

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0356

SENATE STATE AFFAIRS ENGROSSED NO. **HB 1046** - 2/15/2012

Introduced by: The Committee on Judiciary at the request of the Department of the Military

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding child custody during
2 a soldier's deployment.

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

4 Section 1. That § 33-6-10 be amended to read as follows:

5 33-6-10. A ~~member of the armed forces of the United States, including a member of the~~
6 ~~reserve component of the armed forces of the United States called into active service of the~~
7 ~~armed forces, and servicemember ordered to deployment,~~ who is the physical custodian or
8 guardian of a minor or incapacitated person, may delegate by a properly executed power of
9 attorney to another person for a period of one year or less any of the powers regarding care and
10 custody of the minor child or ward, except the power to consent to marriage or adoption of a
11 minor ward. If the ~~custodian or guardian is serving on active duty with the armed forces of the~~
12 ~~United States, and a power of attorney properly executed by such person~~ lapses prior to the
13 servicemember's release of such ~~custodian or guardian~~ from active duty, the power of attorney
14 shall be automatically extended for an additional year unless the ~~custodian or guardian~~
15 servicemember is sooner released from active duty. ~~The~~ Neither the execution of such a power



1 of attorney pursuant to this section ~~or upon activation of the service member into the armed~~
2 ~~forces of the United States does not constitute a material change in circumstances for an action~~
3 ~~seeking to change the custody of the affected child or children by the parent without physical~~
4 ~~custody, nor the deployment itself, may be considered a factor in considering a substantial and~~
5 ~~material change of circumstances, nor a factor in a best interest of the child determination for~~
6 ~~purposes of permanent child custody modification proceedings.~~ There is hereby imposed an
7 automatic stay of all proceedings seeking a permanent change in custody of a minor child where
8 the parent with physical custody is a ~~member of the active component or reserve component of~~
9 ~~the armed forces of the United States called into active service during a period of national~~
10 ~~emergency~~ servicemember called to active duty for deployment. Such stay shall continue for the
11 period of service ~~of the national emergency~~ due to deployment, unless waived in writing by the
12 service member. Nothing in this section precludes a petition by the noncustodial parent to
13 temporarily change physical custody, the best interests of the child remains determinative for
14 such temporary custody determinations. ~~However, the best interests of the child shall be~~
15 ~~determinative~~ Any temporary order modifying physical custody of the child automatically
16 terminates upon return of the servicemember from deployment and reverts back to the custody
17 status or order in effect prior to the deployment. However, if upon return from the deployment
18 either the servicemember or child exhibits a substantial and material change in circumstances
19 which adversely affects the servicemember's ability to adequately care for the child, the best
20 interests of the child shall be determinative. ~~The temporary custody provisions of § 25-4A-11~~
21 do not apply to the temporary custody provisions of this section.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

391T0563

HOUSE JUDICIARY ENGROSSED NO. **HB 1126** 2/13/2012

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

Introduced by: Representative Hunt and Senator Krebs

1 FOR AN ACT ENTITLED, An Act to establish provisions that certain bonds paid by, or on
2 behalf of, certain persons with child support arrearages shall be paid to the Department of
3 Social Services to pay any child support the defendant owes.

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

5 Section 1. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Notwithstanding any provision of chapter 23A-43 to the contrary, any cash bond deposited
8 with the court, whether or not personally posted by the defendant, to assure appearance of an
9 individual charged with nonsupport of a child under § 25-7-15 or 25-7-16 or subject to civil
10 proceedings to enforce child support obligations, may, at the discretion of the court, be ordered
11 paid to the Department of Social Services or the support obligee and applied to child support
12 arrearages either as a condition imposed by the court or as a result of the individual's failure to
13 appear as required by the court.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

906T0460

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1138** - 2/22/2012

Introduced by: Representatives Cronin, Abdallah, Blake, Bolin, Fargen, Gibson, Gosch, Greenfield, Hoffman, Hunhoff (Bernie), Jones, Kirkeby, Kirschman, Rausch, Schaefer, Sigdestad, Solum, Wick, Willadsen, and Wismer and Senators Vehle, Begalka, Cutler, Frerichs, Fryslie, Gray, Hansen (Tom), Hundstad, Johnston, Krebs, Lederman, Maher, Olson (Russell), Peters, Rampelberg, Rave, and Tieszen

1 FOR AN ACT ENTITLED, An Act to declare that any person who maintains or provides roll-
2 your-own cigarette machines at retail establishments are cigarette manufacturers.

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

4 Section 1. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person that maintains or provides a machine at any retail establishment that enables any
7 consumer to process at that establishment tobacco or any product that is made or derived from
8 tobacco into a roll or tube is deemed to be a manufacturer of cigarettes. The product produced
9 by the machine is deemed to be a cigarette that was sold to a consumer for purposes of this
10 chapter and chapter 10-50B. The product produced by the machine shall comply with the
11 provisions of chapter 34-49 by July 1, 2014.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

337T0274

SENATE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **HB 1171** - 2/22/2012

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

Introduced by: Representatives Munsterman, Brunner, Elliott, Hickey, Hunt, Jensen, Kopp, Liss, Magstadt, Miller, Nelson (Stace), Olson (Betty), Schaefer, and Sly and Senators Rhoden, Adelstein, Begalka, Frerichs, Fryslie, Kraus, Lederman, and Sutton

1 FOR AN ACT ENTITLED, An Act to clarify certain rules of evidence to determine the value
2 of services for which special damages may be awarded in health care malpractice cases.

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 determining what constitutes the reasonable value of the services for which special
7 damages may be awarded pursuant to § 21-3-12, both the amount billed for such services and
8 the amount paid for such services are admissible evidence.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

861T0125

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1179** - 2/9/2012

Introduced by: Representatives Kirkeby, Brunner, Deelstra, and Munsterman and Senators Lederman, Juhnke, Peters, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to require certain campaign finance requirements to apply
2 to all counties and municipalities.

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

4 Section 1. That § 12-27-39 be amended to read as follows:

5 12-27-39. The provisions of this chapter apply to each statewide office, legislative office,
6 statewide ballot question, county offices and ballot questions in counties with population greater
7 than five thousand according to the most recent Federal census, ballot questions in first class
8 municipalities, and school district offices and ballot questions in school districts with more than
9 two thousand average daily membership. Any municipal or school district election covered by
10 this chapter shall conform to the contribution limits applicable to legislative offices. This
11 chapter does not apply to the unified judicial system, nor does this chapter apply to any
12 township, ~~municipal~~, or special purpose district offices or ballot questions or elections for
13 municipal offices. However, the governing body of any county, township, municipality, school
14 district, or special purpose district not otherwise covered by this chapter may adopt an ordinance



1 or resolution to make the provisions of this chapter, with or without amendments, applicable to
2 ~~county~~, township, ~~municipal~~, school district, or special purpose district elections.

3 Section 2. That § 12-27-40 be amended to read as follows:

4 12-27-40. The state's attorney shall investigate any violation of the provisions of this chapter
5 relating to elections for county and school district office or county, municipal, or school district
6 ballot questions, and prosecute any violation thereof. In lieu of bringing a criminal action, the
7 state's attorney may elect to file a civil action for any violation of this chapter. In a civil action,
8 in addition to other relief, the court may impose a civil penalty in an amount not to exceed one
9 thousand dollars for each violation. Any civil penalty recovered shall be paid to the county
10 general fund if the violation arose out of a county office or ballot question, municipal general
11 fund if the violation arose out of a municipal ballot question, or the school district general fund
12 if the violation arose out of a school district office or ballot question. A civil enforcement action
13 for a violation of the chapter concerning a municipal ballot question may, with the consent of
14 the state's attorney, be brought by the municipality's attorney. A civil enforcement action for a
15 violation of the chapter concerning a school district office or ballot question may, with the
16 consent of the state's attorney, be brought by the school district's attorney. A civil action brought
17 under this section shall be commenced in the county where filings under the chapter are
18 required, in the county where the person resides, or in the county where the organization,
19 political party, or political committee has its principal office.

20 Section 3. That § 12-27-42 be amended to read as follows:

21 12-27-42. Any statement, form, or filing required by this chapter shall be filed with the
22 secretary of state in the case of a statewide office or legislative office election. Any statement,
23 form, or filing required by this chapter shall be filed with the county auditor in the case of a
24 county office election, with the municipal finance officer or clerk in the case of a municipal

1 ballot question election, with the school business manager in the case of a school district office
2 election, or with the person in charge of the election in the case of other political subdivisions
3 or special purpose districts. However, any county, municipality, school district, or other political
4 subdivision may, by resolution, direct that any statement, form, or filing required by this chapter
5 be electronically filed with the secretary of state, rather than being filed with the county,
6 municipality, school district, or other political subdivision.

7 Section 4. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Nothing in this chapter prevents any political subdivision from adopting additional standards
10 or requirements relating to campaign finance for elections held under the political subdivision's
11 own jurisdiction that are more stringent than the provisions of this title.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

813T0101

HOUSE ENGROSSED NO. **HB 1198** - 2/10/2012

Introduced by: Representatives Rozum, Abdallah, Bolin, Carson, Conzet, Cronin, Deelstra, Elliott, Haggar, Hansen (Jon), Hoffman, Hubbel, Hunhoff (Bernie), Jensen, Jones, Kirkeby, Kopp, Magstadt, Moser, Munsterman, Novstrup (David), Olson (Betty), Perry, Rausch, Romkema, Schaefer, Sly, Solum, Street, Stricherz, Tornow, Turbiville, Van Gerpen, Vanneman, Venner, Wick, Willadsen, and Wismer and Senators Cutler, Adelstein, Bradford, Lederman, Nelson (Tom), Novstrup (Al), Rave, Rhoden, Schlekeway, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise the definition of firearm to include certain antique,
2 muzzle-loading, and black powder weapons in certain circumstances.

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

4 Section 1. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For purposes of §§ 22-14-15 and 22-14-15.1, the term, firearm, includes any antique firearm
7 as defined in subdivision 22-1-2(4) and any muzzle loading rifle, muzzle loading shotgun, or
8 muzzle loading pistol, including muzzle loading weapons that are designed to use black powder
9 or a black powder substitute and cannot use fixed ammunition.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

368T0574

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1206** - 2/22/2012

Introduced by: Representatives Blake, Boomgarden, Brunner, Elliott, Fargen, Gibson, Greenfield, Hickey, Hunhoff (Bernie), Jones, Kirschman, Lucas, Magstadt, Sly, Street, and Wismer and Senators Buhl, Adelstein, Bradford, Krebs, Maher, Peters, Sutton, and Tieszen

1 FOR AN ACT ENTITLED, An Act to make an appropriation for emergency food assistance
2 grants and to repeal the sales tax on food refund program.

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

4 Section 1. Any general funds remaining from the appropriation made in section 3 chapter
5 140 of the 2009 Session Laws shall be reappropriated to the Department of Social Services for
6 grants for the purpose of emergency food assistance. The department shall issue requests for
7 proposals in accordance with chapter 5-18A and may award emergency food assistance grants
8 for a period not to exceed four years. Any grantee awarded funds shall provide a fiscal
9 accounting and program performance data on an annual basis.

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

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



1 Section 4. That § 28-1-70 be repealed.

2 ~~—28-1-70. There is established the sales tax on food refund program to be administered by the~~
3 ~~Department of Social Services. The purpose of the program is to provide sales tax refunds on~~
4 ~~food for purchases made in accordance with chapters 10-45 and 10-46 to South Dakota families~~
5 ~~who need it most.~~

6 Section 5. That § 28-1-71 be repealed.

7 ~~—28-1-71. To be eligible for the sales tax on food refund program, a person shall:~~

8 ~~—(1) Be a South Dakota resident;~~

9 ~~—(2) Be the head of the household and certify the number of persons in the household;~~

10 ~~—(3) Have countable income above one hundred thirty percent and below one hundred~~
11 ~~fifty-one percent of the federal poverty level, as updated annually by the Department~~
12 ~~of Social Services in administrative rules promulgated pursuant to chapter 1-26;~~

13 ~~—(4) Not be a current recipient of supplemental nutrition assistance program benefits.~~

14 Section 6. That § 28-1-72 be repealed.

15 ~~—28-1-72. The Department of Social Services shall promulgate rules, pursuant to chapter 1-~~
16 ~~26, relating to:~~

17 ~~—(1) Eligibility criteria;~~

18 ~~—(2) Refund amounts or levels;~~

19 ~~—(3) Payment provisions;~~

20 ~~—(4) Household reporting requirements; and~~

21 ~~—(5) Recoveries.~~

22 Section 7. That § 28-1-73 be repealed.

23 ~~—28-1-73. To receive sales tax on food refunds pursuant to §§ 28-1-70 to 28-1-77, inclusive,~~
24 ~~a household shall apply for an annual refund during an annual enrollment period on forms~~

1 ~~prescribed by the Department of Social Services.~~

2 Section 8. That § 28-1-75 be repealed.

3 ~~—28-1-75. The estimate of sales tax on food paid or refund awarded under this program shall~~
4 ~~be determined based on:~~

5 ~~—(1)—The thrifty food plan as adopted and updated annually in administrative rules~~
6 ~~promulgated by the Department of Social Services pursuant to chapter 1-26; and~~

7 ~~—(2)—The number of individuals in the household.~~

8 ~~—A monthly allotment shall be determined based on the thrifty food plan's maximum~~
9 ~~allotment and the corresponding number of individuals in the household. Once the monthly~~
10 ~~allotment is determined, it shall be annualized and multiplied by the average sales tax rate in~~
11 ~~South Dakota as determined by the Department of Revenue. This shall be the annual level of~~
12 ~~refund eligible for the household.~~

13 Section 9. That § 28-1-77 be repealed.

14 ~~—28-1-77. The method of payment utilized to make payments authorized by §§ 28-1-70 to 28-~~
15 ~~1-77, inclusive, shall be made by warrant.~~

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0575

SENATE EDUCATION

ENGROSSED NO. **HB 1234** - 2/23/2012

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

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

1 FOR AN ACT ENTITLED, An Act to provide incentives to teach in critical need areas, to
2 provide for rewards for the best teachers and those teaching in math and science subject
3 areas, to revise certain provisions regarding evaluation of teachers, to create a system for
4 evaluating principals, to distinguish between tenured and nontenured teachers, to revise
5 certain provisions regarding the employment of teachers, and to repeal provisions regarding
6 the teacher compensation assistance program.

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

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

10 Beginning in the 2013-2014 academic year, there is hereby established the South Dakota
11 critical teaching needs scholarship program. The purpose of the program is to encourage South
12 Dakota's high school graduates to obtain their postsecondary education in South Dakota for
13 teaching, to remain in the state upon completion of their education, and to contribute to the state
14 and its citizens by working in a critical need teaching area.



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

3 The South Dakota critical teaching needs scholarship program shall be administered by the
4 Critical Teaching Needs Scholarship Board which is hereby established. The board shall consist
5 of five members appointed by the Governor for a term of five years, except that the initial
6 appointments shall be for periods of one, two, three, four, and five years. A majority of the
7 board shall be present either personally or by teleconference to constitute a quorum.

8 The Department of Education shall provide necessary support services to the board.

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

11 From the total pool of applicants, the Critical Teaching Needs Scholarship Board shall
12 award no more than one hundred critical teaching needs scholarships for each academic year.
13 The board shall award scholarships based on the requirements of sections 5 and 6 of this Act,
14 the filling of critical teaching needs areas, and other academic and personal characteristics of
15 each applicant as determined by the board. Notwithstanding the provisions of this section, if the
16 board rescinds a scholarship that has been awarded, the board may award the amount of the
17 rescinded scholarship to an alternate.

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

20 All accredited South Dakota public and nonpublic postsecondary institutions which offer
21 a baccalaureate degree in elementary or secondary education are eligible to participate in the
22 scholarship program. Each institution may choose whether to participate in the program and may
23 limit the number of scholarship recipients the institution will accept in each academic year.

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

1 follows:

2 In order to be eligible for a critical teaching needs scholarship, a student shall:

3 (1) Agree, in writing, to stay in South Dakota and work in a critical teaching needs area
4 for five years after graduation from a participating postsecondary institution;

5 (2) Agree, through a promissory note, that failure to abide by the provisions of
6 subdivision (1) will result in the scholarship being converted into an interest bearing
7 loan;

8 (3) Attend a participating South Dakota postsecondary institution as an undergraduate
9 junior or senior and be accepted in an elementary or secondary education program at
10 the institution that will prepare the student to work in a critical need teaching area;
11 and

12 (4) Be a United States citizen or lawful permanent resident.

13 For purposes of subdivision (3), a junior is a student who has earned sixty credit hours prior
14 to the beginning of the third year of instruction, and a senior is a student who has earned ninety
15 credit hours prior to the fourth year of instruction.

16 A student is eligible to participate in the South Dakota critical teaching needs scholarship
17 program for the equivalent of two academic years (four consecutive spring and fall terms) or
18 until the attainment of a baccalaureate degree in elementary or secondary education in a critical
19 teaching needs area, whichever comes first. However, the Critical Teaching Needs Scholarship
20 Board may grant exceptions to the continuous enrollment requirements for good cause.

21 Scholarships are not provided for summer session students enrolled in traditional four year
22 programs.

23 Section 6. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 In addition to the eligibility criteria identified in section 5 of this Act, the Critical Teaching
2 Needs Scholarship Board may require applicants to submit a written essay or other information
3 by which to judge the academic and personal qualifications of the applicant.

4 Section 7. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The amount of the annual scholarship shall equal the tuition and generally applicable fees
7 for thirty credit hours at a South Dakota public postsecondary institution as of July 1, 2013. The
8 scholarship amount paid to a recipient attending a participating nonpublic postsecondary
9 institution shall equal the amount paid to a recipient attending a public postsecondary
10 institution.

11 One-half of the annual scholarship shall be paid to public postsecondary institutions on
12 behalf of eligible students there enrolled or directly to eligible students enrolled at nonpublic
13 postsecondary institutions at the beginning of the fall semester, and the other half shall be paid
14 at the beginning of the spring semester.

15 If, in any year, the total funds available to fund the critical teaching needs scholarships are
16 insufficient to permit each eligible recipient to receive the full amount provided in this section,
17 the available moneys shall be prorated and distributed to each recipient in proportion to the
18 entitlement contemplated by this section. The total amount of the scholarship may not exceed
19 the amount stipulated in this section.

20 Section 8. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 In order to maintain eligibility for the critical teaching needs scholarship program, a student
23 shall:

24 (1) Maintain a cumulative 2.8 grade point average on a 4.0 scale. The student shall

1 complete consecutive spring and fall terms in order to remain eligible for
2 continuation of the scholarship program from term to term;

3 (2) Make satisfactory academic progress towards a degree by earning thirty credit hours
4 per year;

5 (3) Attend and graduate from a participating South Dakota postsecondary institution with
6 an elementary or secondary education degree which qualifies the student to teach in
7 a critical teaching needs area in South Dakota; and

8 (4) Upon graduation, stay in South Dakota and teach in a critical teaching needs area for
9 five years.

10 If factors beyond the control of a student who has been awarded a critical teaching needs
11 scholarship prevent the student from meeting any of the requirements in subdivisions (1) to (3),
12 the Critical Teaching Needs Scholarship Board may temporarily waive the requirements of those
13 subdivisions. The board may rescind a scholarship award if the student does not maintain
14 eligibility as prescribed in those subdivisions.

15 Failure to fulfill the requirements of subdivision (4) shall result in the critical teaching needs
16 scholarship being converted into an interest bearing loan. The board shall set the rate of interest,
17 as allowed by law. The five years of employment referenced in subdivision (4) shall be fulfilled
18 consecutively unless the board waives this requirement for good cause, and the five years of
19 employment may be fulfilled at more than one school district in South Dakota.

20 Section 9. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The Department of Education may allocate funds appropriated by the Legislature or funds
23 generated by gifts, donations, grants, or endowments for the purposes of sections 1 to 8,
24 inclusive, of this Act, to students qualifying pursuant to sections 1 to 8, inclusive, of this Act.

1 The secretary of the Department of Education shall approve vouchers and the state auditor
2 shall draw warrants to pay expenditures authorized by sections 1 to 8, inclusive, of this Act.

3 Section 10. The Board of Education may promulgate rules pursuant to chapter 1-26 to define
4 areas of critical teaching need for the purposes of sections 1 to 8, inclusive, of this Act, to
5 establish application requirements for the critical teaching needs scholarship, and to further
6 accomplish the purposes of sections 1 to 8, inclusive, of this Act.

7 Section 11. Beginning in the 2014-2015 school year, there is hereby created the math and
8 science teacher incentive program within the Department of Education to provide funds to
9 public school districts for the purpose of providing rewards to attract certified teachers who
10 teach in math and science subject areas in middle school and high school or who are certified
11 with a math or science specialist endorsement which they are utilizing for any grade,
12 kindergarten through twelve. By January 31, 2014, the South Dakota Board of Education shall
13 promulgate rules pursuant to chapter 1-26 establishing which courses qualify as math and
14 science courses for purposes of the program. For purposes of this Act, math and science courses
15 are those courses established by the Board of Education pursuant to this section. For purposes
16 of this Act, middle school is a school consisting of any combination of two or more consecutive
17 grades, five to eight, inclusive, and high school is a school consisting of any combination of
18 three or more consecutive grades, including ninth grade to twelfth grade, inclusive.

19 Section 12. Participation in the math and science teacher incentive program is voluntary for
20 teachers, and incentive rewards are to supplement but not replace what a teacher receives under
21 a contract between the teacher and the school district or a collective bargaining agreement
22 between a district and the district's teachers. No collective bargaining agreement between a
23 district and the district's teachers may limit the ability of a teacher to qualify for or receive an
24 incentive reward. Nothing in sections 11 to 16, inclusive, of this Act is intended to create a

1 contractual right or property right in the math and science teacher incentive program.

2 Section 13. The Department of Education shall provide application forms for teachers
3 wishing to participate in the math and science teacher incentive program. A teacher wishing to
4 participate in the program shall complete and sign the form and provide the form to the business
5 office of the school district by the close of business on October first to be eligible for the
6 program for that school year. A teacher wishing to participate shall submit a new application
7 for each school year. Completed applications are a public record pursuant to chapter 1-27, but
8 personal information in the applications may be redacted as allowed by that chapter.

9 Section 14. To be eligible for the math and science teacher incentive program, a teacher shall
10 fulfill the following requirements:

- 11 (1) Comply with section 13 of this Act;
- 12 (2) Receive a distinguished rating or proficient rating, as referenced in section 38 of this
13 Act, on the teacher's most recent evaluation;
- 14 (3) Teach math or science courses in middle school or high school for at least fifty
15 percent of a full-time equivalent position's assignments submitted in the annual
16 teacher data collection pursuant to § 13-3-51, and any rules promulgated pursuant
17 thereto, and be currently certified with a middle school or high school endorsement
18 to teach each course, or utilize a math or science specialist endorsement for any
19 grade, kindergarten through twelve; and
- 20 (4) Be in full-time status for the entire school year.

21 Nothing in subdivision (3) shall entitle any teacher to receive more than the amount stipulated
22 in section 16 of this Act.

23 Section 15. By September first of each year, the school board of each district shall submit to
24 the Department of Education a copy of the application of each teacher eligible for the math and

1 science teacher incentive program for the previous school year pursuant to the requirements of
2 this Act. The Department of Education may require additional information from the district as
3 necessary to verify each teacher's eligibility for the reward. The department may refuse to issue
4 a reward for any teacher for whom the information required by this section is not provided by the
5 deadline.

6 Section 16. The amount of the reward under the math and science teacher incentive program
7 is two thousand eight hundred fifty dollars per eligible teacher to be distributed as described in
8 this section. No later than October first of each year, at the same time that foundation program
9 state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the
10 secretary of the Department of Education shall distribute funds for the math and science teacher
11 incentive program for teachers that qualify pursuant to this Act. These funds shall be distributed
12 in lump sum payments.

13 Subject to the requirements of this Act, the department shall pay to the school district two
14 thousand eight hundred fifty dollars per eligible teacher in that district. Within thirty days of
15 receipt from the department, the school district shall distribute the funds as follows:

- 16 (1) Two thousand five hundred dollars shall be paid to each eligible teacher in the district;
17 and
18 (2) Three hundred fifty dollars may be retained by the district to pay the district's share
19 of applicable federal taxes, the district's share of contribution to the South Dakota
20 Retirement System, and administrative costs.

21 Section 17. Beginning in the 2014-2015 school year, there is hereby created the top teachers
22 reward program within the Department of Education to provide funds to public school districts
23 for the purpose of providing top teacher rewards for certified teachers.

24 Section 18. Participation in the top teachers reward program is voluntary for teachers, and

1 such rewards shall supplement but not replace what a teacher receives under a contract between
2 the teacher and the school district or a collective bargaining agreement between a district and the
3 district's teachers. No collective bargaining agreement between a district and the district's
4 teachers may limit the ability of a teacher to qualify for or receive a top teacher reward. Nothing
5 in sections 17 to 25, inclusive, of this Act is intended to create a contractual right or property
6 right in the top teachers reward program.

7 Section 19. In each school year, up to twenty percent of each school district's full-time
8 equivalent certified teaching positions, as measured by the district's annual teacher data collection
9 pursuant to § 13-3-51 and any rules promulgated pursuant to that section, shall be eligible to
10 receive a top teacher reward, subject to the requirements of this Act. The Department of
11 Education shall multiply the number of full-time equivalent certified teaching positions in the
12 district by twenty percent. If this calculation results in a fraction, the maximum number of
13 eligible positions may not exceed the next lowest whole number. If there are fewer than five
14 full-time equivalent certified teaching positions in a school district, the maximum number of
15 eligible positions shall be one.

16 Section 20. No later than May first of each year, at the same time that foundation program
17 state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the
18 secretary of the Department of Education shall inform each school district of the number of
19 eligible positions in that district for the current school year, based on the calculation in section
20 19 of this Act, and distribute to each school district five thousand seven hundred dollars per
21 eligible position. These funds shall be distributed in lump sum payments. The school district
22 shall retain these funds until distribution pursuant to section 21 of this Act.

23 Section 21. No later than September first of each year, the school district shall distribute the
24 funds received pursuant to section 20 of this Act as follows:

1 (1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward
2 pursuant to section 24 of this Act for the previous school year; and

3 (2) Seven hundred dollars may be retained by the district to pay the district's share of
4 applicable federal taxes, the district's share of contribution to the South Dakota
5 Retirement System, and administrative costs.

6 Any funds received pursuant to section 20 of this Act which are not distributed according to
7 this section shall be returned to the Department of Education within thirty days.

8 Section 22. The Department of Education shall provide application forms for teachers
9 wishing to participate in the top teachers reward program. A teacher wishing to participate in the
10 program shall complete and sign the form and provide the form to the business office of the
11 school district by the close of business on October first to be eligible for the program for that
12 school year. A teacher wishing to participate shall submit a new application for each school year.
13 Completed applications are a public record pursuant to chapter 1-27, but personal information
14 in the applications may be redacted pursuant to that chapter.

15 Section 23. A participating teacher shall be full-time and receive a distinguished rating, as
16 referenced in section 38 of this Act, on the teacher's most recent evaluation to be eligible for a
17 top teacher reward. In addition, a distinguished teacher's selection for the reward may be based
18 on consideration of the following factors as determined by the school board:

19 (1) Mentoring of less experienced teachers;

20 (2) Curriculum development;

21 (3) Assessment development;

22 (4) Data analysis;

23 (5) Service to the local district, state, or national committees or task forces;

24 (6) Leadership in a professional learning community;

- 1 (7) National board certification;
- 2 (8) Other leadership activities or recognitions; and
- 3 (9) Other additional criteria as determined by the school board.

4 Section 24. No later than August first of each year, the school board of each school district
5 shall determine which participating teachers, if any, are selected to receive top teacher rewards
6 for the previous school year according to the criteria in section 23 of this Act. The number of
7 teachers selected may not exceed the number of eligible positions referenced in sections 19 and
8 20 of this Act.

9 Section 25. Department of Education may require each school district to provide any
10 information necessary to verify the district's compliance with sections 20 to 24, inclusive, of this
11 Act. Upon a finding of noncompliance, the department may require the district to return any
12 funds distributed contrary to the requirements of this Act.

13 Section 26. Notwithstanding any other provisions of this Act, public school districts may opt
14 out of the top teacher reward program by providing written notice to the Department of
15 Education. The notice shall be approved by a majority of the school board and signed by the
16 school board president. The department shall provide forms for this purpose. Beginning in 2014,
17 the notice shall be postmarked no earlier than January first, and no later than January thirty-first,
18 of each year in order to be effective for the next school year. The district shall provide a separate
19 form for each school year for which the district desires to opt out. If a school district fails to
20 follow the requirements of this section, the attempt to opt out is void, and the district shall
21 comply with the requirements of the top teacher reward program.

22 If a district opts out pursuant to this section, the teachers employed in the district are not
23 eligible to participate in the top teacher reward program. The district shall provide written notice
24 to each certified teacher of the teacher's ineligibility for the program before executing a teaching

1 contract with the teacher for the school year for which the opt out is effective.

2 School districts may not opt out of the math and science teacher incentive program
3 established pursuant to this Act.

4 Section 27. If a school district opts out pursuant to section 26 of this Act, all funds which the
5 district would have been eligible to receive for the top teacher program pursuant to this Act shall
6 be redistributed as follows:

7 (1) To obtain the redistribution amount, the Department of Education shall calculate the
8 number of positions that would have been eligible for the top teacher reward program
9 in each opt out district pursuant to section 19 of this Act, and multiply that calculation
10 by five thousand seven hundred dollars;

11 (2) No later than May first of each year, at the same time that foundation program state
12 aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive,
13 the department shall allocate the redistribution amount, on a pro rata basis, to each
14 public school district that did not opt out of the top teacher reward program or is
15 participating in a local teacher reward program pursuant to sections 28 to 35,
16 inclusive, of this Act. Each district's pro rata share of the redistribution amount shall
17 be based on the number of full-time equivalent certified teacher positions in the
18 district, as measured by the district's annual teacher data collection pursuant to
19 § 13-3-51 and any rules promulgated pursuant to that section; and

20 (3) No later than September first of each year, the redistribution amount received by each
21 district pursuant to subdivision (2) shall be distributed equally among all teachers
22 receiving top teacher rewards in the district pursuant to sections 17 to 25, inclusive,
23 of this Act, or among all teachers receiving local teacher rewards pursuant to sections
24 28 to 35, inclusive, of this Act, but each district may withhold an amount necessary

1 to pay the district's share of applicable federal taxes, the district's share of
2 contributions to the South Dakota Retirement System, and administrative costs. Any
3 funds not distributed according to this subdivision shall be returned to the Department
4 of Education within thirty days.

5 Section 28. Notwithstanding any other provision of this Act, a public school district may
6 create a local teacher reward plan to act as a substitute for the top teacher reward program
7 beginning in the 2014-2015 school year. If the local teacher reward plan is developed in
8 compliance with sections 28 to 35, inclusive, of this Act, the district may utilize the local teacher
9 reward plan to provide the district with the flexibility to use the funds that would otherwise be
10 provided to the district through the top teachers reward program.

11 Participation in the local teacher reward plan is voluntary. Rewards shall supplement but not
12 replace what a teacher receives under a contract between the teacher and the school district or
13 a collective bargaining agreement between a district and the district's teachers. No collective
14 bargaining agreement between a district and the district's teachers may limit the ability of a
15 teacher to qualify for or receive a local teacher reward. Nothing in sections 28 to 35, inclusive,
16 of this Act, is intended to create a contractual right or property right in local teacher rewards.

17 Teachers in the district may not participate in the top teacher reward program for any school
18 year for which the district has adopted a local teacher reward plan. The district shall provide
19 written notice to each certified teacher of the teacher's ineligibility for the top teacher reward
20 program and provide a copy of the district's local teacher reward plan to each certified teacher
21 before executing a teaching contract with the teacher for the school year for which the local
22 teacher reward plan is effective.

23 Section 29. The local teacher reward plan shall reward certified teachers in the district based
24 upon one or more of the following criteria:

- 1 (1) Demonstrating an impact on student achievement;
- 2 (2) Demonstrating teacher leadership; or
- 3 (3) Market based needs of the school district based upon critical teaching area needs of
- 4 the school district.

5 Section 30. There is hereby established the Local Teacher Reward Plan Advisory Council.

6 The council shall provide input in developing one or more model local teacher reward plan
7 applications based upon the criteria in section 29 of this Act. The work group shall be appointed
8 by the secretary of education and consist of the following members:

- 9 (1) A combination of six principals and superintendents: two from an elementary school,
10 two from a middle school, and two from a high school;
- 11 (2) Six teachers: two from an elementary school, two from a middle school, and two from
12 a high school; and
- 13 (3) Three school board members: one from a small school district, one from a medium-
14 sized school district, and one from a large school district.

15 Section 31. The Board of Education shall promulgate rules, pursuant to chapter 1-26,
16 establishing the application form for the local teacher reward plan, further guidelines for district
17 applications based on the criteria in section 29 of this Act, a system to monitor whether each
18 participating school district is complying with the local teacher reward plan, and penalties for
19 noncompliance.

20 Section 32. There is hereby established the Local Teacher Reward Plan Oversight Board. The
21 board shall consist of the following members:

- 22 (1) One member of the Senate appointed by the president pro tempore of the Senate;
- 23 (2) One member of the House of Representatives appointed by the speaker of the House
24 of Representatives;

- 1 (3) Two representatives of the business community appointed by the Governor;
- 2 (4) One representative of an educational association appointed by the Governor;
- 3 (5) One current or former teacher appointed by the Governor; and
- 4 (6) The secretary of the Department of Education.

5 Section 33. A school district shall submit the local teacher reward plan application to the
6 Department of Education no later than January thirty-first of each year, beginning in 2014, to be
7 eligible to apply the local teacher reward plan to the upcoming school year.

8 By March fifteenth of each year, the Local Teacher Reward Plan Oversight Board shall
9 review all applications to determine compliance with this Act, and any rules promulgated thereto.
10 The board may request additional information from the district as part of the review of the
11 application. By April first of each year, the board shall inform each district whether the district's
12 local teacher reward plan has been approved for the upcoming school year. If the application is
13 denied, the district may adopt a model plan established pursuant to section 30 of this Act or opt
14 out pursuant to sections 26 and 27 of this Act.

15 Section 34. If a district's local teacher reward plan is approved, the Department of Education
16 shall calculate the number of positions in the district that would have been eligible for the top
17 teacher reward program pursuant to section 19 of this Act and multiply that calculation by five
18 thousand seven hundred dollars. No later than May first of each year, at the same time that
19 foundation program state aid is distributed to the district pursuant to §§ 13-13-10.1 to 13-13-41,
20 inclusive, the secretary of the Department of Education shall distribute this amount to the district
21 in a lump sum payment.

22 Section 35. No later than September first of each year, the district shall distribute the funds
23 received pursuant to section 34 of this Act to each certified teacher selected for a reward under
24 the local teacher reward program for the previous school year, but the district may withhold an

1 amount necessary to pay the district's share of applicable federal taxes, the district's share of
2 contributions to the South Dakota Retirement System, and administrative costs. Any funds not
3 distributed according to this section shall be returned to the Department of Education within
4 thirty days.

5 Section 36. A teacher may apply for both the math and science teacher incentive program and
6 the top teachers reward program established pursuant to this Act or both the math and science
7 teacher incentive program and the local teacher reward plan established pursuant to this Act.

8 Section 37. That § 13-42-34 be amended to read as follows:

9 13-42-34. Any public school district seeking state accreditation shall evaluate the
10 performance of each certified teacher in years one ~~through to three, inclusive,~~ not less than
11 annually, and each certified teacher in the fourth contract year or beyond, not less than every
12 other year.

13 ~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, each school district ~~shall~~
14 may adopt procedures for evaluating the performance of certified teachers employed by the
15 school district that:

- 16 (1) Are based on the minimum professional performance standards established by the
17 Board of Education pursuant to § 13-42-33;
- 18 (2) Require multiple measures;
- 19 (3) Serve as the basis for programs to increase professional growth and development of
20 certified teachers; and
- 21 (4) Include a plan of assistance for any certified teacher, who is in the fourth or
22 subsequent year of teaching, and whose performance does not meet the school
23 district's performance standards.

24 Section 38. That § 13-42-34 be amended to read as follows:

1 13-42-34. Any public school district seeking state accreditation shall evaluate the
2 performance of each certified teacher ~~in years one through three not less than annually, and each~~
3 ~~certified teacher in the fourth contract year or beyond, not less than every other year.~~ Beginning
4 in the 2014-2015 school year, each certified teacher shall be evaluated on an annual basis.

5 Each school district shall adopt the model evaluation instrument required by section 40 of
6 this Act and procedures for evaluating the performance of certified teachers employed by the
7 school district that:

8 (1) Are based on the minimum professional performance standards established by the
9 Board of Education pursuant to § 13-42-33;

10 (2) Require multiple measures of performance as follows:

11 (a) Fifty percent of the evaluation of a teacher shall be based on quantitative
12 measures of student growth, based on a single year or multiple years of data.
13 This quantitative data shall be based on reports of student performance on state
14 validated assessments established pursuant to § 13-3-55. For those teachers in
15 grades and subjects for which there is no state-validated assessment for the
16 quantitative portion of the evaluation, teachers shall demonstrate success in
17 improving student achievement using objective measures, which can include
18 portfolio assessments, end-of-course exams, or other district approved
19 assessments which demonstrate student growth; and

20 (b) Fifty percent of the evaluation of a teacher shall be based on qualitative,
21 observable, evidence-based characteristics of good teaching and classroom
22 practices as further defined in the model evaluation instrument referenced in
23 section 40 of this Act. Districts may collect additional evidence using any of the
24 following if not required by the model evaluation instrument:

- 1 (i) Classroom drop-ins;
- 2 (ii) Parent surveys;
- 3 (iii) Student surveys;
- 4 (iv) Portfolios; or
- 5 (v) Peer review;

6 (3) Serve as the basis for programs to increase professional growth and development of
7 certified teachers; and

8 (4) Include a plan of assistance for any certified teacher, ~~who is in the fourth or~~
9 ~~subsequent year of teaching, and~~ whose performance does not meet the school
10 district's performance standards; and

11 (5) Are based on the following four-tier rating system:

- 12 (a) Distinguished;
- 13 (b) Proficient;
- 14 (c) Basic; and
- 15 (d) Unsatisfactory.

16 Section 39. The provisions of section 38 of this Act are effective July 1, 2014.

17 Section 40. That § 13-42-35 be amended to read as follows:

18 13-42-35. A work group appointed by the secretary of education shall provide input in
19 developing the standards for defining the four-tier rating system required by section 38 of this
20 Act and shall develop in developing a model evaluation instrument that ~~may~~ shall be used by
21 school districts for the 2014-2015 school year and subsequent school years. The work group shall
22 consist of the following members:

- 23 (1) Six teachers: two from an elementary school, two from a middle school, and two from
24 a high school;

- 1 (2) Three principals: one from an elementary school, one from a middle school, and one
- 2 from a high school;
- 3 (3) Two superintendents;
- 4 (4) Two school board members;
- 5 (5) Four parents who have students in various levels of the K-12 system:
- 6 (6) One representative of the South Dakota Education Association;
- 7 (7) One representative of the School Administrators of South Dakota; and
- 8 (8) One representative of the Associated School Boards of South Dakota.

9 Section 41. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules
12 establishing standards for defining the four-tier rating system required by section 38 of this Act
13 and adopting the model evaluation instrument referenced in section 40 of this Act.

14 Section 42. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Beginning with the 2014-2015 school year, the procedures for evaluation and the model
17 evaluation instrument referenced in sections 38 to 41, inclusive, of this Act may not be the
18 subject of any collective bargaining agreement between a district and the district's teachers.

19 Section 43. The Board of Education shall promulgate rules pursuant to chapter 1-26 to
20 establish minimum professional performance standards for certified principals in South Dakota
21 public schools, and to establish best practices for the evaluation of the performance of certified
22 principals that shall be used by individual school districts. The South Dakota Board of Education
23 shall promulgate rules pursuant to chapter 1-26 establishing standards for defining the four-tier
24 rating system required by section 44 of this Act and adopting the model evaluation instrument

1 referenced in section 45 of this Act.

2 Section 44. Beginning in the 2014-2015 school year, any public school district seeking state
3 accreditation shall evaluate the performance of each certified principal not less than every other
4 year.

5 Each school district shall adopt the model evaluation instrument required by section 45 of
6 this Act and procedures for evaluating the performance of certified principals employed by the
7 school district that:

- 8 (1) Are based on the minimum professional performance standards established by the
9 Board of Education pursuant to section 43 of this Act;
- 10 (2) Require multiple measures of performance;
- 11 (3) Serve as the basis for programs to increase professional growth and development of
12 certified principals;
- 13 (4) Include a plan of assistance for any certified principal whose performance does not
14 meet the school district's performance standards; and
- 15 (5) Are based on the following four-tier rating system:
 - 16 (a) Distinguished;
 - 17 (b) Proficient;
 - 18 (c) Basic; and
 - 19 (d) Unsatisfactory.

20 Section 45. A work group appointed by the secretary of education shall provide input in
21 developing the standards referenced in section 43 of this Act, the four-tier rating system required
22 by section 44 of this Act, and in developing a model instrument for principal evaluation that
23 shall be used by school districts for the 2014-2015 school year and each school year thereafter.
24 The work group shall consist of the following members:

- 1 (1) Six principals: two from an elementary school, two from a middle school, and two
2 from a high school;
- 3 (2) Three teachers: one from an elementary school, one from a middle school, and one
4 from a high school;
- 5 (3) Two superintendents;
- 6 (4) Two school board members;
- 7 (5) Four parents who have students in various levels of the K-12 system;
- 8 (6) One representative of the South Dakota Education Association;
- 9 (7) One representative of the School Administrators of South Dakota; and
- 10 (8) One representative of the Associated School Boards of South Dakota.

11 Section 46. All persons conducting teacher or principal evaluations required by sections 38
12 to 45, inclusive, of this Act shall participate in training conducted by the Department of
13 Education before conducting the evaluations.

14 Section 47. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond
17 the fourth consecutive term of employment as a teacher with the school district prior to July 1,
18 2016. If, prior to July 1, 2016, the school district and the teacher have entered into a contract
19 pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment with
20 the district or a subsequent consecutive term of employment with the district, then that teacher
21 is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means a teacher
22 who is not yet in or beyond the fourth consecutive term of employment as a teacher with the
23 school district prior to July 1, 2016. Any teacher who is not in or beyond the fourth consecutive
24 term of employment with the school district prior to July 1, 2016, need not acquire continuing

1 contract status under this chapter. Nothing in this section or section 53 of this Act prohibits a
2 school district from choosing to provide continuing contract to a nontenured teacher beyond what
3 is provided for in this chapter.

4 Section 48. That § 13-43-6 be amended to read as follows:

5 13-43-6. The contract shall specify the date at or about which the school shall begin, the term
6 of employment, the wages per month, and the time of payment ~~thereof, such of wages.~~ The
7 contract shall be signed in duplicate and one copy filed in the office of the business manager and
8 the other retained by the teacher. ~~Such~~ The contract may be issued covering any period of ~~years,~~
9 ~~not to exceed three~~ employment up to one year, over which a teacher holds a certificate which
10 ~~will~~ shall remain valid without renewal.

11 Section 49. That § 13-43-6.1 be amended to read as follows:

12 13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any
13 time for just cause, including breach of contract, poor performance, incompetency, gross
14 immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any
15 policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in or~~
16 ~~beyond the fourth consecutive term of employment as a teacher with the school district pursuant~~
17 ~~to § 13-43-6.3 for just cause, including breach of contract, poor performance, incompetency,~~
18 ~~gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of~~
19 ~~any policy or regulation of the school district.~~

20 Section 50. That § 13-43-6.2 be amended to read as follows:

21 13-43-6.2. If nonrenewal of a tenured teacher is contemplated under ~~§ 13-43-6.1~~ § 13-43-6.3,
22 the superintendent or chief executive officer shall give written notice of an intention to
23 recommend nonrenewal to the teacher and the school board; a written statement of the reasons
24 for the recommendation; access to the employment records of the teacher; the opportunity to the

1 teacher for a hearing before the school board to present reasons in person or in writing why the
2 nonrenewal should not occur; and the opportunity to be represented. The teacher shall request
3 the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner
4 than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing.
5 The parties may waive the time limitations provided for in this section.

6 Section 51. That § 13-43-6.3 be amended to read as follows:

7 13-43-6.3. ~~Until a teacher is in or beyond the fourth consecutive term of employment as a~~
8 ~~teacher with the school district, a~~ A school board may or may not renew the teacher's contract
9 of a nontenured teacher. The superintendent or chief executive officer shall give written notice
10 of nonrenewal by April fifteenth but is not required to give further process or a reason for
11 nonrenewal.

12 ~~After a teacher is in or beyond the fourth consecutive term of employment as a teacher with~~
13 ~~the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract.~~
14 A school board may refuse to renew the teacher's contract of a tenured teacher for just cause,
15 including breach of contract, poor performance, a rating of unsatisfactory on two consecutive
16 evaluations pursuant to section 38 of this Act, incompetency, gross immorality, unprofessional
17 conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the
18 school district. On or before April fifteenth, the superintendent or chief executive officer shall
19 notify the tenured teacher and the school board in writing of the recommendation to not renew
20 the teacher's contract.

21 Acceptance by ~~the~~ a tenured or nontenured teacher of an offer from the district to enter into
22 a new contract with the teacher shall be in the manner specified in the offer. Failure of the teacher
23 to accept the offer in the manner specified constitutes the termination of the existing contract
24 between the teacher and the district at the end of its term.

1 Section 52. That § 13-43-6.4 be amended to read as follows:

2 13-43-6.4. Notwithstanding ~~§§ 13-43-6.1 to~~ §§ 13-43-6.2 and 13-43-6.3, ~~inclusive~~; if a
3 teacher's contract is not renewed due to a reduction in staff, only written notice is required, which
4 shall be provided by the school board to the teacher by April fifteenth.

5 Section 53. That § 13-43-6.6 be amended to read as follows:

6 13-43-6.6. Although a collective bargaining agreement between a district and its teachers may
7 set forth specific additional grounds for termination or set forth provisions as to the procedure
8 or notice, no agreement may limit the district's right to terminate or refuse to renew the contract
9 of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3,
10 inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

11 Section 54. For purposes of this Act, the term, school year, means the regular school term as
12 referenced in § 13-26-2.

13 Section 55. That § 13-3-73 be repealed.

14 ~~—13-3-73. There is hereby created the teacher compensation assistance program within the~~
15 ~~Department of Education to provide funds to school districts for the purpose of assisting school~~
16 ~~districts with teacher compensation. School districts are eligible to receive funds from the teacher~~
17 ~~compensation assistance program based on their fall enrollment numbers. The department shall~~
18 ~~provide four-fifths of the funds for the teacher compensation assistance program to each~~
19 ~~participating school district. The Board of Education shall promulgate rules, pursuant to chapter~~
20 ~~1-26, to create an oversight board appointed by the secretary of education for approval of~~
21 ~~applications as well as guidelines for district applications based on district instructional goals,~~
22 ~~market compensation or other specific district requirements as approved by the department.~~
23 ~~Participation in the program is discretionary. District applications shall be approved by the local~~
24 ~~board of education. The applications shall be reviewed by the teacher compensation assistance~~

1 program oversight board and shall be recommended to the Board of Education for final approval.
2 ~~—The Legislature shall review the teacher compensation assistance program in 2012 to~~
3 ~~determine its effectiveness and to determine whether to continue the program.~~

4 Section 56. That § 13-3-74 be repealed.

5 ~~—13-3-74. The Teacher Compensation Assistance Program Oversight Board shall annually~~
6 ~~monitor the progress of participating school districts with their teacher compensation assistance~~
7 ~~plans, and submit its findings to the Board of Education.~~

8 Section 57. That § 13-3-74.1 be repealed.

9 ~~—13-3-74.1. There is hereby established the Teacher Compensation Assistance Program~~
10 ~~Advisory Council. The council shall be under the supervision of the Department of Education.~~
11 ~~The speaker of the House of Representative shall appoint three members of the House of~~
12 ~~Representatives to the council, including at least one member from each political party, and the~~
13 ~~president pro tempore of the Senate shall appoint three members of the Senate to the council,~~
14 ~~including at least one member from each political party. The Governor shall appoint the~~
15 ~~remaining members of the council, including at least one teacher, one school administrator, and~~
16 ~~one representative of a statewide education organization.~~

17 Section 58. That § 13-3-74.2 be repealed.

18 ~~—13-3-74.2. The council shall examine how teacher quality and teacher salaries in the state can~~
19 ~~be enhanced, and how the funds appropriated in fiscal year 2010 and in subsequent fiscal years~~
20 ~~by the state for the teacher compensation assistance program established in § 13-3-73 can best~~
21 ~~be utilized to assist in that effort. The council shall consider a variety of issues surrounding~~
22 ~~teachers including market compensation, a tiered licensure system, a system for evaluating~~
23 ~~teachers, mentoring and induction programs for teachers, and continuing contracts for teachers.~~

24 Section 59. That § 13-3-74.3 be repealed.

1 ~~13-3-74.3. The council shall complete its work and the secretary of education shall provide~~
2 ~~its recommendations to the Governor and to the Executive Board of the Legislative Research~~
3 ~~Council no later than November 15, 2008.~~

4 Section 60. That § 13-3-75 be repealed.

5 ~~13-3-75. The South Dakota Board of Education shall promulgate rules pursuant to chapter~~
6 ~~1-26 establishing the application process, application timelines, the guidelines for district~~
7 ~~applications based on school district instructional goals or market compensation; and a system~~
8 ~~to monitor the progress of participating school districts with their compensation assistance plans~~
9 ~~and to ensure that each participating school district is complying with the plan as submitted to~~
10 ~~the board.~~

11 Section 61. That § 13-3-83.1 be repealed.

12 ~~13-3-83.1. Once all the school districts with approved applications have received their~~
13 ~~funding pursuant to § 13-3-73, the Department of Education may set aside from any funds~~
14 ~~remaining, a sum not to exceed one hundred thousand dollars from the teacher compensation~~
15 ~~assistance program appropriation for the purpose of providing grants to educational cooperatives~~
16 ~~and multi-district centers that employ teachers for public schools. The South Dakota Board of~~
17 ~~Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process.~~

18 Section 62. The following groups shall, no later than January 15, 2013, provide a progress
19 report to the Legislature outlining the work accomplished:

- 20 (1) The Critical Teaching Needs Scholarship Board, established in section 2 of this Act;
- 21 (2) The Local Teacher Reward Plan Advisory Council established in section 30 of this
22 Act;
- 23 (3) The Local Teacher Reward Plan Oversight Board established in section 32 of this Act;
- 24 (4) The teacher evaluation work group appointed pursuant to section 40 of this Act; and

- 1 (5) The principal evaluation work group appointed pursuant to section 45 of this Act.
- 2 Section 63. Sections 47 to 53, inclusive, of this Act are effective on July 1, 2016.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0497

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1270** - 2/10/2012

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

1 FOR AN ACT ENTITLED, An Act to revise the time period for which unclaimed property is
2 presumed abandoned and to revise certain provisions regarding the publication notice of
3 unclaimed property.

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

5 Section 1. That § 43-41B-2 be amended to read as follows:

6 43-41B-2. (a) Except as otherwise provided by this chapter, all intangible property, including
7 any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing
8 in the ordinary course of a holder's business and has remained unclaimed by the owner for more
9 than ~~five~~ three years after it became payable or distributable is presumed abandoned.

10 (b) Property is payable or distributable for the purpose of this chapter notwithstanding the
11 owner's failure to make demand or to present any instrument or document required to receive
12 payment.

13 Section 2. That § 43-41B-4 be amended to read as follows:

14 43-41B-4. (a) Any sum payable on a travelers check that has been outstanding for more than



1 fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has
2 communicated in writing with the issuer concerning it or otherwise indicated an interest as
3 evidenced by a memorandum or other record on file prepared by an employee of the issuer.

4 (b) Any sum payable on a money order or similar written instrument, other than a third-party
5 bank check, that has been outstanding for more than ~~five~~ three years after its issuance is
6 presumed abandoned unless the owner, within ~~five~~ three years, has communicated in writing with
7 the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or
8 other record on file prepared by an employee of the issuer.

9 (c) A holder may not deduct from the amount of a travelers check or money order any charge
10 imposed by reason of the failure to present the instrument for payment unless there is a valid and
11 enforceable written contract between the issuer and the owner of the instrument pursuant to
12 which the issuer may impose a charge and the issuer regularly imposes such charges and does
13 not regularly reverse or otherwise cancel them.

14 (d) No sum payable on a travelers check, money order, or similar written instrument, other
15 than a third-party bank check, as described in subsections (a) and (b), may be subjected to the
16 custody of this state as unclaimed property unless:

17 (1) The records of the issuer show that the travelers check, money order, or similar written
18 instrument was purchased in this state;

19 (2) The issuer has its principal place of business in this state and the records of the issuer
20 do not show the state in which the travelers check, money order, or similar written
21 instrument was purchased; or

22 (3) The issuer has its principal place of business in this state, the records of the issuer
23 show the state in which the travelers check, money order, or similar written instrument
24 was purchased and the laws of the state of purchase do not provide for the escheat or

1 custodial taking of the property or its escheat or unclaimed property law is not
2 applicable to the property.

3 (e) Notwithstanding any other provisions of this chapter, subsection (d) applies to sums
4 payable on travelers checks, money orders, and similar written instruments presumed abandoned
5 on or after February 1, 1965, except to the extent that those sums have been paid over to a state.

6 Section 3. That § 43-41B-5 be amended to read as follows:

7 43-41B-5. (a) Any sum payable on a check, draft, or similar instrument, except those subject
8 to § 43-41B-4, on which a banking or financial organization is directly liable, including a
9 cashier's check and a certified check, which has been outstanding for more than ~~five~~ three years
10 after it was payable or after its issuance if payable on demand, is presumed abandoned, unless
11 the owner, within ~~five~~ three years, has communicated in writing with the banking or financial
12 organization concerning it or otherwise indicated an interest as evidenced by a memorandum or
13 other record on file prepared by an employee thereof.

14 (b) A holder may not deduct from the amount of any instrument subject to this section any
15 charge imposed by reason of the failure to present the instrument for payment unless there is a
16 valid and enforceable written contract between the holder and the owner of the instrument
17 pursuant to which the holder may impose a charge, and the holder regularly imposes such charges
18 and does not regularly reverse or otherwise cancel them.

19 Section 4. That § 43-41B-6 be amended to read as follows:

20 43-41B-6. (a) Any demand, savings, or matured time deposit with a banking or financial
21 organization, including a deposit that is automatically renewable, and any funds paid toward the
22 purchase of a share, a mutual investment certificate, or any other interest in a banking or financial
23 organization is presumed abandoned unless in the case of a matured time deposit, the banking
24 or financial organization has mailed, at least once in ~~five~~ three years certified mail requesting a

1 return receipt, to the owner and the receipt has been returned and signed by the addressee, or
2 unless the owner, within ~~five~~ three years has:

3 (1) In the case of a deposit, increased or decreased its amount or presented the passbook
4 or other similar evidence of the deposit for the crediting of interest;

5 (2) Communicated in writing with the banking or financial organization concerning the
6 property;

7 (3) Otherwise indicated an interest in the property as evidenced by a memorandum or
8 other record on file prepared by an employee of the banking or financial organization;

9 (4) Owned other property to which paragraph (1), (2), or (3) applies and if the banking or
10 financial organization communicates in writing with the owner with regard to the
11 property that would otherwise be presumed abandoned under this subsection at the
12 address to which communications regarding the other property regularly are sent;

13 (5) Had another relationship with the banking or financial organization concerning which
14 the owner has:

15 (i) Communicated in writing with the banking or financial organization; or

16 (ii) Otherwise indicated an interest as evidenced by a memorandum or other record
17 on file prepared by an employee of the banking or financial organization and
18 if the banking or financial organization communicates in writing with the
19 owner with regard to the property that would otherwise be abandoned under
20 this subsection at the address to which communications regarding the other
21 relationship regularly are sent; or

22 (6) Received tax reports or regular statements of the deposit by mail from the banking or
23 financial organization regarding the deposit. Receipt of the statement by the owner is
24 presumed if the statement is mailed first class by the banking or financial organization

1 and not returned.

2 (b) For purposes of subsection (a) property includes any income, increments, interest, or
3 dividends.

4 (c) A holder may not impose with respect to property described in subsection (a) any charge
5 due to dormancy or inactivity or cease payment of interest unless:

6 (1) There is an enforceable written contract between the holder and the owner of the
7 property pursuant to which the holder may impose a charge or cease payment of
8 interest;

9 (2) For property in excess of two dollars, the holder, no more than three months before
10 the initial imposition of those charges or cessation of interest, has given written notice
11 to the owner of the amount of those charges at the last known address of the owner
12 stating that those charges will be imposed or that interest will cease, but the notice
13 provided in this section need not be given with respect to charges imposed or interest
14 ceased before July 1, 1993; and

15 (3) The holder regularly imposes such charges or ceases payment of interest and does not
16 regularly reverse or otherwise cancel them or retroactively credit interest with respect
17 to the property.

18 (d) Any property described in subsection (a) that is automatically renewable is matured for
19 purposes of subsection (a) upon the expiration of its initial time period, but in the case of any
20 renewal to which the owner consents at or about the time of renewal by communicating in
21 writing with the banking or financial organization or otherwise indicating consent as evidenced
22 by a memorandum or other record on file prepared by an employee of the organization, the
23 property is matured upon the expiration of the last time period for which consent was given. If,
24 at the time provided for delivery in § 43-41B-20, a penalty or forfeiture in the payment of interest

1 would result from the delivery of the property, the time for delivery is extended until the time
2 when no penalty or forfeiture would result.

3 Section 5. That § 43-41B-7 be amended to read as follows:

4 43-41B-7. (a) Funds held or owing under any life or endowment insurance policy or annuity
5 contract that has matured or terminated are presumed abandoned if unclaimed for more than ~~four~~
6 three years after the funds became due and payable as established from the records of the
7 insurance company holding or owing the funds, but property described in subsection (c)(2) is
8 presumed abandoned if unclaimed for more than ~~four~~ three years.

9 (b) If a person other than the insured or annuitant is entitled to the funds and an address of
10 the person is not known to the company or it is not definite and certain from the records of the
11 company who is entitled to the funds, it is presumed that the last known address of the person
12 entitled to the funds is the same as the last known address of the insured or annuitant according
13 to the records of the company.

14 (c) For purposes of this chapter, a life or endowment insurance policy or annuity contract not
15 matured by actual proof of the death of the insured or annuitant according to the records of the
16 company is matured and the proceeds due and payable if:

17 (1) The company knows that the insured or annuitant has died; or

18 (2)(i) The insured has attained, or would have attained if he were living, the limiting age
19 under the mortality table on which the reserve is based;

20 (ii) The policy was in force at the time the insured attained, or would have attained,
21 the limiting age specified in subparagraph (I); and

22 (iii) Neither the insured nor any other person appearing to have an interest in the
23 policy within the preceding ~~four~~ three years, according to the records of the
24 company, has assigned, readjusted, or paid premiums on the policy, subjected

1 the policy to a loan, corresponded in writing with the company concerning the
2 policy, or otherwise indicated an interest as evidenced by a memorandum or
3 other record on file prepared by an employee of the company.

4 (d) For purposes of this chapter, the application of an automatic premium loan provision or
5 other nonforfeiture provision contained in an insurance policy does not prevent a policy from
6 being matured or terminated under subsection (a) if the insured has died or the insured or the
7 beneficiary of the policy otherwise has become entitled to the proceeds thereof before the
8 depletion of the cash surrender value of a policy by the application of those provisions.

9 (e) If the laws of this state or the terms of the life insurance policy require the company to
10 give notice to the insured or owner that an automatic premium loan provision or other
11 nonforfeiture provision has been exercised and the notice, given to an insured or owner whose
12 last known address according to the records of the company is in this state, is undeliverable, the
13 company shall make a reasonable search to ascertain the policyholder's correct address to which
14 the notice must be mailed.

15 (f) Notwithstanding any other provision of law, if the company learns of the death of the
16 insured or annuitant and the beneficiary has not communicated with the insurer within four
17 months after the death, the company shall take reasonable steps to pay the proceeds to the
18 beneficiary.

19 (g) Commencing on July 1, 1994, every change of beneficiary form issued by an insurance
20 company under any life or endowment insurance policy or annuity contract to an insured or
21 owner who is a resident of this state must request the following information:

22 (1) The name of each beneficiary, or if a class of beneficiaries is named, the name of each
23 current beneficiary in the class;

24 (2) The address of each beneficiary; and

1 (3) The relationship of each beneficiary to the insured.

2 Section 6. That § 43-41B-10 be amended to read as follows:

3 43-41B-10. (a) Except as provided in subsections (b) and (e), stock or other intangible
4 ownership interest in a business association, the existence of which is evidenced by records
5 available to the association, is presumed abandoned and, with respect to the interest, the
6 association is the holder, if a dividend, distribution, or other sum payable as a result of the
7 interest has remained unclaimed by the owner for ~~five~~ three years and the owner within ~~five~~ three
8 years has not:

9 (1) Communicated in writing with the association regarding the interest or a dividend,
10 distribution, or other sum payable as a result of the interest; or

11 (2) Otherwise communicated with the association regarding the interest or a dividend,
12 distribution, or other sum payable as a result of the interest, as evidenced by a
13 memorandum or other record on file with the association prepared by an employee of
14 the association.

15 (b) At the expiration of a ~~five-year~~ three-year period following the failure of the owner to
16 claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the
17 interest is not presumed abandoned unless there have been at least ~~five~~ three dividends,
18 distributions, or other sums paid during the period, none of which has been claimed by the
19 owner. If ~~five~~ three dividends, distributions, or other sums are paid during the ~~five-year~~ three-
20 year period, the period leading to a presumption of abandonment commences on the date
21 payment of the first such unclaimed dividend, distribution, or other sum became due and payable.
22 If ~~five~~ three dividends, distributions, or other sums are not paid during the presumptive period,
23 the period continues to run until there have been ~~five~~ three dividends, distributions, or other sums
24 that have not been claimed by the owner.

1 (c) The running of the ~~five-year~~ three-year period of abandonment ceases immediately upon
2 the occurrence of a communication referred to in subsection (a). If any future dividend,
3 distribution, or other sum payable to the owner as a result of the interest is subsequently not
4 claimed by the owner, a new period of abandonment commences and relates back to the time a
5 subsequent dividend, distribution, or other sum became due and payable.

6 (d) At the time an interest is presumed abandoned under this section, any dividend,
7 distribution, or other sum then held for or owing to the owner as a result of the interest, and not
8 previously presumed abandoned, is presumed abandoned.

9 (e) This chapter does apply to any stock or other intangible ownership interest enrolled in a
10 plan that provides for the automatic reinvestment of dividends, distributions, or other sums
11 payable as a result of the interest if the records available to the administrator of the plan show,
12 with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the
13 owner has not within ~~five~~ three years communicated in any manner described in subsection (a).

14 Section 7. That § 43-41B-13 be amended to read as follows:

15 43-41B-13. (a) Intangible property and any income or increment derived therefrom held by
16 fiduciaries and agents for the benefit of another person is presumed abandoned unless the owner,
17 within ~~five~~ three years after it has become payable or distributable, has increased or decreased
18 the principal, accepted payment of principal or income, communicated concerning the property,
19 or otherwise indicated an interest as evidenced by a memorandum or other record on file
20 prepared by the fiduciary.

21 (b) Funds in an individual retirement account or a retirement plan for self-employed
22 individuals or similar account or plan established pursuant to the Internal Revenue laws of the
23 United States are not payable or distributable within the meaning of subsection (a) unless, under
24 the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

1 (c) For the purpose of this section, a person who holds property as an agent for a business
2 association is deemed to hold the property in a fiduciary capacity for that business association
3 alone, unless the agreement between him and the business association provides otherwise.

4 (d) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary
5 capacity for a business association alone is the holder of the property only insofar as the interest
6 of the business association in the property is concerned, and the business association is the holder
7 of the property insofar as the interest of any other person in the property is concerned.

8 Section 8. That § 43-41B-15 be amended to read as follows:

9 43-41B-15. (a) A gift certificate or a credit memo issued in the ordinary course of an issuer's
10 business which remains unclaimed by the owner for more than ~~five~~ three years after becoming
11 payable or distributable is presumed abandoned.

12 (b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the
13 purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned
14 is the amount credited to the recipient of the memo.

15 Section 9. That § 43-41B-17 be amended to read as follows:

16 43-41B-17. Any tangible and intangible property held in a safe deposit box or any other
17 safekeeping repository or agency or collateral deposit box in this state in the ordinary course of
18 the holder's business and proceeds resulting from the sale of the property permitted by other law,
19 which remain unclaimed by the owner for more than ~~five~~ three years after the lease or rental
20 period on the box or other repository has expired, are presumed abandoned.

21 Section 10. That § 43-41B-19 be amended to read as follows:

22 43-41B-19. (a) The administrator shall cause a notice to be published ~~not later than March~~
23 ~~first of the year~~ within the quarter immediately following the report required by § 43-41B-18 at
24 least once ~~a week for two consecutive weeks~~ in a newspaper of general circulation in the county

1 of this state in which is located the last known address of any person to be named in the notice.
2 If no address is listed or the address is outside this state, the notice must be published in the
3 county in which the holder of the property has its principal place of business within this state.

4 (b) The published notice must be entitled "Notice of Names of Persons Appearing to be
5 Owners of Abandoned Property" and contain:

6 (1) The names in alphabetical order and last known address, if any, of persons listed in
7 the report and entitled to notice within the county as specified in subsection (a);

8 (2) A statement that information concerning the property and the name and last known
9 address of the holder may be obtained by any person possessing an interest in the
10 property by addressing an inquiry to the administrator; and

11 (3) A statement that if proof of claim is not presented by the owner and the owner's right
12 to receive the property must be established to the administrator's satisfaction to whom
13 all claims must be directed.

14 (c) The administrator is not required to publish in the notice any items of less than ~~fifty one~~
15 hundred twenty-five dollars unless the administrator considers their publication to be in the
16 public interest.

17 (d) This section is not applicable to sums payable on travelers checks, money orders, and
18 other written instruments presumed abandoned under § 43-41B-4.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

805T0545

HOUSE JUDICIARY ENGROSSED NO. **HB 1273** 2/13/2012

Introduced by: Representatives Haggar, Abdallah, Conzet, Gosch, Hansen (Jon), Magstadt, Turbiville, and Wick and Senators Holien, Brown, Novstrup (Al), and Rave

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of loose leaf incense to minors, to
2 prohibit certain marketing techniques, to regulate the sale of certain types of incense, to
3 provide penalties therefor, and to declare an emergency.

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

5 Section 1. For purposes of this Act, a retailer is any person who sells merchandise at retail.

6 Section 2. No retailer may sell, in a single transaction, one quarter of a gram or more of loose
7 leaf incense. Any person who sells loose leaf incense in violation of this section is guilty of a
8 Class 1 misdemeanor.

9 Section 3. No retailer may willfully and knowingly supply, deliver, give possession, or sell
10 any amount of loose leaf incense to a person under twenty-one years of age. A violation of this
11 is a Class 1 misdemeanor.

12 Section 4. Any retailer who offers loose leaf incense for sale shall display and offer the
13 product for sale behind the counter or in a locked case so that a customer wanting access to the
14 product must ask a store employee for assistance. A violation of this section is a Class 1



1 misdemeanor.

2 Section 5. If offering for sale loose leaf incense, a retailer shall, before making such a sale,
3 require and make a record of the identification of the person purchasing the product. For
4 purposes of this Act, the term, identification, means a document issued by a governmental agency
5 which contains a description of the person or a photograph of the person, or both, and gives the
6 person's date of birth, such as a driver license, passport, or military identification card. The
7 retailer shall maintain the record of identification, including the purchaser's name and date of
8 birth. On August 1, 2012, and no later than the fifth day of every month thereafter, the retailer
9 shall send any such records to the Office of the Attorney General. No retailer may use or maintain
10 the record for any private or commercial purpose or disclose the record to any person, except as
11 authorized by law. The retailer shall disclose the record, upon request, to a law enforcement
12 agency for a law enforcement purpose.

13 Section 6. No manufacturer, distributor, or retailer may advertise to the public, directly or
14 indirectly, that loose leaf incense can be ingested. A violation of this section is a Class 1
15 misdemeanor.

16 Section 7. A retailer shall label each package of loose leaf incense sold in this state with a
17 warning label that reads as follows: "This product is not meant to be ingested. The side effects
18 of ingesting this product are unknown." A violation of this section is a Class 1 misdemeanor.

19 Section 8. For purposes of this Act, loose leaf incense includes loose potpourri, loose herbal
20 incense, herbal smoking blends, or similar dried, leafy substances sold or marketed, directly or
21 indirectly, as a relaxation, smoking, or herbal enhancement product. Herbal dietary supplements
22 or remedies and United States Food and Drug Administration approved herbal teas or products
23 are not included as loose leaf incense under this Act.

24 Section 9. A retailer shall ensure that each package of loose leaf incense sold is labeled with

1 each ingredient present in the product, including all chemicals and additives.

2 Section 10. Whereas, this Act is necessary for the immediate preservation of the public peace,

3 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and

4 effect from and after its passage and approval.