

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

615S0351

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1056** - 2/9/2011

Introduced by: Representatives Miller, Abdallah, Blake, Bolin, Boomgarden, Deelstra, Dennert, Elliott, Fargen, Feinstein, Greenfield, Haggar, Hansen (Jon), Hawley, Hickey, Hoffman, Hubbel, Hunhoff (Bernie), Jensen, Jones, Killer, Kirkeby, Kloucek, Kopp, Magstadt, Moser, Munsterman, Nelson (Stace), Novstrup (David), Olson (Betty), Rozum, Schaefer, Steele, Stricherz, Tulson, Van Gerpen, Wick, and Willadsen and Senators Lederman, Adelstein, Begalka, Brown, Buhl, Heineman, Maher, Nelson (Tom), Novstrup (Al), Nygaard, Rempelberg, Rave, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to establish an additional time period during which
2 fireworks may be sold and discharged and to revise certain provisions regarding county
3 regulation of fireworks.

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

5 Section 1. That § 34-37-2.2 be amended to read as follows:

6 34-37-2.2. In addition to licenses available in § 34-37-2, two special retail licenses may be
7 obtained for sales to out-of-state residents. The first is a sixty-six day license from the first day
8 of May through the fifth day of July with a required fee of one thousand dollars. The second
9 option is a fifty-seven day license from the sixth day of July through the thirty-first day of
10 August with a required fee of one thousand dollars. The fifty-seven day special retail license
11 also allows the retail sale of fireworks to residents and nonresidents during the period beginning



1 December twenty-eighth and extending through January first, as provided in § 34-37-10. A copy
2 of the South Dakota law which prohibits the discharge of fireworks and a map of the Black Hills
3 Forest Fire Protection District shall be provided with every sale of fireworks under a license
4 granted pursuant to this section, except for sales occurring from the twenty-seventh day of June
5 through the fifth day of July.

6 Section 2. That § 34-37-10 be amended to read as follows:

7 34-37-10. No person, firm, or corporation may offer fireworks for sale to individuals at retail
8 ~~before the twenty-seventh day of June and after the fifth day of July~~ except during the period
9 beginning June twenty-seventh and extending through July fifth and during the period beginning
10 December twenty-eighth and extending through January first. Any person obtaining the special
11 sixty-six day or the special fifty-seven day retail licenses may sell fireworks to out-of-state
12 residents for the periods of time designated in § 34-37-2.2. Retail sales to residents and
13 nonresidents during the December twenty-eighth through January first period may only be made
14 by holders of a special fifty-seven day retail license established pursuant to § 34-37-2.2. Retail
15 sales are not permitted after twelve a.m. or prior to seven a.m. from the twenty-seventh day of
16 June through the fifth day of July and from the twenty-eighth day of December through the first
17 day of January.

18 Section 3. That § 34-37-16.1 be amended to read as follows:

19 34-37-16.1. Except as otherwise provided in this chapter, it is unlawful for a person to
20 discharge fireworks in this state ~~after the fifth day of July or prior to the twenty-seventh day of~~
21 ~~June~~ except during the period beginning June twenty-seventh and extending through July fifth
22 and during the period beginning December twenty-eighth and extending through January first.

23 A violation of this section is a Class 2 misdemeanor.

24 Section 4. That § 34-37-19 be amended to read as follows:

1 34-37-19. Any county may, by resolution, regulate or prohibit the use of fireworks outside
2 the boundaries of any municipality in those areas where the fire danger, as determined by use
3 of the South Dakota grassland fire danger index published by the National Weather Service, has
4 reached the extreme category in that county during the period from June twentieth to July
5 second, inclusive, and during the period from December twenty-eighth to January first,
6 inclusive. During any such period, the county's action is suspended if the grassland fire danger
7 index falls below the very high category and ~~shall again become~~ becomes effective if the
8 grassland fire danger index reaches the extreme category.

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484S0487

HOUSE JUDICIARY ENGROSSED NO. **HB 1087** - 2/9/2011

Introduced by: Representatives Hunt, Rausch, and Wick and Senator Peters

1 FOR AN ACT ENTITLED, An Act to address comprehensibly the liability relationship between
2 a trespasser and a person with a possessory interest in land.

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

4 Section 1. No person with a possessory interest in land, including an owner, lessee, or other
5 occupant, owes any duty of care to a trespasser nor is subject to liability for any injury to a
6 trespasser except as provided in this Act.

7 Section 2. A person with a possessory interest in land may be subject to liability if the
8 trespasser's physical injury or death was intentionally caused, including by entrapment, and if
9 the injury or death was not justifiable pursuant to § 22-18-4.

10 Section 3. A person with a possessory interest in land may be subject to liability for physical
11 injury or death to a child thirteen years of age or younger resulting from an artificial condition
12 on the land if:

13 (1) The person knew or had reason to know that children of that age were likely to
14 trespass at the location of the artificial condition; and

15 (2) The condition is one the person knew or reasonably should have known involved an



1 unreasonable risk or death or serious bodily harm to such children; and

2 (3) The injured child did not discover the artificial condition or realize the risk involved
3 in the artificial condition or the risk coming within the area made dangerous by it;
4 and

5 (4) The utility to the person of maintaining the artificial condition and the burden of
6 eliminating the danger were slight as compared with the risk to the child involved;
7 and

8 (5) The person failed to exercise reasonable care to eliminate the danger or otherwise
9 protect the injured child.

10 Section 4. A person with a possessory interest in land may be subject to liability for physical
11 injury or death to a trespasser if the possessor knows, or from facts within the possessor's
12 knowledge should have known, that trespassers consistently intrude upon a limited area of the
13 possessor's land and:

14 (1) The trespasser's harm was caused by the possessor's failure to carry on an activity
15 involving a risk of death or serious bodily harm with reasonable care for the
16 trespasser's safety; or

17 (2) The trespasser's harm was cause by an artificial condition and:

18 (a) The artificial condition was created or maintained by the person;

19 (b) The person knew the artificial condition was likely to cause death or serious
20 bodily injury to such a trespasser;

21 (c) The artificial condition was of such a nature that the possessor had reason to
22 believe that the trespasser would not discover it; and

23 (d) The person failed to exercise reasonable care to warn the trespasser of the
24 artificial condition and the risk involved.

1 Section 5. A person with a possessory interest in land may be subject to liability for physical
2 injury or death to a known trespasser if:

3 (1) The trespasser was harmed as a result of the persons's failure to carry on dangerous
4 activities on the land with reasonable care for the trespasser's safety;

5 (2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable
6 care to warn the trespasser about an artificial condition maintained by the person, the
7 artificial condition involved a risk of death or serious bodily injury, and the artificial
8 condition was of such a nature that the person had reason to believe the trespasser
9 would not discover the artificial condition or realize the risk involved; or

10 (3) The person knew or had reason to know that the trespasser was in dangerous
11 proximity to a moving force in the person's immediate control just before the harm
12 occurred, and the trespasser was harmed as a result of the person's failure to exercise
13 reasonable care so as to prevent the force from harming the trespasser or failed to
14 exercise reasonable care to provide a warning that was reasonably adequate to allow
15 the trespasser to avoid the harm.

16 Section 6. For the purposes of this Act, a trespasser is any person who enters on the property
17 of another without permission and without an invitation, express or implied.

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496S0534

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1129** - 2/8/2011

Introduced by: Representative Conzet and Senator Nelson (Tom)

1 FOR AN ACT ENTITLED, An Act to define a loaded firearm.

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

3 Section 1. That § 22-1-2 be amended by adding thereto a NEW SUBDIVISION to read as
4 follows:

5 "Loaded firearm," any firearm containing an unexpended shell, cartridge, bullet, or projectile
6 in the chamber or cylinder;



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743S0390

HOUSE STATE AFFAIRS
ENGROSSED NO. **HB 1130** - 2/9/2011

Introduced by: Representatives Feinstein, Gosch, Hunhoff (Bernie), Kirkeby, Lucas, and
Lust and Senators Adelstein and Hansen (Tom)

1 FOR AN ACT ENTITLED, An Act to allow certain adult children of overseas citizens to vote
2 in the state.

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

4 Section 1. That § 12-4-4.4 be amended to read as follows:

5 12-4-4.4. Any overseas citizen ~~shall have the right to~~ may register and vote in any federal,
6 state, county, or local election held within South Dakota under the following conditions:

7 (1) The overseas citizen, or the spouse or parent of the overseas citizen, was last
8 domiciled in South Dakota immediately prior to departure from the United States;

9 (2) The overseas citizen does not maintain a domicile, is not registered to vote, and is not
10 voting in any other state;

11 (3) The overseas citizen is otherwise qualified to vote according to law.

12 Section 2. That § 12-4-4.5 be amended to read as follows:

13 12-4-4.5. The overseas citizen ~~shall be allowed to~~ may register and vote absentee in the same
14 county and election precinct in which the overseas citizen, or spouse or parent of the overseas



1 citizen, resided immediately prior to leaving the United States.

2 Section 3. That chapter 12-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If an overseas citizen who has never resided in South Dakota is eligible to register to vote
5 pursuant to § 12-4-4.4 as the adult child of an overseas citizen and has not reached the age of
6 twenty-two, the voter registration of the adult child shall be accompanied by a photocopy of the
7 adult child's United States passport identification page and an overseas registrant form
8 indicating where the adult child's parent is registered to vote in South Dakota. The State Board
9 of Elections shall prescribe the overseas registrant form.

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805S0031

HOUSE JUDICIARY ENGROSSED NO. **HB 1144** 2/9/2011

Introduced by: Representatives Hunt, Haggar, Hawley, Hubbel, Jensen, Kirkeby, Kirschman, Lucas, Moser, Novstrup (David), and Verchio and Senators Hansen (Tom), Begalka, Bradford, Kraus, Krebs, Lederman, and Nelson (Tom)

1 FOR AN ACT ENTITLED, An Act to create a statutory lien for certain health care providers.

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

3 Section 1. For the purposes of this Act, a health care provider is any health care professional
4 licensed, certified, or otherwise regulated to perform specified health services and any clinic in
5 which those services are provided.

6 Section 2. Each health care provider that furnishes services in the treatment of or in
7 connection with an injury not covered by the Workers' Compensation Act, if the injured party
8 asserts or maintains a claim against another for damages on account of the injury, has a lien
9 upon that part going or belonging to the injured party of any recovery or sum had or collected
10 or to be collected by the injured party, or by the injured party's heir or personal representative
11 in case of the injured party's death, whether by judgment or by settlement or compromise to the
12 amount of the reasonable and necessary charges of the health care provider for the treatment,
13 care, and maintenance of the injured party up to the date of payment of the damages.

14 Section 3. The lien granted by this Act may not in any way prejudice or interfere with any



1 lien or contract that may be made by such injured party or any heir or personal representative
2 of the injured party with any attorney for handling the claim on behalf of the injured party, any
3 heir, or personal representative.

4 Section 4. Except as provided in section 3 of this Act, any lien perfected pursuant to chapter
5 44-12 has priority for payment over any lien authorized by this Act.

6 Section 5. The lien set forth in section 2 of this Act may not be applied or considered valid
7 against anyone coming under the Workers' Compensation Act in this state.

8 Section 6. No lien created by this Act is effective, however, unless a written notice
9 containing the name and address of the injured party, the date of occurrence of the injury, the
10 name and address of the health care provider, and the name of the person alleged to be liable to
11 the injured party for the injuries received, is filed together with the post office receipt for such
12 mailing in the office of the register of deeds of the county in which the health care services were
13 provided, before the payment of any moneys to the injured party or the attorney or the legal
14 representative of the injured party, as compensation for the injury.

15 Section 7. Each register of deeds shall maintain a lien docket in which, upon the filing of
16 any lien claim pursuant to the provisions of this Act, the register of deeds shall enter the name
17 and address of the injured person, the name of the person alleged to be liable for the injury, the
18 date of occurrence of the injury, and the name and address of the health care provider making
19 the claim. The register of deeds shall make a proper index of the claim in the name of the
20 injured person and shall charge a fee in accordance with subdivision 7-9-15(3).

21 Section 8. The health care provider shall also mail by certified mail, postage prepaid, a copy
22 of the notice required by section 6 of this Act with a statement of the date of filing of the notice
23 to the person alleged to be liable to the injured party for the injury sustained before the payment
24 of any moneys to the injured party or the attorney or the legal representative of the injured party

1 as compensation for the injury.

2 Section 9. The health care provider shall mail by certified mail, postage prepaid, a copy of
3 the notice required by section 6 of this Act to any insurance carrier that has insured the person
4 alleged to be liable against such liability. The person alleged to be liable to the injured person
5 shall, upon request of the health care provider, disclose the name of the insurance carrier that
6 has insured such person against such liability.

7 Section 10. Any person making any payment to the injured party or to the injured party's
8 attorney, heir, or legal representative as compensation for the injury sustained, after the filing
9 and mailing of the notice, without paying to the health care provider the amount of its lien or
10 so much thereof as can be satisfied out of the moneys due under any final judgment or
11 compromise or settlement agreement, after paying the amount of any prior lien, is liable, for a
12 period of one year from the date of payment of moneys to the injured party or the injured party's
13 heir, attorney, or legal representative, as provided in this section to the health care provider for
14 the amount that the health care provider was entitled to receive as provided in this section. Any
15 such health care provider may, within such period, enforce the lien by a suit at law against the
16 person making such payment.

17 Section 11. For any lien acquired pursuant to this Act, the amount of the lien may not exceed
18 the amount the health care provider is entitled to pursuant to any contract the health care
19 provider may have with an insurance carrier. The limitations in subdivision 58-17C-14(2) apply
20 to the amount of the lien.

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682S0558

HOUSE JUDICIARY ENGROSSED NO. **HB 1145** 2/9/2011

Introduced by: Representatives Hunt, Boomgarden, Gibson, Nelson (Stace), Rausch, and Turbiville and Senators Rave, Hunhoff (Jean), Schlekeway, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for the identification of the law applicable to
2 certain claims for damages.

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

4 Section 1. That chapter 21-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In any action arising out of an injury to the person, the local law of the state where the injury
7 occurs determines whether a claim for damages survives the death of the party sought to be held
8 liable or of the injured person. For purposes of this section, the place where the injury occurs
9 is the place where the forces causing the injury first result in actionable injury to the injured
10 person.



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391S0303

HOUSE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **HB 1146** - 2/8/2011

Introduced by: Representatives Kirkeby, Fargen, Haggar, Hubbel, Hunt, Jensen, Kirschman, Moser, Novstrup (David), and Verchio and Senators Hansen (Tom), Begalka, Bradford, Lederman, and Nygaard

1 FOR AN ACT ENTITLED, An Act to limit copayment or coinsurance amounts for chiropractic
2 services.

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

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No health insurer may impose any copayment or coinsurance amount on an insured for
7 services rendered by a doctor of chiropractic licensed pursuant to chapter 36-5 that is greater
8 than the copayment or coinsurance amount imposed on the insured for the services of a primary
9 care physician or practitioner for the same or a similar diagnosed condition even if a different
10 nomenclature is used to describe a condition.



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724S0511

HOUSE TAXATION ENGROSSED NO. **HB 1147** - 2/8/2011

Introduced by: Representatives Solum, Brunner, Fargen, Hoffman, Hunhoff (Bernie), Kopp, Moser, Rausch, Russell, Vanneman, and Willadsen and Senators Hansen (Tom), Frerichs, Fryslie, Garnos, Lederman, Maher, Nelson (Tom), Rhoden, and Sutton

1 FOR AN ACT ENTITLED, An Act to revise the taxation of rural electric companies with
2 respect to receipts collected for compliance with certain environmental laws.

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

4 Section 1. That § 10-36-5 be amended to read as follows:

5 10-36-5. On April fifteenth of each year, each company shall file with the secretary of
6 revenue and regulation on forms prescribed by ~~him~~ the secretary a report of its gross receipts
7 derived from furnishing electric energy during the preceding calendar year. The report shall set
8 forth the total gross receipts, the receipts collected by the company to comply with federal and
9 state environmental laws, rules, and regulations related to greenhouse gas emissions or global
10 climate change, and the amount of dividends and patron's credits of the company in the state,
11 ~~together with the total gross receipts and the amount of dividends and patron's credits from each~~
12 ~~county in which the company operates and shall further contain the total gross receipts and the~~
13 ~~amount of dividends and patron's credits received by the company within each school district~~



1 in each county in which the company operates. The report shall be sworn to and verified by an
2 officer of the company.

3 Section 2. That § 10-36-6 be amended to read as follows:

4 10-36-6. There is levied on each company, as of May first of each year, a tax of two percent
5 upon the gross receipts derived by it from the furnishing of electric energy during the preceding
6 calendar year. Gross receipts for taxation purposes may not include the receipts collected by the
7 company to comply with federal and state environmental laws, rules, and regulations related to
8 greenhouse gas emissions or global climate change, or dividends or distributions to patrons
9 whether paid or credited.

10 Each company taxed pursuant to § 10-36-6 shall receive a credit against the gross receipts
11 tax due and payable if it has contracted jointly or severally for the use of property in this state
12 owned, held under lease, or otherwise by a light or power company defined in § 10-35-2, a
13 consumer power district organized pursuant to chapter 49-35, or a municipal power agency
14 organized pursuant to chapter 9-41A if the property is assessed for taxation pursuant to chapter
15 10-35, subject to an excise tax as provided in § 49-37-13, or taxed as provided in § 9-41A-36.
16 A company taxed pursuant to § 10-36-6 may deduct as a credit from the gross receipts tax to be
17 paid, that portion of the taxes included in the payments by the company to such organizations
18 for the use of the property described in the contract.

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822S0513

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1163** - 2/8/2011

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

Introduced by: Representatives Nelson (Stace), Greenfield, Haggar, Hoffman, Hubbel, Kloucek, Magstadt, Miller, Olson (Betty), Solum, Stricherz, Tulson, and Verchio and Senators Brown, Frerichs, Gray, Maher, Nygaard, Rave, and Tieszen

1 FOR AN ACT ENTITLED, An Act to allow certain disabled veterans to obtain a disabled
2 hunter permit.

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

4 Section 1. That § 41-8-37 be amended to read as follows:

5 41-8-37. ~~No~~ Except as provided in this section, no person, who is in or on a motor vehicle,
6 may discharge a firearm or bow and arrow at any wild animals except coyotes, jackrabbits,
7 rodents, skunks, badgers, raccoons, and foxes.

8 Licensed hunters who have a disability rating by the United States Department of Veterans
9 Affairs of at least thirty percent, and licensed hunters who are paraplegics or otherwise
10 physically unable to walk with or without crutches, braces, or other mechanical support or who
11 are otherwise considered to be limited or impaired in their ability to walk, ~~and who have~~ may
12 apply for and shall receive a disabled hunter permit. Any licensed hunter who has been issued
13 a disabled hunter permit by the department, may shoot in fields, woods, or from public roads



1 from a stationary motor vehicle while hunting game animals or game birds in accordance with
2 the conditions of the permit and rules promulgated by the Game, Fish and Parks Commission.

3 The commission shall promulgate rules pursuant to chapter 1-26 to establish the definition of
4 disabled hunter; the eligibility criteria, application, and approval procedures for issuance of a
5 disabled hunter permit; the duration of a permit; and the extent of the permitted shooting
6 activities.

7 A violation of this section is a Class 2 misdemeanor.

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463S0397

HOUSE JUDICIARY ENGROSSED NO. **HB 1171** - 2/9/2011

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

Introduced by: Representatives Jensen, Bolin, Brunner, Greenfield, Haggar, Hansen (Jon), Hickey, Hoffman, Hubbel, Kopp, Magstadt, Miller, Nelson (Stace), Olson (Betty), Rausch, Russell, Sly, Steele, Stricherz, Van Gerpen, Venner, Verchio, and Willadsen and Senators Kraus, Fryslie, Lederman, and Maher

1 FOR AN ACT ENTITLED, An Act to expand the definition of justifiable homicide to provide
2 for the protection of certain unborn children.

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

4 Section 1. That § 22-16-34 be amended to read as follows:

5 22-16-34. Homicide is justifiable if committed by any person while resisting any attempt
6 to murder such person, or to harm the unborn child of such person in a manner and to a degree
7 likely to result in the death of the unborn child, or to commit any felony upon him or her, or
8 upon or in any dwelling house in which such person is.

9 Section 2. That § 22-16-35 be amended to read as follows:

10 22-16-35. Homicide is justifiable if committed by any person in the lawful defense of such
11 person, or of his or her husband, wife, parent, child, master, mistress, or servant, or the unborn
12 child of any such enumerated person, if there is reasonable ground to apprehend a design to
13 commit a felony, or to do some great personal injury, and imminent danger of such design being



1 accomplished.

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767S0475

HOUSE ENGROSSED NO. **HB 1175** - 2/14/2011

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

Introduced by: Representatives Perry, Brunner, Schaefer, Sly, Tulson, Venner, and White
and Senator Gray

1 FOR AN ACT ENTITLED, An Act to establish the jump start scholarship program.

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

3 Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 There is hereby established the jump start scholarship program to be administered by the
6 Board of Regents. The purpose of the program is to allow a student who graduates from a public
7 high school in three years or less to receive a scholarship funded with a portion of the money
8 saved by the state in state aid to education funding pursuant to chapter 13-13 as a result of the
9 student's early graduation if the student enrolls at any college, university, or technical school
10 accredited by the North Central Association of Colleges and Schools that provides instruction
11 from a campus located in South Dakota.

12 Section 2. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 To be eligible for the jump start scholarship program, a student shall:



- 1 (1) Be a resident of South Dakota;
- 2 (2) Complete the requirements of the recommended high school program as established
3 by the Board of Education pursuant to § 13-1-12.1, and be awarded a high school
4 diploma by a public high school by the end of grade eleven, including any summer
5 school courses completed before the end of that school fiscal year;
- 6 (3) Have attended a public high school in South Dakota on a full-time basis for at least
7 two semesters prior to graduating; and
- 8 (4) Within one year of graduating from high school, excluding any time served on active
9 duty in the armed forces of the United States, enroll in a college, university, or
10 technical school accredited by the North Central Association of Colleges and Schools
11 that provides instruction from a campus located in South Dakota.

12 No student who enrolls in a high school for all or any part of grade twelve is eligible for the
13 jump start scholarship program.

14 Section 3. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The amount of the scholarship award is equal to seventy-five percent of the statewide
17 average percentage of the current fiscal year's per student allocation as defined in subdivision
18 13-13-10.1(4) that is paid by the state. One half of the award shall be paid to an approved
19 institution on behalf of any eligible student there enrolled at the beginning of the fall semester,
20 and the other half shall be paid in the same manner at the beginning of the spring semester. A
21 student must be enrolled full-time during the spring semester in order to receive the second
22 installment.

23 Section 4. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Any eligible student seeking to obtain a jump start scholarship shall, by September first of
2 the year following the student's eleventh grade year, apply for admission to an approved
3 postsecondary education institution. The institution shall determine the student's initial
4 eligibility, and once the student is admitted into the jump start scholarship program, the
5 executive director of the Board of Regents shall make scholarship payments to the institution
6 on behalf of the student. The approved institutions shall submit to the Board of Regents the
7 names of all eligible students by October first for the first semester and by February twenty-fifth
8 for the second semester, and once the eligibility of each student is verified, the executive
9 director of the Board of Regents shall distribute the funds necessary to award the scholarship
10 to each eligible student to the approved institutions for the first semester on October fifteenth
11 or the first working day thereafter, and for the second semester on March fifteenth or the first
12 working day thereafter.

13 Section 5. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The secretary of the Department of Education shall transfer to the executive director of the
16 Board of Regents, on a noncash basis, from funds appropriated for state aid to general education
17 pursuant to chapter 13-13, the amount of money necessary to award the jump start scholarships
18 to all students admitted into the scholarship program for that fiscal year. One-half of the
19 necessary amount shall be transferred by October fifteenth for distribution for the first semester,
20 and one-half of the necessary amount shall be transferred by March fifteenth for distribution for
21 the second semester. Upon receipt, the executive director of the Board of Regents shall
22 distribute the funds pursuant to section 4 of this Act.

23 Section 6. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The secretary of the Department of Education shall transfer on a noncash basis to the
2 executive director of the Board of Regents the amount of foundation program funds necessary
3 to award jump start scholarships pursuant to this Act to all students admitted into the
4 scholarship program for that fiscal year. One-half of the necessary amount shall be transferred
5 by October fifteenth for distribution for the first semester, and one-half of the necessary amount
6 shall be transferred by March fifteenth for distribution for the second semester.

7 Section 7. That § 13-13-73 be amended to read as follows:

8 13-13-73. The secretary of the Department of Education shall compute state aid to education
9 for each school district under the foundation program according to the following calculations:

- 10 (1) Determine each school district's fall enrollment;
- 11 (2) To arrive at the local need per district:
 - 12 (a) Multiply the per student allocation by the fall enrollment;
 - 13 (b) Multiply the small school adjustment, if applicable, by the fall enrollment; and
 - 14 (c) Add the product of subsection (a) to the product of subsection (b);
- 15 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
16 negative number;
- 17 (4) If the state aid appropriation for the general support of education is in excess of the
18 entitlement provided for in this section and the entitlement provided for in section 6
19 of this Act, the excess shall be used to fund any shortfall of the appropriation as
20 provided for in § 13-37-36.3. The secretary shall report to the Governor by January
21 seventh of each year, the amount of state aid necessary to fully fund the general aid
22 formula in the current year. If a shortfall in the state aid appropriation for general
23 education exists that cannot be covered by § 13-37-45, the Governor shall inform the
24 Legislature and provide a proposal to eliminate the shortfall.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

817S0285

HOUSE ENGROSSED NO. **HB 1184** - 2/14/2011

Introduced by: Representatives Gosch, Abdallah, Blake, Brunner, Cronin, Deelstra, Dennert, Elliott, Fargen, Feinstein, Gibson, Haggar, Hansen (Jon), Hoffman, Hubbel, Hunhoff (Bernie), Kirkeby, Liss, Lucas, Magstadt, Miller, Moser, Nelson (Stace), Rausch, Sly, Tornow, Venner, Verchio, Wick, and Wismer and Senators Cutler, Bradford, Kraus, Nelson (Tom), Nygaard, Rempelberg, Rhoden, and Sutton

1 FOR AN ACT ENTITLED, An Act to limit the subrogation of certain insurers unless and until
2 the insured is fully compensated.

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

4 Section 1. That chapter 58-11 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No insurer under this chapter is entitled to participate in any recovery from any tortfeasor
7 on account of bodily injury or death or damage to property unless and until its insured has first
8 been fully compensated as provided in § 21-3-1. The provisions of this Act do not apply to any
9 workers' compensation insurer.



State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

553S0072

HOUSE ENGROSSED NO. **HB 1185** - 2/14/2011

Introduced by: Representatives Romkema, Blake, Bolin, Boomgarden, Dryden, Hunhoff (Bernie), Kirkeby, Munsterman, Sly, Verchio, and Wick and Senators Hunhoff (Jean), Krebs, Rhoden, Schlekeway, and Tidemann

1 FOR AN ACT ENTITLED, An Act to regulate persons offering speech-language pathology to
2 the public.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the Board of Examiners for Speech-Language Pathology;

6 (2) "Department," the Department of Health;

7 (3) "Endoscopy," an imaging procedure included within the scope of practice for
8 speech-language pathologists in which a speech-language pathologist uses a
9 flexible/nasal endoscopy, rigid/oral endoscopy, or stroboscopy for the purpose of
10 evaluating and treating disorders of speech, voice, resonance, and swallowing
11 function;

12 (4) "Provisional license," the license issued to an applicant who is practicing
13 speech-language pathology while completing the supervised postgraduate
14 professional experience following completion of master's degree in speech-language



1 pathology;

2 (5) "Speech-language pathologist," any person who engages in the practice of
3 speech-language pathology and who meets the qualifications set forth in this Act. A
4 person represents oneself to be a speech-language pathologist when one holds
5 himself or herself out to the public by any means, or by any service or function
6 performed, directly or indirectly, or by using the terms, speech pathology, speech
7 pathologist, speech therapy, speech therapist, speech teacher, speech correction,
8 speech correctionist, speech clinic, speech clinician, language therapy, language
9 therapist, language pathology, language pathologist, language specialist, voice
10 therapy, voice therapist, voice pathologist, logopedics, logopedist, communicology,
11 communicologist, aphasiology, aphasiologist, phoniatriest, or any variation, synonym,
12 coinage or other word that expresses, employs, or implies these terms, names, or
13 functions;

14 (6) "Speech-language pathology assistant," any person who assists in the practice of
15 speech-language pathology and who meets the qualifications set forth in this Act. A
16 person represents oneself to be a speech-language pathology assistant when one holds
17 himself or herself out to the public by any means, or by any service or function
18 performed, directly or indirectly, or by using the terms, speech pathology
19 assistant/aide, speech pathologist assistant/aide, speech therapy assistant/aide, speech
20 therapist assistant/aide, speech teacher assistant/aide, speech correction assistant/aide,
21 speech correctionist assistant/aide, speech clinic assistant/aide, speech clinician
22 assistant/aide, language therapy assistant/aide, language therapist assistant/aide,
23 language pathology assistant/aide, language pathologist assistant/aide, language
24 specialist assistant/aide, voice therapy assistant/aide, voice therapist assistant/aide,

1 voice pathologist assistant/aide, logopedics assistant/aide, logopedist assistant/aide,
2 communicology assistant/aide, communicologist assistant/aide, aphasiology
3 assistant/aide, aphasiologist assistant/aide, phoniatriest assistant/aide, or any variation,
4 synonym, coinage, or other word that expresses, employs, or implies these terms,
5 names, or functions;

6 (7) "Telepractice," telespeech, teleaudiology, telespeech-language pathology, or
7 telehealth when used separately or together. Telepractice service means the
8 application of telecommunication technology to deliver speech-language pathology
9 at a distance for assessment, intervention, or consultation. Services delivered via
10 telespeech or teleaudiology must be equivalent to the quality of services delivered
11 face-to-face.

12 Section 2. For the purposes of this Act, the practice of speech-language pathology is the
13 application of principles, methods, and procedures related to the development, disorders, and
14 effectiveness of human communication and related functions including providing prevention,
15 screening, consultation, assessment/evaluation, diagnosis, treatment/intervention/ management,
16 counseling, collaboration, and referral services for disorders of speech, language, feeding, and
17 swallowing, and for cognitive aspects of communication. The practice of speech-language
18 pathology also includes establishing augmentative and alternative communication techniques
19 and strategies, including developing, selecting, and prescribing of such systems and devices,
20 providing services to individuals with hearing loss and their families, screening individuals for
21 hearing loss or middle ear pathology using conventional pure-tone air conduction methods,
22 otoacoustic emissions screening, or screening tympanometry, using instrumentation to observe,
23 collect data, and measure parameters of communication and swallowing, selecting, fitting, and
24 establishing effective use of prosthetic or adaptive devices for communication, swallowing, or

1 other upper aerodigestive functions, and providing services to modify or enhance
2 communication performance.

3 Section 3. No person may practice speech-language pathology or represent himself or herself
4 as a speech-language pathologist in this state, unless such person is licensed in accordance with
5 this Act. A person may be licensed in both audiology and speech-language pathology if that
6 person meets the respective qualifications.

7 Section 4. After June 30, 2012, no person may be hired by any public or nonpublic school
8 to practice speech-language pathology unless licensed in accordance with this Act.

9 Section 5. Any person who is employed as a speech-language pathologist as of July 1, 2011,
10 and does not otherwise meet the qualifications set forth in this Act, may obtain a license and
11 practice as a speech-language pathologist as long as the speech-language pathologist is
12 continuously employed while performing the duties of that employment. This exception expires
13 January 1, 2020.

14 Section 6. Nothing in this Act may be construed as preventing or restricting:

- 15 (1) Any person licensed, certified, registered, or otherwise credentialed by this state in
16 professions other than speech-language pathology from practicing the profession for
17 which he or she is licensed, certified, registered, or credentialed;
- 18 (2) Any person certified as a teacher of the deaf;
- 19 (3) The activities and services of any person pursuing a course of study leading to a
20 degree in speech-language pathology or as a speech-language pathology assistant at
21 a college, university, or technical institute if:
- 22 (a) The activities and services constitute a part of a planned course of study at that
23 institution;
- 24 (b) The person is designated by a title such as intern, trainee, student, or by other

1 such title clearly indicating the status appropriate to their level of education;
2 and

3 (c) The person works under the supervision of a person licensed by this state to
4 practice speech-language pathology;

5 (4) The activities of any person who is not a resident of this state from engaging in the
6 practice of speech-language pathology as long as the activities of the person do not
7 exceed five days in any calendar year and if the person:

8 (a) Meets the qualifications of this Act;

9 (b) Registers with the board; and

10 (c) Agrees to abide by the standards of professional conduct.

11 Section 7. Any person who is licensed as a speech-language pathologist, who assesses,
12 selects, develops, and fits products related to speech, language, or swallowing, shall:

13 (1) Register with the board the person's intent to assess, select, develop, and fit products
14 related to speech, language, and swallowing; and

15 (2) Provide in any written contract for services the name, mailing address, and telephone
16 number of the board.

17 Section 8. Any speech-language pathologist who supervises a speech-language pathology
18 assistant, shall:

19 (1) Register with the board the name of each assistant working under his or her
20 supervision;

21 (2) Be responsible for the extent, kind, and quality of service provided by the assistant,
22 consistent with the board's designated standards and requirements; and

23 (3) Ensure that persons receiving services from an assistant receive prior written
24 notification that services are to be provided, in whole or in part, by a speech-language

1 pathology assistant.

2 Section 9. Any person who is licensed as a speech-language pathologist may perform
3 assessment, treatment, and procedures related to speech, voice, resonance, and swallowing
4 function using nonmedical endoscopy. A licensed speech-language pathologist may not perform
5 an endoscopic procedure unless he or she has received training and is competent to perform
6 these procedures. A licensed speech-language pathologist shall have protocols in place for
7 emergency medical backup when performing procedures using an endoscope.

8 Section 10. Any licensed speech-language pathologist may provide speech-language
9 pathology services via telepractice in this state. No person licensed as a speech-language
10 pathologist in another state may engage in the practice of speech language pathology in this
11 state, hold himself or herself out as qualified to do such practice, or use any title, word, or
12 abbreviation to indicate to or induce others to believe that he or she is licensed to practice
13 speech-language pathology in this state unless he or she has been issued a limited license in this
14 state to practice telepractice.

15 Section 11. There is hereby created a Board of Examiners for Speech-Language Pathology
16 under the jurisdiction of the Department of Health. The board shall consist of five members
17 appointed by the Governor who are residents of this state. Three of the members shall be
18 speech-language pathologists who are currently practicing speech-language pathology, who have
19 five years experience practicing speech-language pathology, and who hold a license to practice
20 speech-language pathology in this state, except for the first speech-language pathologists
21 appointed who shall meet the eligibility requirements for licensure. Two of the members shall
22 be representatives of the public who are not associated with or financially interested in the
23 practice or business of speech-language pathology.

24 Section 12. Each appointment to the board shall be for a period of three years except for the

1 initial appointments which shall be of staggered terms. Each member shall serve until the
2 expiration of the term for which the member has been appointed or until the member's successor
3 has been appointed and is deemed to be qualified to serve on the board. If a vacancy occurs
4 other than by expiration of a term, the Governor shall appoint a qualified person to fill the
5 vacancy for the unexpired term. No member may serve more than three consecutive three-year
6 terms.

7 The Governor may remove any member of the board for unprofessional conduct,
8 incompetency, or neglect of duty.

9 Section 13. The board shall meet during the first quarter of each calendar year to select a
10 chair and vice chair and to conduct other business. At least one additional meeting shall be held
11 before the end of each calendar year. Additional meetings may be convened at the call of the
12 chair or at the request of two or more board members.

13 Four members of the board constitutes a quorum to do business if the majority of members
14 present are speech-language pathologists.

15 Section 14. Members of the board shall receive a per diem established pursuant to § 4-7-10.4
16 and expenses at the same rate as other state employees while actually engaged in official duties.

17 Section 15. The board has the following powers and duties:

18 (1) Administer, coordinate, and enforce the provisions of this Act, evaluate the
19 qualifications of applicants, supervise the examination of applicants, and issue and
20 renew licenses;

21 (2) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and, at its
22 discretion, investigate allegations of violations of this Act and impose penalties for
23 any violations;

24 (3) Promulgate rules pursuant to chapter 1-26 to delineate qualifications for licensure,

- 1 specify requirements for the renewal of licensure, regulate the delivery of services via
2 telepractice, establish standards of professional conduct, and establish application,
3 licensure, renewal, and late fees not to exceed one hundred dollars each;
- 4 (4) Have available the names and addresses of persons currently licensed pursuant to the
5 provision of this Act;
 - 6 (5) Employ such personnel as determined by its needs and budget;
 - 7 (6) Request legal advice and assistance, as needed, from the Attorney General's Office;
 - 8 (7) Enter into such contracts as necessary to carry out its responsibilities under this Act;
 - 9 (8) Hire legal counsel, if deemed necessary;
 - 10 (9) Establish a budget;
 - 11 (10) Submit reports of its operations and finances as required by § 4-7-7.2;
 - 12 (11) Adopt an official seal by which it shall authenticate its proceedings, copies, records,
13 acts of the board, and licenses; and
 - 14 (12) Communicate disciplinary actions to relevant state and federal authorities and to
15 other state speech-language pathology licensing authorities.

16 No member of the board is liable for civil action for any act performed in good faith in the
17 performance of his or her duties as prescribed by law.

18 Section 16. All moneys coming into the custody of the board, including any fees and any
19 other payments, shall be paid by the board to the state treasurer on or before the tenth day of
20 each month, and shall consist of all moneys received by the board during the preceding calendar
21 month. The state treasurer shall credit the moneys to the Board of Examiners for Speech-
22 Language Pathology account, which account is hereby created. The moneys in the account are
23 hereby continuously appropriated to the board for the purpose of paying the expense of
24 administering and enforcing the provisions of this Act. The total expenses incurred by the board

1 may not exceed the total moneys collected.

2 Section 17. To be eligible for licensure by the board as a speech-language pathologist, the
3 applicant shall:

- 4 (1) Submit an application, upon a form prescribed by the board;
- 5 (2) Pay the application fee;
- 6 (3) Possess a master's or doctoral degree from an educational institution accredited by
7 the accrediting agency of the American Speech-Language-Hearing Association and
8 approved by the United States Department of Education;
- 9 (4) Complete supervised clinical practicum experiences from an educational institution
10 or its cooperating programs;
- 11 (5) Complete a supervised postgraduate professional experience;
- 12 (6) Pass the Praxis II examination in speech-language pathology; and
- 13 (7) Have committed no act for which disciplinary action may be justified.

14 Section 18. Any person granted a master's equivalency before July 1, 2011, shall be issued
15 a license pursuant to this Act, as long as that person is continuously performing the duties of his
16 or her employment.

17 Section 19. The board may waive the education, practicum, and professional experience
18 requirements for any applicant who:

- 19 (1) Received professional education in another country if the board is satisfied that
20 equivalent education and practicum requirements have been met; and
- 21 (2) Met the examination requirement of subdivision (3) of section 17 of this Act.

22 Section 20. The board shall waive the qualifications in subdivisions (3), (4), (5), and (6) of
23 section 17 of this Act for any applicant who:

- 24 (1) Presents proof of current licensure in a state that has standards that are equivalent to

1 or greater than those of this state; or

2 (2) Holds a current Certificate of Clinical Competence in Speech-Language Pathology
3 from the American Speech-Language-Hearing Association in the area for which they
4 are applying for licensure.

5 Any applicant who holds current licensure from another state with equivalent or greater
6 standards or who holds the Certificate of Clinical Competence from the American
7 Speech-Language-Hearing Association may practice speech-language pathology in this state,
8 pending board disposition of the application, if the applicant:

9 (1) Is practicing in the area in which the licensure or Certificate of Clinical Competence
10 was granted;

11 (2) Has filed an application with the board and paid the application fee; and

12 (3) Has not committed any act for which disciplinary action may be justified.

13 Section 21. The board shall issue a provisional license in speech-language pathology to an
14 applicant who:

15 (1) Except for the postgraduate professional experience, meets the academic, practicum,
16 and examination requirements of this Act;

17 (2) Submits an application, upon a form prescribed by the board, including a plan for the
18 content of the postgraduate professional experience;

19 (3) Pays the application fee for a provisional license; and

20 (4) Has not committed any act for which disciplinary action may be justified.

21 A person holding a provisional license may practice speech-language pathology while
22 completing the postgraduate professional experience in speech-language pathology. However,
23 a person holding a provisional license may practice speech-language pathology only while
24 working under the supervision of a licensed speech-language pathologist. The term for a

1 provisional license and the conditions for its renewal shall be determined by the board in rules
2 promulgated pursuant to chapter 1-26.

3 Section 22. Upon receiving a completed application and any required documentation,
4 verification of licensure or certification, and payment of any required fee, the board may issue
5 a limited license for interstate telepractice, if the following conditions are met:

6 (1) The speech-language pathologist is actively licensed or certified to practice without
7 restriction in the state from which the speech-language pathologist or audiologist
8 provides telepractice services;

9 (2) The speech-language pathologist has not had a license to practice speech-language
10 pathology revoked or restricted in any state or jurisdiction;

11 (3) In the event of a previous disciplinary action against the applicant, the board finds
12 that the previous disciplinary action does not indicate that the speech-language
13 pathologist is a potential threat to the public;

14 (4) The speech-language pathologist agrees to be subject to the state laws, the state
15 judicial system, and the board with respect to providing speech-language pathology
16 or audiology services to this state's residents.

17 A telepractitioner shall comply with any statute or rule governing the maintenance of client
18 records, including client confidentiality requirements, regardless of the state where the records
19 of any client within this state are maintained.

20 Section 23. A speech-language pathologist license issued pursuant to this Act expires
21 biennially at a time specified by the board by rules promulgated pursuant to chapter 1-26. Each
22 speech-language pathologist licensed pursuant to this Act shall:

23 (1) Pay the fee established by the board;

24 (2) Submit an application for renewal on a form prescribed by the board;

1 (3) Complete twenty contact hours or two units of continuing education approved by the
2 board for each two-year renewal period; and

3 (4) Meet any other requirements for license renewal the board establishes by rule.

4 A licensee may renew a license up to thirty days after the expiration if the licensee meets
5 requirements for renewal, pays the renewal fee, and any late fee established by the board.

6 Section 24. A suspended license is subject to expiration and may be renewed as provided
7 in this Act, but such renewal does not entitle the licensee, while the license remains suspended
8 and until it is reinstated, to engage in the licensed activity, or any other conduct or activity in
9 violation of the order of judgment by which the license was suspended.

10 Section 25. A license revoked on disciplinary grounds is subject to expiration as provided
11 in this Act, but it may not be renewed. If such license is reinstated after its expiration, the
12 licensee, as a condition of reinstatement, shall meet the license requirements for new licensees
13 and shall pay a reinstatement fee that is equal to the renewal fee in effect on the last regular
14 renewal date immediately preceding the date of reinstatement.

15 Section 26. Any person who fails to renew his or her license by the end of the thirty-day
16 grace period may have the license reinstated if the person:

17 (1) Submits an application for reinstatement to the board within five years after the
18 expiration date of the license;

19 (2) Provides documentation of having completed the continuing education requirements
20 for the period in which the license has lapsed; and

21 (3) Pays a reinstatement fee that shall equal the renewal fee in effect on the last regular
22 renewal date immediately preceding the date of reinstatement, plus any late fee set
23 by the board.

24 Any person who fails to renew his or her license within five years after the expiration date

1 may not have the license renewed. However, the person may apply for and obtain a new license
2 by meeting the requirements for initial licensure.

3 Section 27. The board may adopt rules, pursuant to chapter 1-26, permitting inactive
4 licensure. The rules shall specify the requirements and procedures for placing a license on
5 inactive status, the length a license may remain on inactive status, and the requirements and
6 procedures to activate an inactive license. Except as otherwise specified by rule, an inactive
7 licensee may not engage in the practice of speech-language pathology.

8 Section 28. The board may grant a license to any person who has successfully complied with
9 the requirements of the American Speech-Language-Hearing Association, holds a Certificate
10 of Clinical Competence in speech-language pathology, and holds a current license in another
11 state in speech-language pathology if the following conditions are met:

- 12 (1) The other state maintains a standard of qualifications and examinations for
13 speech-language pathologists that meets or exceeds the requirements for licensure in
14 this state;
- 15 (2) Payment of the fee established by the board for licensure; and
- 16 (3) Submission of evidence satisfactory to the board of current out-of-state license.

17 Section 29. The board may grant a license to practice speech-language pathology to an
18 applicant who completed an educational program in a college or university in a foreign country
19 if the applicant submits one of the following:

- 20 (1) Proof satisfactory to the board that the applicant has received a Master's or doctorate
21 degree for speech-language pathology from a foreign institution which was
22 accredited, at the time the degree was conferred, by an accrediting body recognized
23 by the national government of the country in which the institution is located; or
- 24 (2) A certification from a private education evaluation service approved by the board that

1 the applicant's foreign education is equivalent to the education provided by an
2 accredited program; or

3 (3) A certification from the American Speech-Language-Hearing Association.

4 Section 30. Any person not eligible for licensure as a speech-language pathologist or not
5 eligible for authorization to practice as an intern, who assists in the practice of speech-language
6 pathology while in the employ of and under the supervision of a licensed speech-language
7 pathologist shall apply for and receive licensure from the board as a speech-language pathology
8 assistant. Before granting such licensure the board shall consider the academic training and
9 clinical experience of the applicant, the specific duties and responsibilities assigned, the amount
10 and nature of the supervision that is available to the assistant, and the number of assistants
11 assigned to the proposed supervisor. Each applicant shall satisfy one of the following
12 requirements:

13 (1) Any applicant applying for licensure with an associate's degree shall produce written
14 notification from the chair or program director of an academic institution verifying
15 that the applicant attended the academic institution and completed the academic
16 course work requirement and clinical work requirement. This written notification
17 shall serve as presumptive proof of completion of the requirements;

18 (2) Any applicant applying for licensure with a bachelor's degree shall produce written
19 notification from the chair or program director of an academic institution verifying
20 that the applicant attended the academic institution and completed the academic
21 course work requirement. An official transcript from the institution satisfies the
22 requirements of this section.

23 Nothing in this section may be construed to prevent a speech-language pathologist from
24 employing any person in a nonclinical capacity.

1 Section 31. Any person who is employed as a speech-language pathology assistant as of
2 July 1, 2011, and does not otherwise meet the qualifications set forth in this Act, may obtain a
3 license and practice as a speech-language pathology assistant as long as the assistant is
4 continuously employed while performing the duties of that employment. This exception expires
5 January 1, 2020.

6 Section 32. An assistant shall be supervised by a licensed speech-language pathologist. An
7 assistant may have more than one supervisor if the board is notified and any supervisor meets
8 the requirements of this Act. If for any reason the supervising speech-language pathologist is
9 no longer available to provide the level of supervision stipulated, the supervisor and assistant
10 shall notify the board. The speech-language pathology assistant may not perform any additional
11 tasks until a licensed speech-language pathologist with at least two years of experience has been
12 designated as the speech-language pathology assistant's supervisor and the board has approved
13 the change.

14 Section 33. A speech-language pathologist shall provide no less than thirty percent direct
15 and indirect supervision weekly for the first ninety days and no less than twenty percent direct,
16 onsite supervision weekly for each speech-language pathology assistant the speech-language
17 pathologist supervises. After successful completion of the first ninety days, the supervising
18 speech-language pathologist shall provide no less than twenty percent supervision weekly and
19 no less than ten percent direct, onsite supervision weekly. The supervising speech-language
20 pathologist shall be available by electronic means at all times when the speech-language
21 pathology assistant is performing clinical activities. The assistant shall document the
22 supervision.

23 For the purposes of this Act, direct supervision is in-view observation and guidance by a
24 speech-language pathologist while an assigned activity is performed by an assistant. Indirect

1 supervision is any activity other than direct observation and guidance, conducted by a speech-
2 language pathologist that may include methods such as audio recordings, videotape recordings,
3 telephone communications, conferences, and review of data.

4 Section 34. An applicant for licensure as a speech-language pathology assistant shall submit
5 an application, upon a form prescribed by the board, that is signed by both the applicant and the
6 supervising speech-language pathologist. The supervising speech-language pathologist shall
7 submit a notarized statement explicitly indicating that the supervisor agrees to supervise the
8 assistant's practice and that the supervisor accepts full and complete responsibility for that
9 practice. If the applicant is not currently employed, the application shall be signed by the chair
10 of the academic program of the institution conferring the degree. Within thirty days of the
11 applicant's employment, the supervising speech-language pathologist shall submit a notarized
12 statement explicitly indicating that the supervisor agrees to supervise the assistant's practice and
13 that the supervisor accepts full and complete responsibility for that practice.

14 Section 35. A speech-language pathology assistant license expires at a time specified by the
15 board by rules promulgated pursuant to chapter 1-26. Each speech-language pathology assistant
16 licensed pursuant to this Act shall:

- 17 (1) Pay the fee established by the board;
- 18 (2) Submit an application for renewal on a form prescribed by the board; and
- 19 (3) Complete continuing education requirements consistent with those required for
20 speech-language pathologists.

21 Section 36. A supervising speech-language pathologist must have a valid license as a
22 speech-language pathologist. Each supervising speech-language pathologists shall:

- 23 (1) Register with the board the name of each assistant;
- 24 (2) Be responsible for the extent, kind, and quality of service provided by the assistant,

1 consistent with the board's designated standards and requirements; and

- 2 (3) Ensure that persons receiving services from an assistant receive prior written
3 notification that services are to be provided, in whole or in part, by a speech-language
4 pathology assistant.

5 No speech-language pathologist may supervise more than three speech-language pathology
6 assistants at one time.

7 Section 37. Each speech-language pathology assistant applicant shall:

- 8 (1) Hold an associate's degree or bachelor's degree with a major emphasis in
9 speech-language pathology from an accredited educational institution approved by
10 the board;
- 11 (2) Submit a bona fide official transcript and verification of academic preparation and
12 clinical experience reflecting a minimum of fifteen semester credit hours in general
13 education, a minimum of twenty semester credit hours in technical content, and a
14 minimum of twenty-five hours of observation; and
- 15 (3) Complete a minimum of one hundred clock hours of supervised clinical experience
16 at the educational institution approved by the board, or, during the applicant's initial
17 employment.

18 Section 38. The following activities may be delegated to an assistant by the supervising
19 speech-language pathologist:

- 20 (1) Assist the speech-language pathologist with speech-language and hearing screenings;
- 21 (2) Assist with informal documentation as directed by the speech-language pathologist;
- 22 (3) Follow documented treatment plans or protocols developed by the supervising
23 speech-language pathologist;
- 24 (4) Document patient or client performance;

1 (5) Assist the speech-language pathologist with assessment of patients or clients;

2 (6) Assist with clerical duties;

3 (7) Perform checks and maintenance of equipment;

4 (8) Support the speech-language pathologist in research projects, in service training, and
5 public relations programs; and

6 (9) Collect data for monitoring quality improvement.

7 Section 39. No speech-language pathologist assistant may:

8 (1) Perform diagnostic tests, formal or informal evaluations, or interpret test results;

9 (2) Evaluate or diagnose patients or clients for feeding or swallowing disorders;

10 (3) Participate in parent conferences, case conferences, or any interdisciplinary team
11 without the presence or prior approval of the supervising speech-language
12 pathologist;

13 (4) Write, develop, or modify a patient's or client's individualized treatment plan in any
14 way;

15 (5) Assist with patients or clients without following the individualized treatment plan
16 prepared by the speech-language pathologist or without access to supervision;

17 (6) Sign any formal documents not drafted or approved by the speech-language
18 pathologist prior to dissemination of the document;

19 (7) Select patients or clients for services;

20 (8) Discharge a patient or client from service;

21 (9) Disclose clinical or confidential information either orally or in writing to anyone
22 other than the supervising speech-language pathologist;

23 (10) Make referrals for additional service;

24 (11) Counsel or consult with the patient or client, family, or others regarding the status or

1 service of the patient or client;

2 (12) Use a checklist or tabulate results of feeding or swallowing evaluations;

3 (13) Demonstrate swallowing strategies or precautions to patients, family, or staff;

4 (14) Represent himself or herself as a speech-language pathologist.

5 Section 40. The board may impose separately, or in combination, any of the following
6 disciplinary actions on a licensee after formal or informal disciplinary action:

7 (1) Refuse to issue or renew a license;

8 (2) Issue a letter of reprimand or concern;

9 (3) Require restitution of fees;

10 (4) Impose probationary conditions;

11 (5) Impose a fine not to exceed one thousand dollars, either total or per violation;

12 (6) Require the licensee to reimburse the board for costs of the investigation and
13 proceeding;

14 (7) Suspend or revoke a license;

15 (8) Impose practice or supervision requirements, or both; or

16 (9) Require licensees to attend continuing education programs specified by the board as
17 to content and hours.

18 Section 41. If the board imposes suspension or revocation of license, application may be
19 made to the board for reinstatement. If a licensee is placed on probation, the board may require
20 the license holder to:

21 (1) Report regularly to the board on matters that are the basis of probation;

22 (2) Limit practice to the areas prescribed by the board; or

23 (3) Continue or review continuing education until the license holder attains and degree
24 of skill satisfactory to the board in those areas that are the basis of the probation.

1 Section 42. The board may take disciplinary actions for the following conduct:

2 (1) Fraudulently or deceptively obtaining or attempting to obtain a license or a
3 provisional license;

4 (2) Fraudulently or deceptively using a license or provisional license;

5 (3) Altering a license or provisional license;

6 (4) Aiding or abetting unlicensed practice;

7 (5) Selling, bartering, or offering to sell or barter a license or provisional license;

8 (6) Committing fraud or deceit in the practice of audiology or speech-language
9 pathology, including:

10 (a) Willfully making or filing a false report or record in the practice of audiology
11 or speech-language pathology;

12 (b) Submitting a false statement to collect a fee;

13 (c) Obtaining a fee through fraud or misrepresentation;

14 (7) Using or promoting or causing the use of any misleading, deceiving, improbable, or
15 untruthful advertising matter, promotional literature, testimonial, guarantee,
16 warranty, label, brand insignia, or any other representation;

17 (8) Falsely representing the use or availability of services or advise of a physician;

18 (9) Misrepresenting the applicant, licensee, or holder by using the term, doctor, or any
19 similar word, abbreviation, or symbol if the use is not accurate or if the degree was
20 not obtained from a regionally accredited institution;

21 (10) Committing any act of dishonesty or immoral or unprofessional conduct while
22 engaging in the practice of speech-language pathology;

23 (11) Engaging in illegal or incompetent or negligent practice;

24 (12) Providing professional services while:

- 1 (a) Mentally incompetent;
- 2 (b) Under the influence of alcohol;
- 3 (c) Using any narcotic or controlled dangerous substance or other drug that is in
- 4 excess of therapeutic amounts or without valid medical indication;
- 5 (13) Providing services or promoting the sale of devices, appliances, or products to a
- 6 person who cannot reasonably be expected to benefit from such services, devices,
- 7 appliances, or products;
- 8 (14) Violating any provision of this Act, or any lawful order given, or rule adopted, by the
- 9 board;
- 10 (15) Being convicted or pleading guilty or nolo contendere to a felony or to a crime
- 11 involving moral turpitude, whether or not any appeal or other proceeding is pending
- 12 to have the conviction or plea set aside;
- 13 (16) Being disciplined by a licensing or disciplinary authority of any state or country, or
- 14 any nationally recognized professional organization, or convicted or disciplined by
- 15 a court of any state or country for an act that would be grounds for disciplinary action
- 16 under this section;
- 17 (17) Exploiting a patient for financial gain or sexual favors;
- 18 (18) Failing to report suspected cases of child abuse or vulnerable adult abuse;
- 19 (19) Diagnosing or treating a person for speech or hearing disorders by mail or telephone
- 20 unless the person has been previously examined by the licensee and the diagnosis or
- 21 treatment is related to such examination; or
- 22 (20) Violating federal, state, or local laws relating to the profession.

23 The board shall adopt, by rules promulgated pursuant to chapter 1-26, a schedule of
24 sanctions to be imposed as the result of formal or informal disciplinary activities conducted by

1 the board.

2 Section 43. The board shall keep an information file about each complaint filed with the
3 board. The information in each complaint file shall contain complete, current, and accurate
4 information including:

- 5 (1) Any person contacted in relation to the complaint;
- 6 (2) A summary of findings made at each step of the complaint process;
- 7 (3) An explanation of the legal basis and reason for a complaint that is dismissed; and
- 8 (4) Other relevant information.

9 Section 44. The board shall provide reasonable assistance to a person who wishes to file a
10 complaint with the board. The board shall adopt a form to standardize the information
11 concerning complaints made to the board. If a written complaint is filed with the board within
12 the board's jurisdiction, the board, at least as frequently as quarterly and until final disposition
13 of the complaint, shall notify the parties to the complaint of the status of the complaint unless
14 the notice would jeopardize an ongoing investigation.

15 Section 45. The board shall dispose of all complaints in a timely manner and in accordance
16 with chapter 1-26. The board shall establish a schedule for conducting each phase of a complaint
17 that is under the control of the board not later than the thirtieth day after the date the complaint
18 is received by the board. The schedule shall be kept in the information file for the complaint and
19 all parties shall be notified of the projected time requirements for pursuing the complaint. Any
20 change in the schedule shall be noted in the complaint information file and all parties to the
21 complaint must be notified not later than the seventh day after the change is made.

22 Section 46. The board shall develop a system for monitoring license holders' compliance
23 with the requirements of this Act and procedures for monitoring a license holder who is ordered
24 by the board to perform certain acts and identify and monitor license holders who present a risk

1 to the public.

2 Section 47. Any person violating the provisions of this Act may be enjoined from further
3 violations at the suit of the state's attorney of the county where the violations occurred or suit
4 may be brought by any citizen of this state. An action for injunction shall be an alternate to
5 criminal proceedings, and the commencement of one proceeding by the board constitutes an
6 election.

7 Section 48. Any action taken by the board against a person licensed pursuant to this Act
8 shall be reported to the National Practitioners Database. The board may also report its actions
9 to the American Speech-Language-Hearing Association Board of Ethics.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

635S0526

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1215** - 2/8/2011

Introduced by: Representatives Sigdestad, Abdallah, Dennert, Schrempp, Van Gerpen, White, and Wismer and Senators Tidemann, Frerichs, Fryslie, Hansen (Tom), Hundstad, Nygaard, Putnam, and Vehle

1 FOR AN ACT ENTITLED, An Act to repeal certain refund provisions of the motor fuel tax for
2 certain nonhighway agricultural use of motor fuels and to provide for the distribution of
3 such motor fuel tax.

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

5 Section 1. That § 10-47B-119 be repealed.

6 ~~— 10-47B-119. Any motor fuel consumer may apply for and obtain a refund of fuel taxes~~
7 ~~imposed and paid to this state, for motor fuel purchased and used by consumers in motor~~
8 ~~vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes~~
9 ~~or used in motor vehicles or equipment for nonhighway commercial uses. The portion of this~~
10 ~~refund attributed to nonhighway use of motor vehicles shall be calculated by multiplying the~~
11 ~~motor vehicle's average miles per gallon during the claim period times the number of~~
12 ~~nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway~~
13 ~~miles shall be supported by actual individual vehicle fuel disbursement records and odometer~~
14 ~~readings. The portion of this refund attributed to nonhighway machinery and equipment shall~~



1 ~~be supported by individual vehicle fuel disbursement records. Three cents per gallon of each tax~~
2 ~~refund shall be deposited in the value added agriculture subfund created in § 1-16G-25. For the~~
3 ~~purposes of this section, the refund applies to any purchases of motor fuel made after July 1,~~
4 ~~1999.~~

5 Section 2. That § 10-47B-149 be amended to read as follows:

6 10-47B-149. At the beginning of each month, the secretary shall make adjustments to the
7 motor fuel tax fund balance in the following manner:

8 (1) Each July transfer an amount to the snowmobile trails' fund equal to the product of
9 multiplying the number of licensed snowmobiles as of July first, times one hundred
10 twenty-five gallons, times the rate of tax provided for motor fuel under this chapter;

11 (2) ~~Transfer~~ Each July transfer from the amount of motor fuel tax collected from the
12 motor fuel used for nonhighway purposes to the motor fuel tax refund fund an
13 amount to pay motor fuel tax refunds for the current month value added agriculture
14 subfund created in § 1-16G-25 one hundred thirty-five thousand dollars;

15 (3) Each July transfer from the amount of motor fuel tax collected from the motor fuel
16 used for nonhighway purposes to the Department of Agriculture seventy-five
17 thousand dollars to be used for a grant to the Northern Crops Institute;

18 (4) Transfer to the motor fuel tax administration account two percent of the deposits
19 made to the motor fuel tax fund during the preceding month to cover the expenses
20 incurred in administering all motor fuel and special fuel tax laws of this state. On or
21 about August first of each year, the preceding year's remaining motor fuel tax
22 administration account balance, less an amount to provide cash flow within the
23 account, shall be transferred to the state highway fund. The remaining balance is to
24 be calculated by subtracting from the total of monthly deposits, the amount of

1 corresponding expenses. The expense of administering the chapters relating to motor
2 and special fuel taxation shall be paid out of appropriations made by the Legislature;

3 ~~(4)(5)~~ Transfer Each July transfer from the amount of motor fuel tax collected from the
4 motor fuel used for nonhighway purposes to the coordinated natural resources
5 conservation fund ~~an amount equal to thirty-five percent of the claimed refunds~~
6 ~~authorized by § 10-47B-119 for the preceding month, not to exceed a cumulative~~
7 ~~total of one million five hundred thousand dollars in any single fiscal year~~ five
8 hundred thousand dollars;

9 ~~(5)(6)~~ Each July transfer to the parks and recreation fund an amount equal to the product of
10 multiplying the number of licensed motorized boats as of the previous December
11 thirty-first, times one hundred forty gallons, times the rate of tax provided for motor
12 fuels under this chapter;

13 ~~(6)(7)~~ Each July distribute to counties and townships as provided in section 3 of this Act
14 seven hundred thousand dollars;

15 (8) Transfer to the member jurisdictions taxes collected under the provisions of the
16 international fuel tax agreement; and

17 ~~(7)(9)~~ Transfer the remaining cash balance to the state highway fund.

18 Section 3. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The amount to be distributed to counties and townships pursuant to section 2 of this Act
21 shall be distributed among the counties, pro rata, twenty-five percent according to truck
22 registrations, twenty-five percent according to population, and fifty percent according to total
23 road mileage. Each county shall distribute sixty percent of the amount received pursuant to this
24 section to the county road and bridge fund and forty percent to the special highway fund to be

1 distributed pursuant to the provisions of subdivision 32-11-4.1(2) and § 32-11-6.

2 Section 4. That § 32-11-6 be amended to read as follows:

3 32-11-6. The amount set aside to the various unorganized and organized civil townships
4 pursuant to § 32-11-4.1 and section 3 of this Act shall be apportioned among the townships
5 according to the number of miles of maintained township roads within the townships. The
6 county treasurer shall distribute ~~such~~ the money to each organized township within the county
7 within thirty days of apportionment. However, an organized township may request in writing
8 that ~~such~~ the money remain in the custody of the county treasurer and shall be paid out only on
9 warrants issued by the county auditor in payment of claims for the construction, reconstruction,
10 or maintenance of roads and highways within the township highway system.

11 Section 5. That § 10-47B-135 be amended to read as follows:

12 10-47B-135. No refund of motor fuel or special fuel taxes paid may be made for any of the
13 following uses of fuel:

- 14 (1) Fuel used in motor vehicles operated on the public highways of this state;
- 15 (2) Fuel used for propulsion on the highway in any vehicles, machinery, or equipment
16 for any highway construction or maintenance work which is paid for, wholly or in
17 part, by public moneys;
- 18 (3) Fuel used in aircraft or watercraft;
- 19 (4) Undyed special fuel used in off-road machinery or equipment; ~~or~~
- 20 (5) Fuel used from the engine fuel supply tank by a motor vehicle while idling. Fuel used
21 by a motor vehicle while idling shall be included in the total amount of fuel
22 consumed when calculating average miles per gallon; or
- 23 (6) Fuel used in any motor vehicle, recreation vehicle, or farm equipment used for
24 nonhighway agricultural purposes or, unless otherwise provided by this chapter, used

1 in any motor vehicle or equipment for nonhighway commercial uses.

2 Section 6. That § 10-47B-144 be amended to read as follows:

3 10-47B-144. Interest at the rate provided for under § 10-59-6 shall be paid on any refund
4 claim amount authorized by §§ ~~10-47B-119~~ 10-47B-119.2 to 10-47B-131, inclusive, which has
5 not been refunded to the claimant within sixty days of acceptance by the department during the
6 months of January, February, or March. Claims received during any other month shall be paid
7 within forty-five days, otherwise interest shall be paid to the claimant. No interest may be paid
8 for refunds made to interstate fuel tax agreement licensees or licensed interstate users.

9 Section 7. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The Legislature finds, based on historical data, that one million four hundred ten thousand
12 dollars represents the amount of motor fuel taxes collected annually on motor fuel for
13 nonhighway agricultural uses. The Legislature further finds that these funds should be utilized
14 in a manner which benefits agriculture and the citizens of the state.

15 Section 8. That § 38-7-26 be amended to read as follows:

16 38-7-26. The coordinated natural resources conservation fund consists of money transferred
17 from the ~~unclaimed tax refunds from the~~ sale of motor fuel for nonhighway agricultural uses in
18 the motor fuel tax fund as provided in § ~~10-47A-11~~ 10-47B-149, and all public and private
19 sources including legislative appropriations or federal grants.

20 Section 9. That § 10-47B-119.1 be repealed.

21 ~~—10-47B-119.1. Any special fuel or motor fuel user may apply for and obtain a refund of fuel~~
22 ~~taxes imposed and paid to this state for motor fuel or special fuel purchased and used as racing~~
23 ~~fuel in motor vehicles operated solely off of public highways in organized racing events.~~

24 Section 10. That § 10-47B-127 be repealed.

1 ~~10-47B-127. Any undyed special fuel consumer may apply for and obtain a refund of fuel~~
2 ~~taxes imposed and paid to this state, for undyed special fuel purchased and used by the~~
3 ~~consumer in the engine fuel supply tank of a motor vehicle used for nonhighway agricultural~~
4 ~~purposes or nonhighway commercial uses, except special fuel used to power a refrigeration unit~~
5 ~~which is attached to the engine fuel supply tank of the motor vehicle. This refund shall be~~
6 ~~calculated by multiplying the motor vehicle's average miles per gallon during the claim period~~
7 ~~times the number of nonhighway miles the vehicle was operated. The average miles per gallon~~
8 ~~and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records~~
9 ~~and odometer readings.~~

10 Section 11. That § 10-47B-138 be repealed.

11 ~~10-47B-138. Any consumer who desires to claim refund of motor fuel or special fuel taxes~~
12 ~~paid to this state, shall apply for a refund claimant license from the department before or at the~~
13 ~~time that the first claim for refund is made. Applications for licenses and claims for refund shall~~
14 ~~be made on forms provided by the department. Upon approval of the application by the~~
15 ~~department, a nonassignable license and claimant number shall be issued to each claimant. Each~~
16 ~~subsequent claim for refund is to bear the claimant's assigned refund permit number.~~

17 Section 12. That § 10-47B-139 be repealed.

18 ~~10-47B-139. The claim for refund of fuel taxes which is allowed under this chapter shall~~
19 ~~contain the following information:~~

- 20 ~~(1) The name and mailing address of the refund claimant;~~
- 21 ~~(2) The refund claimant license number assigned by the department to the claimant;~~
- 22 ~~(3) The claim period during which fuel was purchased and used;~~
- 23 ~~(4) If applicable, a listing of the licensed motor vehicles owned or operated by the~~
24 ~~claimant during the claim period;~~

- 1 ~~(5) If applicable, information concerning the miles driven and fuel consumed by the~~
2 ~~vehicles listed in subdivision (4) of this section;~~
- 3 ~~(6) If the claimant is the user of the fuel, a summary of fuel purchased during the claim~~
4 ~~period;~~
- 5 ~~(7) If the claimant is the seller of the fuel, a summary of the refundable sales;~~
- 6 ~~(8) The claimant's signature verified under oath; and~~
- 7 ~~(9) Any other information which the secretary deems necessary for the administration of~~
8 ~~this section.~~

9 Section 13. That § 10-47B-140 be repealed.

10 ~~10-47B-140. Motor fuel and special fuel tax refund claims of consumers shall be~~
11 ~~accompanied by proof that the South Dakota fuel tax has been paid. Proof of tax payment may~~
12 ~~be presented in one or more of the following forms:~~

- 13 ~~(1) An original invoice. An invoice shall be an original copy which is serially numbered~~
14 ~~by machine and prepared in duplicate. The original copy shall be given to the~~
15 ~~purchaser either at the time of delivery or upon payment of the amount due; or~~
- 16 ~~(2) Any of the following forms of proof containing the information required in § 10-47B-~~
17 ~~159:~~
 - 18 ~~(a) A credit card receipt. A receipt may be prepared using NCR (no carbon~~
19 ~~required) paper or other means of data transferal. Only an unaltered original~~
20 ~~copy of a credit card receipt is accepted; or~~
 - 21 ~~(b) A statement generated from an unattended, automated pump facility. An~~
22 ~~itemized monthly statement is acceptable if the statement contains the required~~
23 ~~invoice information and if the seller has marked the statement as having been~~
24 ~~paid. If a statement is used as proof of tax payment, the use of double-faced~~

1 carbon, NCR (no carbon required) paper, and serial numbering are not
2 required in preparation of the statement.

3 Section 14. That § 10-47B-141 be repealed.

4 ~~10-47B-141. Any claim for refund of motor fuel or special fuel tax shall be received by the~~
5 ~~department within fifteen months of the date the fuel was originally purchased in order to be~~
6 ~~accepted for refund. Fuel purchased more than fifteen months from the date the claim is~~
7 ~~received is forever barred from refund eligibility.~~

8 Section 15. That § 10-47B-142 be repealed.

9 ~~10-47B-142. The secretary may, in order to establish the validity of any claim for refund of~~
10 ~~motor fuel or special fuel tax, require the claimant to furnish any additional proof of the validity~~
11 ~~of the claim the secretary may determine necessary. The department may examine the books and~~
12 ~~records of the seller and purchaser for this purpose. The failure of the claimant to furnish the~~
13 ~~books or records for examination shall constitute a waiver of all rights to the refund on account~~
14 ~~of the transaction questioned.~~

15 Section 16. That § 10-47B-154 be repealed.

16 ~~10-47B-154. The Legislature finds that not all motor fuel taxes which qualify for the~~
17 ~~nonhighway agricultural motor fuel tax refund are, in fact, refunded under the procedure set~~
18 ~~forth in this chapter. The Legislature further finds that a certain amount of these unclaimed tax~~
19 ~~refunds from the sale of motor fuel for nonhighway agricultural uses should be utilized for~~
20 ~~agricultural purposes in a manner which benefits both agriculture and the citizens of the state~~
21 ~~by preserving its natural resources. Therefore, the Legislature declares that an amount equal to~~
22 ~~thirty-five percent of the claimed refunds authorized by § 10-47B-119, not to exceed one million~~
23 ~~five hundred thousand dollars in any single fiscal year, represents the amount of unclaimed tax~~
24 ~~refunds from the sale of motor fuel tax for nonhighway agricultural uses. The Legislature further~~

1 ~~declares that it is the policy of this state to use these funds, representing the unclaimed tax~~
2 ~~refunds from the sale of motor fuel for nonhighway agricultural purposes, to implement the~~
3 ~~coordinated natural resources conservation program.~~

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

219S0385

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1216** - 2/8/2011

Introduced by: Representatives Fargen, Abdallah, Blake, Bolin, Boomgarden, Brunner, Cronin, Deelstra, Dennert, Elliott, Feinstein, Gibson, Gosch, Hansen (Jon), Hawley, Hickey, Hoffman, Hunhoff (Bernie), Iron Cloud III, Jones, Juhnke, Killer, Kirkeby, Kirschman, Kloucek, Lucas, Lust, Moser, Munsterman, Nelson (Stace), Novstrup (David), Olson (Betty), Rausch, Russell, Schrempp, Sigdestad, Sly, Solum, Street, Stricherz, Tulson, Vanneman, Verchio, White, Wick, and Wismer and Senators Olson (Russell), Begalka, Bradford, Buhl, Cutler, Frerichs, Garnos, Gray, Hansen (Tom), Heineman, Hundstad, Johnston, Lederman, Maher, Novstrup (Al), Nygaard, Peters, Rempelberg, Rave, Rhoden, Schlekeway, Sutton, Tidemann, and Vehle

1 FOR AN ACT ENTITLED, An Act to prohibit certain contract restrictions on the use of ethanol
2 blender pumps by retailers.

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

4 Section 1. That § 37-2-34 be amended to read as follows:

5 37-2-34. Terms used in §§ 37-2-35 to 37-2-38, inclusive, mean:

6 (1) "Franchise-related document," a franchise agreement, branded jobber contract,
7 branded marketer agreement, and any other contract or directive of a franchisor
8 relating to terms or conditions of the sale of fuel by a franchisee or customer;

9 (2) "Renewable fuel," biodiesel, biodiesel blend, ethyl alcohol, and ethanol blend, ~~and~~
10 ~~E-85~~, all as defined in § 10-47B-3, and any motor fuel made from a blend, in any



1 ratio, of gasoline and the product commonly or commercially known as E-85 or an
2 ethanol blend and the product commonly or commercially known as E-85.

3 Section 2. That § 37-2-35 be amended to read as follows:

4 37-2-35. No franchise-related document entered into or renewed on or after July 1, 2008
5 may contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the
6 franchisee from:

- 7 (1) Installing on the marketing premises of the franchisee a renewable fuel pump or tank,
8 except that the franchisee's franchisor may restrict the installation of a tank on leased
9 marketing premises of the franchisor;
- 10 (2) Converting an existing tank or pump on the marketing premises of the franchisee for
11 renewable fuel use;
- 12 (3) Advertising the sale of any renewable fuel, including through the use of signage;
- 13 (4) Selling renewable fuel in any specified area on the marketing premises of the
14 franchisee, including any area in which a name or logo of a franchisor or any other
15 entity appears;
- 16 (5) Purchasing renewable fuel from sources other than the franchisor if the franchisor
17 does not offer its own renewable fuel for sale by the franchisee;
- 18 (6) Listing renewable fuel availability or prices, including on service station signs, fuel
19 dispensers, or light poles; ~~or~~
- 20 (7) Allowing for payment of renewable fuel with any form of payment available for any
21 other type of fuel;
- 22 (8) Installing on the marketing premises of the franchisee an ethanol blender pump as
23 defined in section 2, chapter 15 of the 2010 Session Laws; or
- 24 (9) Using any pump to dispense a specified ethanol blend or range of blends, if the pump

1 is approved by the authority having jurisdiction, as defined in § 34-38-23, for
2 dispensing the specified ethanol blend or range of blends.

3 Nothing in this section authorizes any activity that constitutes mislabeling, misbranding,
4 willful adulteration, or other trademark violations by the franchisee.

5 Section 3. That § 37-2-37 be amended to read as follows:

6 37-2-37. No franchise-related document that requires that three grades of gasoline be sold
7 by the applicable franchisee may prevent the franchisee from selling a ~~renewable fuel~~ one or
8 more renewable fuels in lieu of one, and only one, grade of gasoline.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

833S0361

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1221** - 2/8/2011

Introduced by: Representatives Moser, Hoffman, Lucas, Magstadt, and Willadsen and
Senators Schlekeway, Cutler, Garnos, Sutton, and Tieszen

1 FOR AN ACT ENTITLED, An Act to establish a task force on teen driving safety.

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

3 Section 1. There is hereby established a task force on teen driving safety. The task force
4 shall evaluate data, laws, and current practices regarding teen driving in South Dakota and
5 provide recommendations for improving teen driving safety to the 2013 Legislature. The
6 evaluation by the task force shall include the following:

7 (1) Examine data on teen driving by age groups and urban and rural setting including
8 traffic citations, crashes, injuries, fatalities, and circumstances and causal factors in
9 crashes;

10 (2) Review current laws affecting teen drivers;

11 (3) Examine data on driver education available for teens, including preparation and
12 ongoing training of instructors, costs for driver education, current payers, and
13 enrollment statistics;

14 (4) Examine barriers to teen driving safety; and



1 (5) Review national best practices to improve safety of teen drivers.

2 Section 2. The task force may not exceed twenty members. The Executive Board of the
3 Legislative Research Council shall appoint two senators and two representatives to the task
4 force. The Chief Justice of the Supreme Court shall appoint a representative. The secretary of
5 Public Safety shall appoint no more than fifteen members to the task force. The secretary's
6 appointments shall include parents, advocates, representatives from law enforcement, insurance
7 industry, auto clubs, health care, Indian Health Service, driver education, higher education,
8 public schools, and representatives of the Department of Public Safety, the Department of
9 Education, the Department of Health, and the Department of Transportation.

10 Section 3. Appointment of the task force shall be contingent on the state receiving a grant
11 to fund the activities of the task force.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0180

SENATE TRANSPORTATION ENGROSSED NO. **SB 4** - 1/31/2011

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

1 FOR AN ACT ENTITLED, An Act to update certain standards governing pedestrian control
2 signals.

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

4 Section 1. That § 32-28-9.1 be amended to read as follows:

5 32-28-9.1. Whenever special pedestrian control signals exhibiting the words, walk or don't
6 walk, or exhibiting a lighted international pedestrian walk or don't walk symbol are in place, the
7 signals indicate the following:

8 (1) Walk or a lighted international pedestrian walk symbol.--Pedestrians facing the signal
9 may proceed across the roadway in the direction of the signal and shall be given the
10 right-of-way by the drivers of all vehicles;

11 (2) Don't walk or a lighted international pedestrian don't walk symbol.--No pedestrian
12 may start to cross the roadway in the direction of the signal, but any pedestrian who
13 has partially completed crossing on the walk signal shall proceed to a sidewalk or
14 safety island while the don't walk signal or lighted international pedestrian don't walk



1 symbol is showing.

2 The special pedestrian control signals shall conform to the Manual on Uniform Traffic
3 Control Devices, ~~2003~~ 2009 Edition.

4 ~~A violation of this section~~ Any failure by a driver to comply with the provisions of this
5 section is a Class 2 misdemeanor. ~~A violation of this section~~ Any failure by a pedestrian to
6 comply with the provisions of this section is a petty offense.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0241

HOUSE TAXATION ENGROSSED NO. **SB 39** - 2/8/2011

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding what organizations
2 qualify for an exemption from sales tax as a relief agency or a religious educational
3 institution.

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

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

6 10-45-10. There are hereby specifically exempted from the provisions of this chapter and
7 from the computation of the amount of tax imposed by it, the gross receipts from sales of
8 tangible personal property, any product transferred electronically, and services to the United
9 States, to the State of South Dakota or to any other state of the United States or the District of
10 Columbia if the other state provides a reciprocal exemption for South Dakota, to public or
11 municipal corporations of the State of South Dakota or of any other state of the United States
12 or the District of Columbia if the other state provides a reciprocal exemption to South Dakota
13 public or municipal corporations, to any nonprofit charitable organization maintaining a
14 physical location within this state which devotes its resources exclusively to the relief of the



1 poor, distressed or underprivileged, and has been recognized as an exempt organization under
2 § 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

3 Section 2. That § 10-45-14 be amended to read as follows:

4 10-45-14. There are specifically exempted from the provisions of this chapter and from the
5 computation of the amount of tax imposed by it, the gross receipts from sales of tangible
6 personal property, any product transferred electronically, and services to and for use by religious
7 educational institutions, private educational institutions currently recognized as exempt under
8 section 501(c)(3) of the Internal Revenue Code as in effect on January 1, ~~1983~~ 2011, and
9 nonprofit, charitable hospitals when purchases are made by authorized officials, payment made
10 from the institution funds and title to the property retained in the name of such institution. For
11 the purposes of this section, a private educational institution shall be defined as an institution
12 currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in
13 effect on January 1, ~~1983~~ 2011, maintaining a campus physically located within this state; and
14 accredited by the South Dakota Department of Education or the North Central Association of
15 Colleges and Schools. For the purposes of this section, a religious educational institution shall
16 be defined as an institution currently recognized as exempt under section 501(c)(3) of the
17 Internal Revenue Code as in effect on January 1, 2011, that maintains a campus physically
18 located within this state.

19 This exemption does not extend to sales to or purchases of tangible personal property or any
20 product transferred electronically for the personal use of officials, members or employees of
21 such institutions or to sales to or purchases of tangible personal property or any product
22 transferred electronically used in the operation of a taxable retail business.

23 The exemption provided in this section does not, in any manner, relieve the institution from
24 the payment of the additional and further license fee imposed on the registration of motor

1 vehicles.

2 ~~All institutions~~ Each institution claiming this exemption shall prepare and maintain a list of
3 all purchases on which the exemption was claimed, fully itemized, showing name and address
4 of vendors, description of property purchased, date or dates of purchase, purchase price, and
5 brief explanation of use or intended use.