealed.

21 ~~35-4-86. No person may possess any alcoholic beverage other than in a package upon which~~
22 ~~the required stamps are affixed. This section, however, does not apply to alcoholic beverages:~~

23 ~~(1) In transit to or in possession of distiller or wholesale licensees;~~

24 ~~(2) In possession of a person authorized to have possession as specified in § 35-4-66;~~

1 ~~— (3) — Purchased outside the state by carrier licensees for service to patrons only;~~

2 ~~— (4) — Seized by or in possession of any officer of this state or any political subdivision of~~
3 ~~the state pursuant to official duty;~~

4 ~~— (5) — In transit to or stored with a bonded warehouse under the provisions of § 35-4-46;~~

5 ~~— (6) — As to which, under § 35-5-6, no tax is required to be paid.~~

6 ~~— A violation of this section is a Class 2 misdemeanor.~~

7 Section 45. That § 35-4-93 be repealed.

8 ~~— 35-4-93. This chapter and chapter 35-5 shall be known and may be cited, as the South~~
9 ~~Dakota Liquor Control Law.~~

10 Section 46. That § 35-4-96 be amended to read as follows:

11 35-4-96. The secretary of revenue may require the brand owner, or the authorized agent of
12 the brand owner, to file ~~written~~:

13 (1) The schedules of prices and discounts, allowance schedules, and other pricing
14 information ~~and to specifically set forth the~~;

15 (2) The exact brand or trade name, capacity of package, nature of contents, and age and
16 proof where stated on the label; ~~the~~ and

17 (3) The number of bottles contained in each case and the bottle and case price to
18 wholesalers, which is individual for each item ~~at such time and in such form as is~~
19 ~~necessary~~.

20 The schedules and documents shall be filed in a form and manner to be determined by the
21 secretary to facilitate the enforcement of §§ 35-4-94 to 35-4-98, inclusive.

22 Section 47. That § 35-4-97 be amended to read as follows:

23 35-4-97. Upon a finding that a brand owner, or authorized agent of the brand owner, has
24 knowingly violated the provisions of §§ 35-4-94 to 35-4-98, inclusive, or that any person has

1 knowingly made a false statement in any affirmation statement made and filed pursuant to
2 §§ 35-4-94 to 35-4-98, inclusive, the secretary of revenue shall collect a civil penalty of one
3 hundred dollars per case for each case sold in violation of §§ 35-4-94 to 35-4-98, inclusive. Any
4 item sold in violation of the provisions of §§ 35-4-94 to 35-4-98, inclusive, may not be sold to
5 or purchased by any wholesaler for a period of thirty days.

6 Section 48. That § 35-4-98 be amended to read as follows:

7 35-4-98. A filing made pursuant to ~~this section and §§ 35-4-94 to 35-4-97~~ 35-4-98,
8 inclusive, is confidential. It is a Class 2 misdemeanor to disclose any such filing except to a
9 wholesaler licensed under Title 35 or in accordance with the manner in which returns and return
10 information may be disclosed pursuant to §§ 10-1-28.4 and 10-1-28.5.

11 Section 49. That § 35-4-101 be amended to read as follows:

12 35-4-101. Any hotel or motel may operate minibars as defined in ~~subdivision 35-1-1(25)~~
13 § 35-1-1 in any of its rooms or units if ~~such~~ the hotel or motel has an on-sale liquor license
14 issued pursuant to subdivision 35-4-2(4), (6), or (13).

15 Section 50. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
16 follows:

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

1 Section 51. That § 35-5-3 be amended to read as follows:

2 35-5-3. The occupational tax based on the quantities of different kinds of alcoholic
3 beverages is:

4 (1) Malt beverages, eight dollars and fifty cents per barrel of thirty-one gallons, or a
5 prorata portion thereof in accordance with the size of the bulk container;

6 (2) All light wines and diluted beverages (except sparkling wines and cider) containing
7 alcohol by weight to the extent of more than 3.2 percent and not more than fourteen
8 percent, ninety-three cents per gallon;

9 (3) All wines (except sparkling wines) containing alcohol by weight to the extent of
10 more than fourteen percent and not more than twenty percent, one dollar and
11 forty-five cents per gallon;

12 (4) All wines (except sparkling wines) containing alcohol by weight to the extent of
13 more than twenty percent and not more than twenty-four percent, all natural sparkling
14 wines containing alcohol and all artificial sparkling wines containing alcohol, two
15 dollars and seven cents per gallon;

16 (4A) All cider containing alcohol by weight not more than ten percent, twenty-eight cents
17 per gallon;

18 (5) All other alcoholic beverages not otherwise specified, three dollars and ninety-three
19 cents per gallon.

20 For the purposes of this section, diluted beverages are alcoholic beverages prepared from
21 the admixture of spirits or wine with water, dairy products, fruit juices, or vegetable juices, to
22 which may be added natural flavors, artificial flavors, sweetening agents, or food additives to
23 produce a beverage distinct and unique from the spirits or wine. In no case does the term, diluted
24 beverages, include beverages which contain in excess of twelve percent alcohol by weight.

1 Any funds collected from the tax imposed by this section shall be deposited in the alcoholic
2 beverage fund.

3 Section 52. That § 35-5-21.1 be repealed.

4 ~~35-5-21.1. Fifty percent of all license and transfer fees received under the provisions of~~
5 ~~subdivisions 35-4-2(16), (17), and (17A) shall remain in the municipality in which the licensee~~
6 ~~paying the fee is located, or if outside the corporate limits of a municipality, then in the county~~
7 ~~in which the licensee is located. In addition, fifty percent of wholesaler license fees received~~
8 ~~under subdivision 35-4-2(15) shall revert to the municipality in which the licensee is located,~~
9 ~~or if outside the corporate limits of a municipality, then to the county in which the licensee is~~
10 ~~located. The remainder of all license and transfer fees and penalties received shall be credited~~
11 ~~to the state general fund. All revenue received from the levy in carrying out § 35-5-3 shall be~~
12 ~~credited to the alcoholic beverage fund.~~

13 Section 53. That § 35-5-26 be amended to read as follows:

14 35-5-26. The population of any unincorporated ~~towns~~ town in an organized or unorganized
15 ~~townships~~ township shall include the entire population of the organized or unorganized
16 ~~township so concerned.~~ The population of the unincorporated ~~towns~~ town in an unorganized
17 ~~townships~~ township shall be furnished to the ~~state treasurer~~ secretary by the county auditor of
18 the county in which the unincorporated town is located.

19 Section 54. That § 35-5-11 be repealed.

20 ~~35-5-11. The occupational tax may, if required by the secretary to assure collection of the~~
21 ~~tax, be evidenced by an identification stamp to be affixed to each original package of alcoholic~~
22 ~~beverage for use in this state.~~

23 Section 55. That § 35-5-12 be repealed.

24 ~~35-5-12. The secretary shall adopt the design of the identification stamp and shall procure~~

1 ~~the manufacture of the stamp in such quantities as the secretary deems necessary.~~

2 Section 56. That § 35-5-14 be repealed.

3 ~~—35-5-14. Any person who makes, manufactures, counterfeits, duplicates, or in any way~~
4 ~~imitates any identification stamp provided for in this chapter or who possesses, transfers, utters,~~
5 ~~or delivers any imitation or counterfeits any identification stamp is guilty of forgery.~~

6 Section 57. That § 35-10-10 be repealed.

7 ~~—35-10-10. If any alcoholic beverage is imported into this state or held in the possession of~~
8 ~~any person in this state without proper stamps in violation of the provisions of state law, the~~
9 ~~alcoholic beverage constitutes contraband goods and may be seized by the secretary or any law~~
10 ~~enforcement officer of the state. Any alcoholic beverage seized under the provisions of this~~
11 ~~section shall be confiscated and forfeited to the state. The actual owner of the contraband goods~~
12 ~~has such rights as defined, and the secretary may dispose of, sell, or destroy, the contraband~~
13 ~~goods in accordance with the provisions of §§ 35-10-11 to 35-10-16, inclusive. The proceeds~~
14 ~~of any such sale shall be placed in the general fund of the state.~~

15 Section 58. That § 35-10-15 be amended to read as follows:

16 35-10-15. If confiscated alcoholic beverages are lawfully salable, and of sufficient value to
17 justify an attempted sale, the secretary of revenue shall take custody of the alcoholic beverages,
18 and ~~may~~ shall, pending sale, store the beverages at any convenient and safe place. ~~All stamps~~
19 ~~provided by this title, except inspection stamps, shall be canceled and removed.~~

20 Section 59. That § 35-10-16 be amended to read as follows:

21 35-10-16. ~~From time to time as~~ If confiscated alcoholic beverages accumulate in sufficient
22 quantities, the secretary of revenue shall notify all licensed wholesalers as to kinds and types of
23 ~~such~~ alcoholic beverages in the secretary's custody for sale. The secretary shall receive bids, and
24 sales shall be made on the basis of ~~such~~ the bids as the secretary deems advantageous to the

1 state. Any wholesaler purchasing the beverages shall, before resale of the beverages, affix to the
2 package or bulk container all stamps, other than the inspection stamp, required by this title. All
3 proceeds of any such sale by the secretary shall be deposited with the state treasurer and credited
4 to the general fund.

5 Section 60. That § 35-9-1.2 be amended to read as follows:

6 35-9-1.2. Any person charged with a violation of § 35-9-1, ~~35-4-78~~, or 35-9-1.1 may offer
7 evidence, as a defense, that the person made a reasonable attempt to investigate the age of the
8 person by examining an age-bearing identification document that would have appeared valid
9 to a reasonable and prudent person.

10 Section 61. That § 35-9-2 be amended to read as follows:

11 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
12 purchase, attempt to purchase, or possess or consume alcoholic beverages except pursuant to
13 § 35-9-1.1 or when consumed in a religious ceremony and given to ~~said~~ the person by an
14 authorized person, or to misrepresent his or her age with the use of any document for the
15 purpose of purchasing or attempting to purchase alcoholic beverages from any licensee licensed
16 under this title.

17 Section 62. That § 35-10-4 be amended to read as follows:

18 35-10-4. For the purposes of any hearing provided for by this title, the secretary ~~of revenue~~
19 ~~shall have~~ may exercise the powers granted by § 1-26-19.1.

20 Section 63. That § 35-10-8 be amended to read as follows:

21 35-10-8. Any cost penalty provided for by this title shall be included in the judgment of
22 conviction and has all the force and effect of a judgment in a civil action. If the person against
23 whom the cost penalty is assessed has furnished a bond as a licensee under this title, the surety
24 is liable for the cost penalty. The cost penalty may be paid by the defendant to the clerk of the

1 court that rendered the judgment in which the cost penalty was assessed. The payment shall
2 operate as a satisfaction of the portion of the judgment relating to the cost penalty and shall be
3 entered upon the judgment record accordingly. If not paid to the clerk, the judgment for the cost
4 penalty shall be enforced by execution or other process, the same as any civil judgment. The
5 clerk or any officer collecting the cost penalty shall, without delay, transmit the cost penalty to
6 the ~~state treasurer~~ secretary with a statement giving full information as to the source of the cost
7 penalty. The ~~state treasurer~~ secretary shall issue a receipt for the cost penalty to the person
8 transmitting the cost penalty.

9 Section 64. That § 35-10-14 be amended to read as follows:

10 35-10-14. Upon any adjudication in any form of confiscation of alcoholic beverages, the
11 officer having custody of the beverages shall make a full report to the secretary ~~of revenue~~
12 setting forth the quantity, kind, and probable value of the beverages. If the beverages are of such
13 character that the beverages cannot lawfully be sold, or are of insufficient value to justify an
14 attempted sale, the secretary shall order the beverages destroyed. The officer in custody of the
15 beverages shall comply with the order and shall report to the secretary that the order has been
16 carried out.

State of South Dakota
EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

259R0740

HOUSE ENGROSSED NO. SB 188 - 3/4/2010

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

Introduced by: Senators Nelson, Fryslie, Olson (Russell), and Tieszen and Representatives Turbiville, Conzet, Kirkeby, Krebs, Rausch, Romkema, Rounds, and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the sale and display
2 of alcoholic beverages in certain establishments.

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

4 Section 1. That § 35-4-121 be amended to read as follows:

5 35-4-121. Any person, corporation, or business entity that is issued a new retail license
6 under subdivision 35-4-2(3) in a municipality of the first class after June 30, 2008, and derives
7 more than fifty percent of the licensee's annual gross receipts from the sale of food, prepared
8 food, and food ingredients at the location where the license is held, shall ~~sell~~ display its
9 alcoholic beverages, other than malt beverages, ~~in an~~ and wine, in one area which is separated
10 by a physical barrier from the rest of the establishment. For the purposes of this section, a
11 physical barrier includes a wall or fence erected for the sole purpose of separating the area in
12 which the alcoholic beverages are ~~sold~~ displayed from the rest of the establishment.

13 Section 2. That § 35-4-122 be amended to read as follows:

14 35-4-122. Any person, corporation, or business entity that is issued a new retail license
15 under subdivision 35-4-2(3) after June 30, 2009, and derives less than fifty percent of the



1 licensee's annual gross receipts from the sale of alcoholic beverages at the location where the
2 license is held shall ~~sell~~ display its alcoholic beverages, other than malt beverages, ~~in an~~ and
3 wine, in one area which is separated by a physical barrier from the rest of the establishment. For
4 the purposes of this section, a physical barrier includes a wall or fence erected for the sole
5 purpose of separating the area in which the alcoholic beverages are ~~sold~~ displayed from the rest
6 of the establishment.