

# REGISTER



## South Dakota Legislative Research Council

Volume 43

Monday, 8:00 a.m., October 3, 2016

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### FILINGS IN THE LEGISLATIVE RESEARCH COUNCIL'S OFFICE:

**Notice of Proposed Rules:** (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

**Bureau of Human Resources: Civil Service Commission:** (September 27, 2016) intends to amend a rule to allow an out-of-state law enforcement officer, who is currently certified or has been in the last two years, to be placed on the requisition list without taking a written exam and specify the appointing authority shall determine the minimum score for the written exam. The general authority for this rule, as cited by the bureau, is SDCL § 3-6D-7.

A public hearing will be held in Room 412, 4<sup>th</sup> floor, State Capitol, Pierre, South Dakota, on October 26, 2016, at 10:00 a.m. CDT. Copies of the proposed rule may be obtained without charge from and written comments sent to the South Dakota Bureau of Human Resources, Room 110, State Capitol, 500 E. Capitol, Pierre, South Dakota 57501-1234. Written comments must be received by October 25, 2016, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the bureau can make arrangements are asked to call (605) 773-4479 at least 48 hours before the hearing.

**Department of Social Services: Division of Behavioral Health:** (July 7, 2016 and September 27, 2016) intends to amend rules to repeal Article 46:05 Substance use disorders and rewrite as Article 67:61 under the department; repeal Article 46:20 Mental health and rewrite as Article 67:62. Overall, duplicative language,

outdated terms, and language no longer current were removed; "Alcohol and Drug Abuse" was updated to "Substance Use Disorder" or SUD; align the Articles; update to the current diagnostic manual DSM-5; add telemedicine as a reimbursable service; better detail client rights; revise treatment plan timeframes to better match the structure of programs; update dietary guidelines; add sentinel effect notifications; clarify certain accreditation requirements; and update the life safety code. The general authority for these rules, as cited by the department, is SDCL §§ 1-36-25, 27A-1-9, 27A-5-1, and 34-20A-27.

A public hearing will be held in the Kneip Conference Room 1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on October 21, 2016, at 3:00 p.m. Copies of the proposed rules may be obtained from and written comments sent to Teresa Schulte, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Copies of the proposed rules are also available at: <http://rules.sd.gov>. Written comments must be received by October 31, 2016, to be considered. Individuals intending to present oral testimony at the hearing must make a written copy of their testimony available to the department at the time of the hearing. Written comments and testimony must relate directly to the changes being proposed and must cite the specific rule number to which the comments are being directed. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3165 at least 48 hours before the hearing.

**Department of Social Services: Division of Medical Services:** (September 27, 2016) intends to amend rules to update definitions and other language, clarify coverage of certain services, implement ambulatory payment classification reimbursement methodology, update substance abuse rule references to reflect the new articles, update the national provider identification number requirements for reimbursement, move and update the substance use disorder provisions from Human Services to Social Services, and allow for in-state liver transplant option. The general authority for these rules, as cited by the department, is SDCL §§ 28-6-1, 28-6-1.1, and 42 U.S.C. § 1396d.

A public hearing will be held in the Kneip Conference Room 1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on October 21, 2016, at 3:30 p.m. Copies of the proposed rules may be obtained from and written comments sent to Teresa Schulte, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Copies of the proposed rules are also available at: <http://rules.sd.gov>. Written comments must be received by October 31, 2016, to be considered. Individuals intending to present oral testimony at the hearing must make a written copy of their testimony available to the department at the time of the hearing. Written comments and testimony must relate directly to the changes being proposed and must cite the specific rule number to which the comments are being directed. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3165 at least 48 hours before the hearing.

**Department of Transportation:** (September 29, 2016) is proposing to amend rules to add a definition of "wireless infrastructure" that apply to utility accommodations in noninterstate rights-of-way, prohibit installation of wireless infrastructure in the noninterstate highway right-of-way, include the statement that installation of

wireless infrastructure in the interstate highway right-of-way is prohibited, and make the definition of wireless infrastructure that is proposed for utility accommodations in noninterstate right-of-way also apply to utility accommodations in interstate right-of-way. The general authority for these rules, as cited by the department, is SDCL § 31-26-22.

A public hearing will be held in the Commission Room, Becker-Hansen Building, 700 East Broadway, Pierre, South Dakota, on October 27, 2016, at 9:30 a.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Secretary of Transportation, Becker-Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Copies of the proposed rules are also available at: <http://open.sd.gov>. Material sent by mail must reach the department by October 26, 2016, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3540 or 1-800-877-1113 (Telecommunication Device for the Deaf).

#### **FILINGS IN THE SECRETARY OF STATE'S OFFICE:**

##### **DEPARTMENT OF PUBLIC SAFETY:**

20:01:02:01 to 20:01:02:03, inclusive;  
 20:01:06:02 to 20:01:06:09, inclusive;  
 20:01:07:02, 20:01:07:04, 20:01:07:05,  
 20:01:07:07, 20:01:07:09; 20:01:08:06;  
 20:01:09:02; 20:01:10:03 to 20:01:10:06,  
 inclusive; 20:15:06:01; 61:15:01:01 to  
 61:15:01:06, inclusive, 61:15:01:08,  
 61:15:01:09, 61:15:01:13, 61:15:01:16 to  
 61:15:01:19, inclusive; 61:15:02:03 to  
 61:15:02:08, inclusive; 61:15:05:05 to  
 61:15:05:08, inclusive; 61:15:06:01,  
 61:15:06:05 to 61:15:06:08, inclusive;  
 61:15:07:01, 61:15:07:03, 61:15:07:09,  
 61:15:07:14 to 61:15:07:16, inclusive,  
 61:15:07:19, 61:15:07:21 to 61:15:07:24,  
 inclusive, and 61:15:07:28 to 61:15:07:30,  
 inclusive.

History-Notice: 43 SDR 1, July 5, 2016  
 Hearing: August 2, 2016  
 Filed: September 26, 2016  
 Effective: October 17, 2016

**DEPARTMENT OF REVENUE: SOUTH DAKOTA LOTTERY COMMISSION:**  
 48:03:06:05; and 48:03:15:04.

History-Notice: 43 SDR 26, August 22, 2016  
 Hearing: September 15, 2016  
 Filed: September 26, 2016  
 Effective: October 17, 2016

**DEPARTMENT OF TRANSPORTATION:**  
 70:13:01:01 to 70:13:01:04, inclusive,  
 70:13:01:06 to 70:13:01:10, inclusive,  
 70:13:01:12, and 70:13:01:13.

History-Notice: 43 SDR 15, August 1, 2016  
 Hearing: August 24, 2016  
 Filed: September 26, 2016  
 Effective: October 17, 2016

**ELECTRONIC RECORDING COMMISSION:** 22:03:01:01 to 22:03:01:10, inclusive.

History-Notice: 43 SDR 18, August 8, 2016  
 Hearing: September 8, 2016  
 Filed: September 26, 2016  
 Effective: October 17, 2016

**SOUTH DAKOTA RETIREMENT SYSTEM:** 62:01:05:01, 62:01:05:03, 62:01:05:03.01, 62:01:05:06 to 62:01:05:10, inclusive, 62:01:05:12, 62:01:05:13, 62:01:05:15; and 62:01:09:03.

History-Notice: 43 SDR 18, August 8, 2016  
 Hearing: September 7, 2016  
 Filed: September 26, 2016  
 Effective: October 17, 2016

**DEPARTMENT OF HEALTH: JOINT BOARD OF NURSING AND BOARD OF MEDICAL AND OSTEOPATHIC EXAMINER'S:** 20:62:01:02; 20:62:02:02, 20:62:02:04, 20:62:02:06, 20:62:02:07, 20:62:02:09; 20:62:03:03 to 20:62:03:05, inclusive; 20:78:03:01 to 27:78:03:10, inclusive; 20:78:04:01 to 20:78:04:06, inclusive; 20:78:05:01 to 20:78:05:08, inclusive; 20:84:01:01; 20:84:02:01, 20:84:02:02; 20:84:03:01; 20:84:04:01; 20:84:05:01, and 20:84:05:02.

History-Notice: 43 SDR 17, August 8, 2016  
 Hearing: September 8, 2016  
 Filed: September 30, 2016  
 Effective: October 20, 2016

**DEPARTMENT OF HEALTH: BOARD OF MEDICAL AND OSTEOPATHIC EXAMINER'S:** 20:47:07:01, 20:47:07:02; 20:52:01:03.01, 20:52:01:03.02; 20:82:04:01, and 20:82:04:02.

History-Notice: 43 SDR 17, August 8, 2016  
 Hearing: September 8, 2016  
 Filed: September 30, 2016  
 Effective: October 20, 2016

### **Executive Appointment:**

**David Lust**, District 34, was appointed on September 27, 2016, to the **South Dakota House**, to fill the vacancy created by the passing of Representative Dan Dryden, effective immediately.

Note: A copy of the rules may be obtained directly from the above agencies or at <https://rules.sd.gov>. Write to the agency at the address given under "Notices of Proposed Rules." There is no charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry, the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Revenue and Regulation, and the Department of Labor for Article 47:03.

**REMINDER OF HEARINGS SCHEDULED**

<b>10-6-2016</b>	<p><b>Department of Game, Fish, and Parks</b></p> <p>Amend Depredation Permits rules to combine the elk depredation hunt registration and selection process with the deer, antelope and turkey registration and selection process; require online registration for all depredation hunts; require that landowners receiving big game depredation assistance must allow hunting access to hunters that possess a big game depredation permit without charge; enable the GFP Commission by resolution to determine the number of elk depredation permits and authorize the Secretary to issue permits where appropriate; allow elk depredation hunts to be utilized throughout the year if deemed necessary; establish a process whereby hunters who register for the elk pool from December 1 – 31 will be randomly selected to determine the order in which they are contacted if a depredation hunt is needed and after December 31, additional hunters will be registered in the pool in the order that they enroll; limit those who may register for an elk depredation hunt to only residents who were not issued an elk license from the current regular elk drawing; establish a \$20 fee for an elk depredation permit with no charge for landowner permits; limit the maximum number of landowner/operator elk depredation permits that may be issued to one per household or ranch; authorize elk depredation hunts to be utilized in an established elk hunting unit as well as areas outside an established elk hunting unit; establish that elk depredation hunts will not occur within an established elk hunting unit during any open elk hunting season; provide that landowner preference or preference points do not apply to the issuance of elk depredation permits; provide that participation in an elk depredation hunt does not affect future eligibility or preference points in future lottery drawings for elk seasons; provide that the nine year waiting period does not apply to a person who registers for an elk depredation permit; and provide that the pool of registered elk depredation hunters expires on December 31 of the following year; repeal the chapter regarding Elk Depredation Permits rules and combine/consolidate it with the general rule chapter pertaining to issuance of depredation permits; amend Fishing Seasons and Methods rules to allow for baitfish use within the Black Hills Management Area and remove high-grading regulations specific to South Dakota/Minnesota border waters and replace them with the South Dakota inland regulations; provide authorization for landowners to perform fisheries management activities on created, man-made impoundments on land they own or lease; remove the 15 inch minimum size restrictions for black bass (largemouth and smallmouth bass) on Carthage, Dimock, Vermillion, Hanson and Staum Lakes; remove the 14 to 18 inch protected slot limit for black bass on Enemy Swim and Pickerel Lakes; and remove the 15 inch minimum size restriction for walleye and the 14 to 18 inch protected slot limit for black bass from Campbell Sough; reopen a snagging season for salmon on Lake Oahe during the months of October and November; clarify the hours during which snagging of paddlefish can occur on portions of the Big Sioux River included in the fall paddlefish snagging season; lengthen the spearing/archery season for game fish (except paddlefish and sturgeon) in inland waters open to game fish spearing from current dates of June 15 through March 15 to May 1 through March 31, inclusive; change hours from sunrise to sunset to one-half hour before sunrise to sunset; add crossbows as a legal method of take for game fish on inland and border waters; open all inland waters (including rivers and streams during open seasons), except those managed for muskies or closed elsewhere in administrative rule, to take of catfish and northern pike during established season dates;</p>
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	close Middle Lynn Lake to the spearing of catfish and northern pike; and open Waubay and Bitter Lakes in Day County, Swan and Dry #2 Lakes in Clark County, Albert, Henry, Thompson and Whitewood Lakes in Kingsbury County, to spearing of all game fish except paddlefish and sturgeon during established season dates; allow non-commercial take of bait in the Black Hills Fish Management Area except from Pactola, Deerfield and Sheridan Lakes; amend Special Permits and Licenses rules to allow fish health inspections to be conducted according to the "World Animal Health Organization (OIE) Aquatic Code 19 <sup>th</sup> Edition, 2016" or according to the American Fisheries Society Fish Health Section's "Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens, 2014 Edition;" establish an application fee for fishing tournaments based upon a fee schedule with the applicable fee to increase as the number of tournament boats/participants increases and provide that participation in a non-permitted fishing tournament is a violation of rule; 43 SDR 45, September 19, 2016.
<b>10-18-2016</b>	<b>Office of the Secretary of State: Board of Finance</b> Amend rules to remove the signature definition in order to facilitate electronic signatures, update an obsolete statute reference, and change the minimum salary grade threshold to match the current general pay structure; 43 SDR 35, September 6, 2016.
<b>10-21-2016</b>	<b>Department of Social Services: Division of Behavioral Health</b> Amend rules to repeal Article 46:05 Substance use disorders and rewrite as Article 67:61 under the department; repeal Article 46:20 Mental health and rewrite as Article 67:62. Overall, duplicative language, outdated terms, and language no longer current were removed; "Alcohol and Drug Abuse" was updated to "Substance Use Disorder" or SUD; align the Articles; update to the current diagnostic manual DSM-5; add telemedicine as a reimbursable service; better detail client rights; revise treatment plan timeframes to better match the structure of programs; update dietary guidelines; add sentinel effect notifications; clarify certain accreditation requirements; and update the life safety code; 43 SDR 55, October 3, 2016.
<b>10-21-2016</b>	<b>Department of Social Services: Division of Medical Services</b> Amend rules to update definitions and other language, clarify coverage of certain services, implement ambulatory payment classification reimbursement methodology, update substance abuse rule references to reflect the new articles, update the national provider identification number requirements for reimbursement, move and update the substance use disorder provisions from Human Services to Social Services, and allow for in-state liver transplant option; 43 SDR 56, October 3, 2016.
<b>10-26-2016</b>	<b>Bureau of Human Resources: Civil Service Commission</b> Amend a rule to allow an out-of-state law enforcement officer, who is currently certified or has been in the last two years, to be placed on the requisition list without taking a written exam and specify the appointing authority shall determine the minimum score for the written exam; 43 SDR 55, October 3, 2016.
<b>10-27-2016</b>	<b>Department of Transportation</b> Amend rules to add a definition of "wireless infrastructure" that apply to utility accommodations in noninterstate rights-of-way, prohibit installation of wireless infrastructure in the noninterstate highway right-of-way, include the statement that installation of wireless infrastructure in the interstate highway right-of-way is prohibited, and make the definition of wireless infrastructure that is proposed for utility accommodations in noninterstate right-of-way also apply to utility accommodations in interstate right-of-way; 43 SDR 56, October 3, 2016.

**RULES REVIEW COMMITTEE MEETINGS**

The last regular meeting of the Interim Rules Review Committee will be held on Monday, November 14, 2016, in Room 414, Fourth Floor of the State Capitol.

**Note:** An updated version of the Administrative Rules Guide to Form and Style is available on the LRC website at <http://www.sdlegislature.gov/Rules/RulesManual.aspx>.