

AN ACT

ENTITLED, An Act to revise certain provisions relating to state employees and to the administration of state personnel matters.

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

Section 1. That § 1-33-3 be amended to read as follows:

1-33-3. The Department of Executive Management consists of the Bureau of Finance and Management, the Bureau of Administration, the Bureau of Human Resources, the Bureau of Information and Telecommunications, the Governor's Office of Economic Development, and any other agencies created by administrative action or law and placed under the Department of Executive Management.

Section 2. That § 1-33-5 be repealed.

Section 3. That § 1-33-6 be repealed.

Section 4. That § 1-33-9 be amended to read as follows:

1-33-9. The Bureau of Human Resources shall:

- (1) Provide workers' compensation coverage and a group health and flexible benefit plan for all state employees unless such duties are delegated to another agency pursuant to chapter 1-24;
- (2) Administer recruitment and classification for all civil service employees unless such duties are delegated to another agency pursuant to chapter 1-24;
- (3) Provide human resource management and programs including programs governing human resource planning, training and development, internships, performance evaluation, employee assessment and testing, classification, compensation, recruitment, and other matters relating to human resource management for all of the executive branch of state government under the control of the Governor and by agreement for other state

government agencies;

- (4) Perform all administrative functions for the Civil Service Commission;
- (5) Employ such staff as are necessary to perform its duties; and
- (6) Contract as is necessary to perform its duties.

Section 5. That § 1-33-10 be amended to read as follows:

1-33-10. The Bureau of Human Resources is administered by a commissioner appointed by the Governor with the advice and consent of the Senate. The commissioner serves at the pleasure of the Governor.

Section 6. That § 1-33-11 be repealed.

Section 7. That § 1-33-12 be repealed.

Section 8. That § 1-33-13 be repealed.

Section 9. That § 3-1-1.1 be amended to read as follows:

3-1-1.1. No person who is required by the Military Selective Service Act, 50 U.S.C. § 453, as amended and in effect on January 1, 2012, to register with the selective service system and who has not done so, may be hired by the state or a county, township, municipality, school district, or any other governmental unit or department in any capacity.

Section 10. That chapters 3-6, 3-6A, 3-6B, 3-7, 3-12A, §§ 1-36A-20 to 1-36A-24, inclusive, §§ 23-3-65 to 23-3-69, inclusive, and §§ 41-20-8.4 to 41-20-8.8, inclusive, be repealed.

Section 11. Code counsel is directed to codify sections 12 to 36, inclusive, of this Act, as chapter 3-6C and entitle that chapter, State Employment General Provisions.

Section 12. Terms as used in sections 13 to 87, inclusive, of this Act, mean:

- (1) "Appointing authority," the hiring entity;
- (2) "Commission," the Civil Service Commission;
- (3) "Bureau," the Bureau of Human Resources;

- (4) "Bureau commissioner," the head of a bureau;
- (5) "Civil service," a system of human resource management for the executive branch of state government based on merit principles governing the appointment, promotion, compensation, removal, transfer, and other matters related to human resource management;
- (6) "Civil service employee," a state employee not otherwise exempted by the provisions of this chapter;
- (7) "Change in family status," marriage, divorce, or death of the member, spouse, or any covered dependent; birth or adoption of a child; or a change in the employment status of the member, spouse, or any covered dependent;
- (8) "Class of positions," all civil service positions which are sufficiently similar in kind or subject matter of work performed, level of difficulty and responsibility, and qualification requirements to warrant similar treatment in personnel and pay administration;
- (9) "Compensation," the total compensation, which includes direct salary and fringe benefits. Fringe benefits includes employer paid retirement programs, social security, health insurance, life insurance, and any other programs offering a benefit to the employee in which the employer participates;
- (10) "Contribution," the dollar amount established by the commissioner sufficient to cover the cost of the insurance plan;
- (11) "Department secretary," a person appointed by and serving at the pleasure of the Governor to administer one of the major departments of state government;
- (12) "Dependent," a person who is not an employee and is:
 - (a) An employee's spouse who is not divorced or legally separated from the employee;
 - or

- (b) An employee's child who is:
 - (i) Under the age of twenty-six or under the age of twenty-nine if a full-time student; and
 - (ii) Not benefit eligible through their employer or spouses employer; and
 - (iii) Not in military service;
- (13) "Deputy," a person who serves as first assistant to, and at the pleasure of, a department secretary, bureau commissioner, or division director if allowed by law;
- (14) "Division director," a person appointed by and serving at the pleasure of the department secretary to administer a division within a major department of state government;
- (15) "Eligible employee," an active employee placed in a permanent position, employed by a participating agency and scheduled to work twenty or more hours a week at least six months of the year;
- (16) "Employee," any person working for state government, paid by the State of South Dakota, or remunerated by other funds raised, appropriated, or otherwise generated by the state. The term does not include any person working for any authority authorized by law;
- (17) "Employer," the State of South Dakota;
- (18) "Executive branch employee," any employee working for state government except those working for the legislative or judicial branches of state government;
- (19) "Human Resources commissioner," the commissioner of the Bureau of Human Resources;
- (20) "Law enforcement employee," any certified law enforcement officer working for the Division of Criminal Investigation or the Highway Patrol;
- (21) "Member," a state employee or retiree who is covered by the plan as the primary insured and who may elect to have his or her dependents covered by the plan;
- (22) "Plan," the state employee's benefit insurance plan as created by this Act;

- (23) "Position," a collection of duties and responsibilities assigned by the appointing authority to one person;
- (24) "Safety-sensitive position," any law enforcement officer authorized to carry firearms and any custody staff employed by any agency responsible for the rehabilitation or treatment of any adjudicated adult or juvenile;
- (25) "Self-insured," a state-supported benefit plan in which the initial risk for any losses is born by the plan;
- (26) "Substance," marijuana as defined in subdivision 22-42-1(7) and any controlled drug or substance as defined in chapter 34-20B.

Section 13. The Bureau of Human Resources shall perform human resource functions for the following agencies:

- (1) Board of Regents;
- (2) Board of Trustees of the South Dakota Retirement System; and
- (3) All other state departments, bureaus, divisions, boards, and commissions of the executive branch.

The Bureau of Human Resources may delegate human resource functions to either the Board of Regents or the Trustees of the South Dakota Retirement System through agreements entered into pursuant to chapter 1-24.

Section 14. No temporary employee nor any patient, inmate, or student employee, as defined by any rules promulgated by the Civil Service Commission pursuant to chapter 1-26, may receive any compensation for any holiday as defined in § 1-5-1. However, the employee shall be compensated for any hours actually worked on such holidays.

Section 15. Each state employee shall earn fifteen working days vacation time per full year of employment. Any employee with more than fifteen years employment shall receive twenty working

days vacation with pay for each year of employment. Such leave shall be accrued on an hourly, biweekly, semimonthly, or monthly basis as determined by the commissioner of Human Resources. No vacation hours earned may be used until the employee has served the initial six-month period. Vacation hours are cumulative only to the extent of that which may be earned in a period of time not exceeding two years of regular and continuous state employment. No advanced leave of absence for vacation with pay may be granted at any time.

Section 16. Any state employee, including any state employee exempt from the provisions of this chapter, who has been employed by the state for a period of six months is entitled to vacation leave. However, no temporary or emergency employee, as defined by any rules promulgated by the Civil Service Commission pursuant to chapter 1-26, and no patient, inmate, or student employee is eligible for vacation leave. Any part-time employee who has served an accumulative six-month period is entitled to vacation leave.

Section 17. Any employee who retires or voluntarily resigns may terminate employment at the end of the employee's accrued vacation period or receive a lump-sum payment for the unused vacation time which has accrued as of the employee's final day on the payroll. Any employee meeting the definition of a participant as set out in subdivision 3-13A-2(8) shall have such lump-sum payment transmitted to the fund pursuant to the provisions of § 3-13A-5. However, if the employee dies, payment for the accumulated leave of absence for vacation time shall be paid according to §§ 3-8-8 to 3-8-11, inclusive.

Section 18. In addition to the leave of absence for vacation as provided in section 16 of this Act, each employee of the state, except temporary and emergency employees as defined by Civil Service Commission rules, and patient, inmate, and student employees, is entitled to fourteen days leave of absence for sickness without loss of pay, exclusive of Saturdays, Sundays, and holidays, for each year the employee is in the employment of the state. Leave of absence for sickness shall be accrued

on an hourly, biweekly, semimonthly, or monthly basis as determined by the commissioner of Human Resources and shall accumulate without limit as to the number of days of such accumulation. Any leave of absence for sickness shall be supported by a medical certificate upon the request of the commissioner of Human Resources. No employee is entitled to more than the employee's accrued and earned leave of absence for sickness without first using up any and all of the employee's accumulated and earned leave of absence for vacation.

An employee may use up to five days of the employee's sick leave annually for personal emergency reasons. Leave for personal emergencies may not be accrued from year to year. The Civil Service Commission, pursuant to chapter 1-26, shall promulgate rules to implement this provision.

Adoption of a child by any state employee is treated as natural childbirth for leave purposes.

Section 19. Any state employee may accrue vacation leave, but not sick leave, while receiving workers' compensation under § 62-4-3.

Section 20. Leave of absence for sickness may be advanced to an employee who has been in regular and continuous employment of the state for at least one full year if the employee has used up all of the employee's earned leave of absence for vacation and sickness. If an employee receives advanced sick leave, any subsequent sick leave earned by the employee shall be credited against the employee's negative sick leave balance until the advanced sick leave is repaid. At no time shall the employee's advanced negative sick leave balance exceed twenty-eight days. Advanced leave of absence for sickness is within the discretion of the bureau under rules promulgated by the Civil Service Commission pursuant to chapter 1-26, and is authorized only if the bureau's consent has first been obtained.

Section 21. No state employee may be allowed compensation under § 62-4-3 for a period for which the employee has also received sick pay authorized by section 18 or 20 of this Act or vacation pay authorized by section 16 of this Act. Nothing in this section limits any other compensation or

benefits due employees of the state under Title 62.

Section 22. If an injured state employee's workers' compensation benefits are not equal to the employee's salary, the employee may, notwithstanding any provision in section 21 of this Act, use sick pay or vacation pay in an amount necessary to make up the difference between the employee's salary and the workers' compensation benefits.

Section 23. Every state employee, who has been continuously employed in a permanent position by the State of South Dakota or any department or agency thereof for at least seven years prior to the date of the employee's retirement, voluntary resignation, layoff, termination for inability to perform job functions due to physical disability or death, shall receive payment for one-fourth of the unused leave of absence for sickness which has accrued as of the employee's final day on payroll. The payment may not exceed the sum of four hundred eighty hours. Payment shall be made in a lump sum with the employee's last payroll warrant. Any employee meeting the definition of a participant as set out in subdivision 3-13A-2(8) shall have such lump-sum payment transmitted to the fund pursuant to the provisions of § 3-13A-5. However, in the case of death of the employee, payment for such accumulated leave of absence for sickness shall be paid as provided under the provisions of §§ 3-8-8 to 3-8-11, inclusive.

Section 24. Any employee of the state may donate accrued vested leave to another state employee who meets all of the following criteria:

- (1) The recipient employee is terminally ill and the employee's condition does not allow a return to work;
- (2) The recipient employee is suffering from an acutely life threatening illness or injury which has been certified by a licensed physician as having a significant likelihood of terminating fatally and the employee's physical condition does not allow a return to work for a period of at least ninety consecutive days; and

- (3) All leave benefits for which the recipient employee is eligible have been exhausted.

The donation is not allowed after the recipient employee is able to return to work or is approved for disability benefits provided for in § 3-12-98 or any other public disability benefits.

The donation of accrued vested leave may not exceed two thousand eighty hours per recipient employee as defined in subdivision (1) of this section or one thousand forty hours per illness or injury for a recipient employee as defined in subdivision (2) of this section, not to exceed two thousand eighty hours per recipient. The donation shall be approved by the Bureau of Human Resources under rules promulgated by the Civil Service Commission pursuant to chapter 1-26, including number of hours to be donated, confidentiality of a donation, definition of terminally ill, definition of life threatening illness or injury, criteria for determining employee eligibility to receive or donate leave, coordination of leave donation with disability and other public benefits and in compliance with the provisions of section 23 of this Act, and procedures for approval of the donation.

Section 25. Any donation of leave pursuant to section 23 or 24 of this Act may be restricted as follows:

- (1) The donating employee may only donate leave to an employee who is at the same or lower paygrade as the donating employee; and
- (2) The donation may be denied based upon funding considerations within the agency, at the discretion of the commissioner.

Section 26. Any employee of the state may donate vacation leave to another state employee who meets all of the following criteria:

- (1) The recipient employee will use the donated leave to care for the recipient employee's spouse, child, or parent who is terminally ill;
- (2) The recipient employee's spouse, child, or parent is suffering from an acutely life

threatening illness or injury which has been certified by a licensed physician as having a significant likelihood of terminating fatally; and

- (3) All leave benefits for which the recipient employee is eligible have been exhausted.

The total paid leave, including the donated vacation leave pursuant to this section, may not exceed twelve weeks annually per recipient employee. The donation shall be approved by the Bureau of Human Resources under rules promulgated pursuant to chapter 1-26 by the Civil Service Commission, including number of hours to be donated, confidentiality of a donation, definition of terminally ill, definition of life threatening illness or injury, criteria for determining employee eligibility to receive or donate leave and for prorating donated leave for part-time employees, and procedures for approval of the donation. Any donation shall be in compliance with the provisions of sections 16 and 17 of this Act.

Section 27. If an employee transfers from one state department, institution, agency, or office to another state department, institution, agency, or office, the employee may transfer all unused and earned leave of absence for vacation or sickness as was allowed the employee under the provisions of sections 16 and 17 of this Act.

Section 28. The provisions of sections 16 to 27, inclusive, of this Act, do not prohibit the taking of leave of absence for vacation or sickness without pay if the leave of absence is authorized and approved by the board, commission, agency, department, office, or officer employing the employee, pursuant to rules promulgated pursuant to chapter 1-26 by the commissioner of the Bureau of Human Resources.

Section 29. The Civil Service Commission may, pursuant to chapter 1-26, promulgate rules to further define the types of leave permitted to be taken as sick leave, vacation leave, and leave of absence, including the following: child care, jury duty, military service, maternity, and education and other fringe benefits.

Section 30. It is the policy of the State of South Dakota that citizens of this state and of the United States may not be deprived of their freedom of speech guaranteed them by the constitutions of the United States of America and of the State of South Dakota, by reason of the fact that they are state officers and employees. No state agency may pass a rule restricting or prohibiting the constitutionally guaranteed right of its employees and officers to express their opinions.

Section 31. Holidays, other than Sundays, enumerated in § 1-5-1, are a benefit for any permanent state employee including those who are not scheduled to work the day on which a holiday falls. A permanent employee is eligible for holiday pay if the employee works at least one shift or is on approved paid leave during the calendar week in which the holiday falls. Part-time employees shall receive prorated holiday pay. For payroll and leave purposes, a holiday is no more than eight hours long.

Section 32. Any employee of the State of South Dakota who is a certified disaster service volunteer of the American Red Cross may be granted leave from work with pay not to exceed ten days in any one calendar year to participate in disaster relief services for the American Red Cross during a State of South Dakota declared disaster, upon the request of the American Red Cross for the services of the employee and upon approval of that employee's appointing authority. However, no state employee who is needed by the employee's appointing authority to perform job-related disaster services may be granted this leave. The appointing authority shall compensate an employee granted leave under this section at the employee's regular rate of pay for regular work hours during which the employee is absent from work.

Section 33. Any absence approved pursuant to section 32 of this Act for disaster service volunteers does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of employment.

Section 34. Each appointing authority shall have exclusive authority to make the final selection

of employees in the authority's respective department, bureau, division, and institution.

Section 35. The Human Resources commissioner shall establish and maintain appropriate records on all civil service employees relating to the several provisions of this chapter. The Civil Service Commission may promulgate rules pursuant to chapter 1-26 to regulate the records maintained by the Bureau of Human Resources. Any records required or maintained by the Bureau of Human Resources, including performance appraisals, that pertain to an employee shall be available and open to inspection by the employee during normal business hours.

Section 36. Preference in the selection of student interns shall be given to those students who are residents of South Dakota or attending an institution of higher education within this state.

Section 37. Code counsel is directed to codify sections 38 to 61, inclusive, of this Act, as chapter 3-6D and entitle that chapter, State Civil Service.

Section 38. There is hereby created a Civil Service Commission. The Civil Service Commission consists of seven members, not all of whom may be of the same political party. Three of the members shall be experienced in law enforcement. The Governor shall initially appoint two members for a term of two years, two members for a term of three years, and three members for a term of four years. Thereafter, each appointment shall be for a term of four years, beginning on the first day of July. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Section 39. A member of the Civil Service Commission may be removed by the Governor only for cause after being given a copy of the charges and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.

Section 40. The Civil Service Commission shall hold such meetings as necessary to carry out its duties under this chapter. The commission shall elect one of its members as chair at its first

meeting in each year. Four members shall constitute a quorum for the conduct of business. If the subject of any meeting is the discipline of any law enforcement officer, at least two of the members of the commission in attendance shall be experienced in law enforcement.

Section 41. This chapter applies to all executive branch employees of state government, but excluding:

- (1) Elected officers and all employees in the offices of the secretary of state, state treasurer, state auditor, commissioner of school and public lands, and public utilities commission;
- (2) The members of boards and commissions;
- (3) Department secretaries, bureau commissioners, division directors, deputy secretaries, deputy bureau commissioners, deputy division directors, and supervisors who determine and publicly advocate substantive program policy, attorneys, physicians, confidential assistants to exempt employees and other directors or administrative policy-making positions of executive branch institutions, commissions, boards and agencies;
- (4) All positions in the Office of the Governor and Bureau of Finance and Management;
- (5) Presidents, deans, administrative and policy-making positions, student health service physicians, teaching and professional research positions under the jurisdiction of the State Board of Regents and other directors or administrative policy-making positions of such institutions as determined by the Human Resources commissioner;
- (6) Teachers of the several institutions under the jurisdiction of the executive branch;
- (7) A person hired to fill the position of an employee who is deployed or activated under circumstances requiring reinstatement under the Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. §4301 as in effect January 1, 2012;
- (8) Patients and inmates who are employed by state institutions under the executive branch;
- (9) Temporary employees and interns; and

- (10) The attorney general and all employees within its office except certified law enforcement officers within the division of criminal investigation.

The Civil Service Commission may promulgate rules pursuant to chapter 1-26 which establish criteria to implement this subdivision for exemptions from the civil service. The commissioner may determine which positions are eligible for exemption under the provisions of this chapter. Any decision of the commissioner of Human Resources relating to exemptions from the civil service may be appealed to the commission pursuant to chapter 1-26.

Section 42. Each civil service applicant and civil service employee shall be accorded the following protections:

- (1) Discrimination on the basis of political affiliation in regard to the hiring, promotion, termination, or any other tangible employment action relating to a civil service employee is prohibited;
- (2) An employee may not be required to participate in partisan political activities;
- (3) An employee may not be obliged, by reason of that employment, to contribute to any political funds or collections or render political service. Any employee refusing to contribute such funds or to render that political service may not be removed or otherwise disciplined or prejudiced for such refusal;
- (4) An employee retains the right of free speech;
- (5) An employee may not be disciplined for the reporting of any violation of state or federal law to any local, state or federal authority;
- (6) An employee has the right to obtain a copy of his or her personnel file or any other pertinent data that directly relates to the employee held in the state's files. The cost of the copy shall be borne by the employee;
- (7) Prior to any disciplinary action, the employee shall be given verbal or written notice and

an opportunity to present reasons, either in person or in writing, why the proposed action should not be taken; and

- (8) Such other rights and protections as enumerated by state or federal statute or rule.

Section 43. Any personnel management actions taken under the provisions of this chapter shall comply with merit standards as follows:

- (1) Recruiting, selecting, and advancing employees through open consideration of qualified applicants for initial appointments and promotions. Selection of qualified applicants is based on relative ability, knowledge, and skills;
- (2) Providing equitable and adequate compensation;
- (3) Training employees to assure high quality performance;
- (4) Retaining employees based on performance, correcting inadequate performance, and separating employees whose performance cannot be improved; and
- (5) Assuring fair treatment without regard to age, political affiliation, race, color, national origin, sex, or religious creed.

Section 44. The Civil Service Commission shall promulgate rules pursuant to chapter 1-26 in the areas of recruitment, examination, selection, and promotion of civil service employees to be administered by the Human Resources commissioner. Each examination shall relate to matters that will fairly test the relative capacity of the person examined to discharge the duties of the position and may include tests of physical qualifications, training and experience, written examinations, and health and, if appropriate, technical or manual skill. The commissioner shall designate the times and places for each examination.

Section 45. Each civil service appointment shall be made from among the best qualified persons on a list of eligible applicants certified by the Human Resources commissioner as meeting the minimum qualifications standards for the position to be filled. Any person who makes an

appointment contrary to the provisions of this section is guilty of a Class 1 misdemeanor.

Section 46. The Human Resources commissioner may delegate the administration of this chapter to state institutions and departments throughout the state. However, the commissioner shall delegate to institutions under the jurisdiction of the Board of Regents the administration of recruitment, examining, and selection of employees for such institutions. All such delegated administrative authority shall be exercised in accordance with the provisions of this chapter and Civil Service Commission rules.

Section 47. The Civil Service Commission shall promulgate rules pursuant to chapter 1-26 to develop a position classification system for all positions in the civil service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications and pay may reasonably be required and established for positions allocated to the same class.

Section 48. The Civil Service commission shall promulgate rules pursuant to chapter 1-26 to develop a statewide pay system which assures the principle of equal pay for equal work applying to positions existing in the civil service.

Section 49. The commissioner of the Bureau of Human Resources shall approve the payroll for all departments and institutions of the executive branch to ensure compliance with this chapter and chapter 3-6C.

Section 50. The commissioner of the Bureau of Human Resources shall give final approval or rejection to all negotiated labor contracts and settlements for civil service employees based on compliance with this chapter and Civil Service Commission rules.

Section 51. The Civil Service Commission shall promulgate rules pursuant to chapter 1-26 governing civil service employees in matters of discipline, retirement, standards of conduct, adverse actions, political activity in employment, hours of work, equal opportunity, complaints, grievances and appeals to the commission, and reductions in force due to nondisciplinary reasons.

Section 52. If a grievance remains unresolved after exhaustion of a departmental grievance procedure, an employee may demand a hearing before the Civil Service Commission as provided for in contested cases in chapter 1-26; and proceedings shall be held as provided in chapter 1-26. The Civil Service Commission shall provide notice of the hearing within thirty calendar days of an employee's request for a hearing. The commission shall conduct a hearing within thirty calendar days of the notice of the hearing unless the hearing is continued for good cause or unless the commission determines, upon the motion of any party, that the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that a grievance, defense, or claim presents no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law. The commission, upon the motion of any party, may dispose of any grievance, defense, or claim at the close of the evidence offered by the proponent of the grievance, defense, or claim if it determines that the evidence offered by the proponent of the grievance, defense, or claim is legally insufficient to sustain the grievance, defense, or claim. The commissioner shall schedule the hearing to ensure compliance with the time frames provided in this section. If the grievant agrees, the commissioner may appoint a hearing examiner as authorized in § 1-26-18.1.

Any final action or decision may be appealed pursuant to chapter 1-26.

Section 53. In resolving grievances involving the discipline of an employee, the Civil Service Commission shall determine and decide whether the action was made for good cause. If the commission finds that the action was made for good cause, the commission shall enter an order upholding the decision of the appointing authority disciplining the employee. If, however, the commission finds that the action was made without good cause, the commission shall enter an order reversing the decision of the appointing authority.

Section 54. In resolving a grievance, the commission may reinstate an employee who has been disciplined without good cause. If reinstatement is ordered by the commission, the order shall

include one or more of the following forms of relief: an award of back pay, an award of back benefits, placement in the same position and location that the employee held before the discipline, or placement in a comparable position and location that the employee held before the discipline. Any award of back pay and benefits which adversely affects an agency's budget shall be considered advisory and submitted by the affected agency to the committee created by chapter 4-8A or the next session of the Legislature.

Section 55. Each state department shall adhere to, and assist the commissioner of the Bureau of Human Resources in administering, the provisions of this chapter. An appointing authority may formulate department level procedures within the limitations of those rules promulgated pursuant to chapter 1-26 by the Civil Service Commission or the commissioner of Human Resources. The procedures shall be reviewed and approved by the commissioner of Human Resources before implementation.

Section 56. The Human Resources commissioner shall maintain accurate records reflecting the costs of administering the provisions of this chapter. The commissioner shall summarize the cost and shall bill each department, office, institution, or bureau for a pro rata share of the administrative cost.

Section 57. No applicant for a civil service position shall:

- (1) Directly or indirectly give, render, or pay, or promise to give, render, or pay any money, service, or other thing to any person, for or on account of, or in connection with an examination, appointment, or proposed appointment; or
- (2) Submit, with the intent to deceive, any false application, credential, test, or examination to a hiring authority for the purpose of obtaining any appointment or proposed appointment or promotion.

A violation of this section is a Class 1 misdemeanor.

Section 58. No employee of the Bureau of Human Resources or any other person may defeat,

deceive, or obstruct any person's right to examination, eligibility, certification, or appointment pursuant to this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the civil service. A violation of this section is a Class 1 misdemeanor.

Section 59. An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.

Section 60. A person upon accepting civil service employment with any agency covered by this chapter shall be placed on a probationary period. For a law enforcement officer, the probationary period shall be twelve months. For all other civil service employment, the probationary period shall be six months. During this time the person may be dismissed without cause.

Section 61. The director of the Division of Criminal Investigation shall establish and maintain records on law enforcement employees within the Division of Criminal Investigation relating to the provisions of this chapter.

Section 62. Code counsel is directed to codify sections 63 to 81, inclusive, of this Act, as chapter 3-6E and entitle that chapter, State Employees' Health and Life Insurance.

Section 63. The Bureau of Human Resources may establish a benefits plan, for employees of the state. The plan may either be self-funded or established as a group health insurance program. The plan may provide for group health coverage against the financial cost of hospital, surgical, pharmacy, and medical treatment and care, and such other coverage or benefits, as deemed appropriate and desirable by the commissioner. The commissioner may include a flexible benefit plan which allows an employee to choose the employee's own benefits or levels of coverage.

Section 64. The commissioner of the Bureau of Human Resources may provide all, or any part

of, the benefits under the plan or plans provided pursuant to this chapter by means of a plan which is self-funded in whole or in part.

Section 65. The commissioner may authorize the purchase of reinsurance to cover against losses incurred by the benefit plan.

Section 66. Each state employee eligible for membership in the health plan shall be enrolled in the plan unless the employee is covered by another group health plan either as a dependent or spouse and the employee provides notice to the plan administrator.

Section 67. All eligible employees shall be enrolled in the benefit plan on such effective dates as the commissioner may establish.

Section 68. Any eligible employee may elect to have any of the employee's eligible dependents covered by the health plan. The election shall be made at the time the employee becomes enrolled in the plan, or such other time as the commissioner allows.

Section 69. The Bureau of Human Resources may provide a health plan for retiring employees and their spouses and dependents as defined by rules of the Bureau of Human Resources, promulgated pursuant to chapter 1-26, and on such terms as the commissioner deems appropriate.

Section 70. The State of South Dakota shall either make a monthly contribution to the system or otherwise provide for the amount necessary to make payment to the system for the full single rate monthly health insurance premium or contribution for each employee. This amount shall be transmitted to the account of the state employees benefits plan in the Office of the State Treasurer. The state treasurer, after making a record of the receipts, shall credit the benefits plan with an amount equal to that remitted or otherwise provided. After the contribution has been assigned to the benefits plan, the Bureau of Human Resources shall disburse the contribution in accordance with the provisions of this chapter and the rules promulgated pursuant to chapter 1-26 by the commissioner of the Bureau of Human Resources.

Section 71. The employer shall deduct on each payroll of a member for each payroll period the amount of the contribution or premium, including any administrative expense. The employer shall make deductions from salaries of employees and shall transmit monthly the amount specified to be deducted to the state treasurer. The state treasurer, after making a record of receipts, shall credit the benefits plan with an amount equal to that remitted by the employer. After the credit has been assigned to the benefits plan, the commissioner shall disburse credit in accordance with the provisions of this Act and the rules promulgated pursuant to chapter 1-26 by the commissioner of the Bureau of Human Resources.

Section 72. Any funds transmitted to the state treasurer's office as designated transfers to the state employees benefits plan shall be placed in the trust fund established by this chapter and entitled the state employees benefits plan fund. Disbursements from such fund shall be made by warrants drawn by the state auditor upon itemized vouchers duly approved by the commissioner of the Bureau of Human Resources.

Section 73. The Bureau of Human Resources shall make available upon request, to each employee who is covered under the plan, a certificate setting forth the benefits to which the employee and the employee's dependents are entitled under this chapter, to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the plan's benefits as they affect the employee and the employee's dependents.

Section 74. Any benefits payable under the benefit plan may be paid either directly to the attending physician, dentist, hospital, medical, or dental group, or other person, corporation, limited liability company, association, or firm furnishing the service upon which the claim is based, or to the insured employee upon presentation of receipted bills for such service.

Section 75. The commissioner of the Bureau of Human Resources is responsible for the administration of this chapter and shall promulgate such rules as are required for the effective

administration of the provisions of this chapter in accordance with chapter 1-26. The rules may be promulgated in the following areas:

- (1) To establish what benefits will be offered pursuant to this chapter;
- (2) Participation in the plan by employees, retired employees, and dependents;
- (3) Procedures for election of coverage;
- (4) Effective dates of coverage if not specified by statute;
- (5) Termination of coverage;
- (6) Changes in dependent coverage;
- (7) Collection of premiums and contributions;
- (8) To coordinate the benefits plan with the health insurance plan authorized in this chapter;
and
- (9) Other provisions as required to meet federal law.

Section 76. The State of South Dakota shall provide for the amount necessary to make payment to the state employee workers' compensation program for the claims of employees of the state arising under Title 62. This amount shall be transmitted to the account of the state employees workers' compensation program in the Office of the State Treasurer. The treasurer, after making a record of the receipts, shall credit the state employee workers' compensation program with an amount equal to that remitted or otherwise provided. After the contribution has been assigned to the state employees workers' compensation program, the Bureau of Human Resources shall disburse the funds according to the provisions of Title 62 and the rules promulgated by the commissioner of the Bureau of Human Resources pursuant to chapter 1-26.

Section 77. Responsibility for the administration and payment of workers compensation claims of former employees of the South Dakota State Cement Plant Commission is hereby transferred to the state employees workers' compensation program.

Section 78. The employer shall contribute on each payroll for an employee for each payroll period the amount of the state employees workers' compensation program premium, including any administrative expense. The employer shall transmit monthly the amount specified to be paid to the state treasurer. The state treasurer, after making a record of receipts, shall credit the state employees workers' compensation program with an amount equal to that remitted by the employer. The credit shall be assigned to the state employee workers' compensation program. The commissioner shall disburse the funds according to Title 62 and the rules promulgated by the Department of Labor and Regulation and the commissioner pursuant to chapter 1-26.

Section 79. Any funds transmitted to the Office of the State Treasurer as designated transfers to the state employees workers' compensation program shall be placed in the trust fund established by this section and entitled the state employees workers' compensation program fund. Disbursements from this fund shall be made by warrants drawn by the state auditor.

Section 80. The commissioner of the Bureau of Human Resources may promulgate rules pursuant to chapter 1-26 with respect to the adjustment, administration, and management of the workers' compensation program for state employees.

Section 81. Responsibility for the administration and payment of life insurance plan benefits of former employees of the South Dakota State Cement Plant Commission is hereby transferred to the Bureau of Human Resources.

Section 82. Code counsel is directed to codify sections 83 to 87, inclusive, of this Act, as chapter 3-6F and entitle that chapter, State Employees Drug Testing.

Section 83. The commissioner of the Bureau of Human Resources shall establish and implement a drug screening program for applicants who seek the following employment:

- (1) Positions at the Human Services Center or the South Dakota Developmental Center whose primary duty includes patient or resident care or supervision;

- (2) Positions at the South Dakota State Veterans' Home whose primary duty includes patient or resident care or supervision;
- (3) Safety sensitive positions; and
- (4) Positions in the Department of Agriculture, Wildland Fire Suppression Division whose duties include firefighting.

The commissioner may also establish and implement a drug screening program for employees holding those positions based upon reasonable suspicion of illegal drug use by any such employee.

Section 84. Any printed public announcement or advertisement soliciting applications for the positions listed in section 83 of this Act shall include a statement of the requirements of the drug screening program.

Section 85. Individual test results and medical information collected pursuant to this chapter are confidential. This information may be revealed only as authorized by the commissioner of the Bureau of Human Resources. An applicant or employee may have access to the information or test results upon written request to the commissioner.

Section 86. Except as provided in section 85 of this Act, any person responsible for recording, reporting, or maintaining medical information required pursuant to the provisions of this chapter, who knowingly or intentionally discloses or fails to protect medical information declared to be confidential pursuant to section 85 of this Act, or who compels another person to disclose such medical information, is guilty of a Class 2 misdemeanor.

Section 87. The commissioner of the Bureau of Human Resources may promulgate rules, pursuant to chapter 1-26, necessary to carry out the provisions of this chapter with regard to:

- (1) Listing of positions whose primary duty includes patient or resident care or supervision;
- (2) Substances to be screened;
- (3) Drug screening procedures;

- (4) Procedures for collecting, analyzing, and evaluating test samples;
- (5) Confidentiality of testing procedures;
- (6) Referral for education or treatment; and
- (7) Consequences that may result from valid positive test results or from failure to submit to a test.

Section 88. The provisions of Articles 55:01 and 55:02 of the Administrative Rules of South Dakota in effect as of July 1, 2012, shall remain in effect until repealed by the Civil Service Commission created pursuant to section 38 of this Act. All duties vested in the Career Service Commission and the Law Enforcement Civil Service Commission pursuant to those articles shall vest in the Civil Service Commission.

Section 89. That § 1-18C-3 be amended to read as follows:

1-18C-3. The state archives shall be administered by a state archivist who shall be appointed by the secretary of the Department of Tourism, subject to the Governor's approval, and shall serve at the pleasure of the secretary. Compensation for the state archivist shall be determined according to guidelines established by the Bureau of Human Resources and within the limits of available appropriations.

Section 90. That § 1-18C-6 be amended to read as follows:

1-18C-6. Within limits of available appropriations and according to guidelines established by the Bureau of Human Resources, the secretary of tourism may hire additional trained personnel in order to more efficiently index, catalog, and otherwise make accessible to state agencies and the public the permanently valuable records in the custody of the state archives.

Section 91. That subdivision (12) of § 2-14-2 be amended to read as follows:

- (12) "Full-time equivalent" or "FTE," a number which designates staffing level where one full-time equivalent position is equal to the number of days, Monday through Friday, in a

fiscal year, multiplied by eight hours per day. It excludes: paid overtime hours; hours paid to an employee assigned to a light duty position as approved by the commissioner of the Bureau of Human Resources due to a temporary partial disability as defined in subdivision 62-1-1(8); hours paid for accumulated annual leave and sick leave upon employee termination; hours paid to patient employees of the institutions under the control of the Department of Human Services or the Department of Social Services and the Department of Veterans Affairs; hours paid to work-study students enrolled in postsecondary educational institutions or postsecondary students employed pursuant to chapter 3-6B; hours paid to students enrolled in and employed by postsecondary educational institutions; and hours paid to members of boards and commissions pursuant to § 4-7-10.4. For purposes of salary computation a nine month or more per year full-time teaching or research faculty person, or the equivalent thereof, at the institutions under the jurisdiction of the Board of Regents shall be considered one full-time equivalent;

Section 92. That § 5-24A-18 be amended to read as follows:

5-24A-18. Notwithstanding any other provision of law, the commission shall disburse the proceeds from the liquidation of the commission's property, to the extent proceeds are available, as follows:

- (1) First, to pay any remaining noncontingent, liquidated liabilities of the commission;
- (2) Second, the amount of three hundred fifty thousand dollars to the Bureau of Human Resources for the purpose of administering and paying existing and future workers compensation claims and life insurance coverage of former employees of the commission;
- (3) Third, to the South Dakota Retirement System for the purpose of funding benefits payable to former employees of the commission. The amount disbursed shall be determined by the commission based upon an actuarial review for the fiscal year ending June 30, 2010; and

- (4) Fourth, the remainder shall be paid into the trust fund created by S.D. Const., Art. XIII, § 20.

Section 93. That § 15-15A-7 be amended to read as follows:

15-15A-7. The following information in a court record is not accessible to the public:

- (1) Information that is not to be accessible to the public pursuant to federal law;
- (2) Information that is not to be accessible to the public pursuant to state law, court rule or case law as follows;
- (3) Examples of such state laws, court rules, or case law follow. Note this may not be a complete listing and the public and court staff are directed to consult state law, court rules or case law. Note also that additional documents are listed below that may not be within court records but are related to the court system; the public and court staff should be aware of access rules relating to these documents.
 - (a) Abortion records (closed); § 34-23A-7.1
 - (b) Abuse and neglect files and records (closed, with statutory exceptions); § 26-8A-13
 - (c) Adoption files and adoption court records (closed, with statutory exceptions); §§ 25-6-15 through 25-6-15.3
 - (d) Affidavit filed in support of search warrant (sealed if so ordered by court, see statutory directives); § 23A-35-4.1
 - (e) Attorney discipline records (closed until formal complaint has been filed with Supreme Court by the State Bar Association's Disciplinary Board or Attorney General, accused attorney requests matter be public, or investigation is premised on accused attorney's conviction of a crime); § 16-19-99
 - (f) Civil case filing statements (closed); § 15-6-5(h);
 - (g) Coroner's inquest (closed until after arrest directed if inquisition finds criminal

- involvement with death); § 23-14-12
- (h) Custody or visitation dispute mediation proceedings pursuant to § 25-4-60 (closed, inadmissible into evidence)
 - (i) Discovery material (closed unless admitted into evidence by court) §§ 15-6-26(c); 15-6-5(g)
 - (j) Domestic abuse victim's location (closed, with statutory exception); § 25-10-39
 - (k) Employment examination or performance appraisal records maintained by Bureau of Human Resources (closed); § 1-27-1
 - (l) Grand jury proceedings (closed with statutory exceptions); § 23A-5-16
 - (m) Guardianships and conservatorships (closed with statutory exceptions); § 29A-5-311
 - (n) Involuntary commitment for alcohol and drug abuse (petition, application, report to circuit court and court's protective custody order sealed; law enforcement or prosecutor may petition the court to examine these documents for limited purpose); § 34-20A-70.2
 - (o) Judicial disciplinary proceedings (closed until Judicial Qualifications Commission files its recommendation to Supreme Court, accused judge requests matter be public, or investigation is premised on accused judge's conviction of either a felony crime or one involving moral turpitude); ch. 16-1A, Appx. III(1)
 - (p) Juvenile court records and court proceedings (closed with statutory exception); §§ 26-7A-36 through -38; §§ 26-7A-113 through -116
 - (q) Mental illness court proceedings and court records (closed); §§ 27A-12-25; 27A-12-25.1 through -32
 - (r) Pardons (statutory exceptions, see § 24-14-11)

- (s) Presentence investigation reports (closed); §§ 23A-27-5 through -10; § 23A-27-47
- (t) Probationer under suspended imposition of sentence (record sealed upon successful completion of probation conditions and discharge); §§ 23A-27-13.1; 23A-27-17
- (u) Records prepared or maintained by court services officer (closed except by specific order of court); § 23A-27-47
- (v) Trade secrets (closed); subdivision 15-6-26(c)(7)
- (w) Trusts (sealed upon petition with statutory exceptions); § 21-22-28
- (x) Voluntary termination of parental rights proceedings and records (closed except by order of court); § 25-5A-20
- (y) Wills (closed with statutory exceptions); § 29A-2-515
- (z) Written communication between attorney and client; attorney work product (closed unless such privilege is waived); ch. 16-18, Appx. Rule 1.6
- (aa) Information filed with the court pending in camera review (closed)
- (bb) Any other record declared to be confidential by law; § 1-27-3.

Section 94. That § 3-8-13 be amended to read as follows:

3-8-13. Any state employee who is employed in a position that is eligible for longevity pay and has at least seven years of employment with the State of South Dakota is entitled to longevity compensation. The longevity compensation for years of employment seven to ten, inclusive, is one hundred dollars. The longevity compensation for years of employment eleven to fourteen, inclusive, is equal to ten dollars per year of employment until the fifteenth year of service at which time the longevity pay shall be equal to fifteen dollars per year of service. Longevity pay shall increase at five dollar increments thereafter for each additional five years of employment. The longevity compensation may not be affected by any other compensation and classification plan except that the longevity compensation shall be distributed in the same manner and form as prescribed in § 3-8-6.

Longevity compensation is payable annually in one lump sum. Any employee due any portion of the employee's longevity payment upon retirement and meeting the definition of a participant as set out in subdivision 3-13A-2(8) shall have any such lump-sum payment transmitted to the fund pursuant to the provisions of § 3-13A-5. The commissioner of the Bureau of Human Resources shall promulgate rules pursuant to chapter 1-26 to determine the state employee position categories that are eligible for longevity pay, the criteria for payment for prior years of service, the date for payment, and the type of service that may be used to calculate longevity. The only employees of the Board of Regents eligible for longevity pay are those nonfaculty permanent full-time employees who are customarily employed for twenty hours or more a week at least six months a year.

Any agent, patrolman, or employee of the Division of Highway Patrol of the Department of Public Safety may elect to receive longevity pay under this section or under § 32-2-10, but may not receive longevity pay under both provisions at the same time.

Section 95. That § 26-8A-12.2 be amended to read as follows:

26-8A-12.2. Upon receipt of names of current or potential employees or volunteers from the Juvenile Division of the Department of Corrections, any adolescent treatment program operated by the Department of Human Services or the Department of Social Services, any entity recognized as administering a CASA program as provided in § 16-2-51, or a court considering appointment of a guardian ad litem for a child in a proceeding pursuant to chapter 26-8A, the Department of Social Services shall compare the names to the central registry for abuse and neglect and report any findings to the requesting program director, to the Bureau of Human Resources human resource manager, or to the court. Any potential employee or volunteer under this section shall give written consent prior to completion of the abuse and neglect screening. Failure to submit to abuse and neglect screening disqualifies an applicant from employment or appointment.

Section 96. That § 36-25-12 be amended to read as follows:

36-25-12. The Bureau of Human Resources shall set the compensation of the secretary-treasurer, and of such other inspectors and assistants as may be necessary to carry out the provisions of this chapter, and the State Plumbing Commission may incur such other expense as may be necessary.

Section 97. That § 38-1-12 be amended to read as follows:

38-1-12. The secretary of agriculture may, with the advice and consent of the Governor, employ such inspectors, deputies, clerical assistants, and other necessary employees as shall be necessary for the efficient and economical administration of the department and not inconsistent with the rules and regulations of the Bureau of Human Resources.

Section 98. That § 38-1-13 be amended to read as follows:

38-1-13. The terms of office or employment of executives, directors, inspectors, and other employees appointed or employed pursuant to § 38-1-11 or 38-1-12 shall be as prescribed by the secretary of agriculture, and any of them may be discharged at any time without cause upon recommendation of the secretary and the approval of the Governor. Their salaries shall be as prescribed by law or, in the absence of such prescription, then as fixed by the secretary and approved by the Governor and subject to regulations of the Bureau of Human Resources.

Section 99. That § 38-10-14 be amended to read as follows:

38-10-14. The wheat commission may establish an administrative office for the wheat commission in the State of South Dakota at such place as may be suitable for the furtherance of this chapter. The commission may:

- (1) Expend the funds collected pursuant to this chapter;
- (2) Appoint, discharge, fix compensation for and prescribe the duties of such personnel as it may deem necessary subject to Bureau of Human Resources guidelines;
- (3) Lease, purchase, own, equip, maintain, operate, and dispose of equipment in the commission office;

- (4) Accept donations of funds, property, services, and other assistance from public, private and other sources for the purpose of aiding and promoting the work and objectives of the commission;
- (5) Appoint an attorney who shall act for the commission when needed.

Section 100. That § 49-1-7 be amended to read as follows:

49-1-7. The annual salary of each member of the Public Utilities Commission shall be set by the Bureau of Human Resources in accordance with the provisions of chapter 3-6A.

Section 101. That § 58-2-13 be amended to read as follows:

58-2-13. The Department of Labor and Regulation may appoint a chief clerk and such other employees as may be necessary, subject to the approval of the Bureau of Human Resources.

Section 102. That § 58-2-17 be amended to read as follows:

58-2-17. The compensation of all such personnel employed or contracted for by the Department of Labor and Regulation shall be fixed by the department subject to the approval of the Bureau of Human Resources.

Section 103. That § 58-17-116 be amended to read as follows:

58-17-116. A seven-member board appointed by the Governor shall administer the risk pool. The board shall include representatives of the Governor's Office, Department of Social Services, Bureau of Human Resources, Department of Health, and Division of Insurance and two other persons appointed by the Governor. The board may contract for the performance of any of its functions.

Section 104. That § 58-17-120 be amended to read as follows:

58-17-120. There is hereby established a South Dakota risk pool fund within the Bureau of Human Resources to receive premiums, assessments, federal funds, and any claims and make payments either directly or indirectly to health care providers and others to carry out the functions of the risk pool.

Section 105. That § 3-6-17 be transferred to chapter 9-14.

An Act to revise certain provisions relating to state employees and to the administration of state personnel matters.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1028

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1028
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State