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South Dakota Legislative Research Council

Volume 34 *Monday, 8:00 a.m., November 26, 2007*

NOTICES OF PROPOSED RULES: (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

Department of Revenue and Regulation: Commission on Gaming: (November 20, 2007) is proposing to amend Racing rules to include as a Class A violation for which there may be a summary suspension of racing license the failure to pay a wining pari-mutuel ticket or failure to allow customers of a multi-jurisdictional totalizator hub to withdraw funds from their accounts within appropriate time frames; define the terms "independent real time monitoring system" and "pari-mutuel ticket" under the multi-jurisdictional hub account wagering rules; set forth the requirements to be maintained within all totalizator rooms in multi-jurisdictional totalizator hub operations; require that computer systems at hubs be supported by an uninterruptible power supply to allow for system shutdown if power failures occur; require that the totalizator system utilized by the hub be capable of transmitting data in real time to an independent real time monitoring system; require that the mutual manager determine causes of errors in totalizator operation or independent monitoring systems and make necessary repairs and to notify the Executive Secretary within 24 hours after each occurrence of such errors; set forth the requirement of certain end-of-day reports, including balance report for wagering devices, wagering summary report for every pool and for each race, system balance report comparing pool and paid out totals, money room balance report showing cash added and subtracted from beginning day's balance, and IRS report showing winner's social security number, ticket number amount won and taxes withheld; require hubs to produce any reports requested by the Commission within 72 hours after the receipt of such request (reports may include, but are not limited to, odds progression report, ticket and transaction history report, terminal history report, outstanding ticket report, outstanding tickets cashed report, manually cashed tickets report, canceled tickets report, network balance report, teller inquiry report, wagering report, account history report, inter-track wager report, ticket history report and terminal history report, pool transmission report, and special reports); require hubs to produce daily logs to the Commission which include at a minimum: a teller/machine history log, ticket history log, user terminal log, system error log, system journal log, and account history log; and require hub personnel to maintain off-line logs which include at a minimum: system incident log, totalizator room access log and totalizator maintenance log; amend Gaming rules to clarify tournament buy-in definitions and to add to the definitions the term "tournament entry fee;" allow licensees the discretion to conduct game tournaments on dates of their choosing for tournaments with buy-ins or entry fees of $50 or less per player; exclude mandatory gratuities paid to licensed dealers from the adjusted gross proceeds of tournaments; and clarify that five cent or one cent stand alone progressive slot machines need not have close circuit surveillance until the prize has reached five thousand dollars. The general authority for these rules, as cited by the commission, is SDCL 42-7-56, 42-7B-7, and 42-7B-11.

A public hearing will be held at the City Hall, 102 Sherman Street, Deadwood, South Dakota, on December 11, 2007, at 9:00 a.m. MT. Copies of the proposed rules may be obtained without

charge from and written comments sent to the South Dakota Commission on Gaming, 221 West Capitol Avenue, Suite 101, c/o 1320 East Sioux Avenue, Pierre, South Dakota 57501-3100. Materials sent by mail must reach the Commission on Gaming by December 11, 2007, to be considered. However, the Commission requests that all written comments be received by December 6, 2007, to allow for adequate consideration prior to the hearing. This hearing is being held in a physically accessible place. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-6050 or (605) 578-3074 at least 48 hours before the hearing.

***Secretary of State: Board of Finance*:** (November 21, 2007) intends to amend rules to increase the per diem rate for in-state lodging allowed while a state employee is on official business and to increase the annual salary required for persons recruited and hired to fill positions to be eligible to receive a moving allowance. The general authority for these rules, as cited by the board, is SDCL 3-9-2 and 3-9-11.

A public hearing will be held in the Secretary of State's office, Suite 204, 2nd floor, State Capitol, Pierre, South Dakota, on December 18, 2007, at 2:00 p.m. CDT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Board of Finance, c/o Secretary of State, 500 E. Capitol, Pierre, South Dakota 57501. Copies of the proposed rules may also be obtained at www.sdsos.gov. Material sent by mail must be received by December 28, 2007, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the board can make arrangements are asked to call (605) 773-3537 at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Order:

The Governor has signed **Executive Order 2007-27** dated November 16, 2007. Due to persistent drought conditions in Custer, Fall River, Pennington, and Shannon Counties, the Governor has granted permission to move overwidth baled livestock feed on public highways, notwithstanding the restrictions in SDCL 32-22-2 and ARSD 70:03:01:07. The executive order outlines other requirements that apply. The executive order shall expire no later than midnight, December 31, 2007.

Note: A copy of the rules may be obtained directly from the above agencies. 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

12-6-2007	Game, Fish and Parks	Amend Uses of Park and Public Lands rules to restrict persons hunting wild turkey in Custer State Park during the spring turkey hunting season to using shotguns with shot shells, muzzle loading shotguns, and bows and arrows; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; establish the number of licenses/tags available which will

		include offering residents 255 more one-tag "male turkey" and 270 more two-tag "any turkey" licenses for the Prairie Units than 2007 for an overall increase of 795 tags (+7%); offer nonresidents 18 less one-tag "male turkey" and 19 more two-tag "any turkey" licenses for the Prairie Units than 2007 for an overall increase of 2 tags; create a late (May 1-18) Black Hills bonus season for SD residents; establish new units in Hamlin (32A/B) and Day/Codington (22A/B) Counties and prohibit hunting with rifles in these new units; add western Brookings, Minnehaha, Hamlin and Brown Counties to the area open for archery hunting; combine Dewey and Ziebach into one unit; and revise the area description of Lincoln County units (44A and 44B) to include all of Lincoln County; amend Spearing to exempt a Nebraska resident angler possessing a valid Nebraska fishing license, or who is exempt from complying with Nebraska license or permit requirements, and who possesses the required nonresident South Dakota archery paddlefish permit and tag, from being required to possess a nonresident South Dakota fishing license in order to archery fish for paddlefish on the Missouri River below Gavins Point Dam; and expand the areas open to taking catfish by legal spearguns, spears, and bows and arrows on Lake Oahe from Oahe Dam upstream to the North Dakota/South Dakota State line, and on Lake Francis Case from Fort Randall Dam upstream to the Brule/Buffalo County line; 34 SDR 141.
12-6-2007	Social Services: Child Protection Services	Amend rules relating to child care facilities licensed by the Department to repeal a rule relating to the document of need that must be supplied to the Department; add intensive residential treatment centers to the list of facilities that must report incidents or a change in circumstances that may affect a provider's ability to comply with the requirements of licensure or the ability to provide care and specify that the facility must report such occurrence immediately after ensuring that children in care are safe; amend rules relating to group care centers for minors to update and clarify existing definitions; define "alternative

		services," "personal restraint," "program director," "short-term assessment services", and "treatment plan"; allow a shelter care facility to maintain a child in care for an additional 30 days when a placement plan has been made but cannot be implemented or when needed assessment services cannot be completed within the initial 30 days; require a group care center that provides alternative services to children in the custody of the Department to have a signed alternative service agreement with the Department; allow a program director to have two years of relevant alternative child care experience and no longer limit that experience to the group care setting; delete a requirement that staff be available within 15 minutes in the event of an emergency and instead require a facility to have a written plan in place that ensures that staff, law enforcement, or appropriate emergency responders be available at the facility within a reasonable time in the event of an emergency; require a facility to provide in-service training in the use of seclusion and personal restraint, if used by the facility, and cultural sensitivity; require that training in behavior management techniques and personal restraint be from a nationally recognized program; replace the term "case service plan" with "treatment plan"; require the treatment plan to include a description of how family and aftercare services will be provided; specify that a shelter care facility that does not provide short-term assessment services is exempt from the requirement for establishing a written treatment plan; require employees to be at least 21 years of age and demonstrate a capacity to carry out the duties of the employee's job description; provide a waiver of the age requirement for college interns working under the direct supervision of an experienced staff member; specify that an employee determined to have active tuberculosis may not work or be present in the facility until a physician determines that the employee is no longer infectious; require a facility to maintain health information relating to a child if a child is in care for 30 days or longer; require the facility

		to obtain a signed authorization for regular and emergency medical and surgical care for securing medical reports at the time the child is placed into the facility; delete the requirement that children have a tuberculin skin test done within two weeks of placement; delete the reference to the Department of Commerce and Regulation and replace it with the Department of Public Safety; require a facility to provide each child with a minimum of 70 cubic feet of individual storage space for personal belongings as well as additional, sufficient space for the child's clothing and other items required to meet the child's day-to-day living needs; require volunteers to meet the staff health requirements; delete the requirement that volunteers have a tuberculin skin test; require a facility to establish and follow written policy regarding behavior support and intervention and to make the facility's written policy on discipline known to guardians; specify that the policy must encourage and support the positive development of children, nurture a culture of respect and safety, and emphasize proactive and preventive intervention; specify prohibited types of punishment; in cases of medication errors or drug reactions, require notification of the facility's nurse rather than the attending physician and allow the nurse to assess the situation and determine if a report needs to be made to the attending physician; require that a nurse licensed under SDCL 36-9 be responsible for the administration of medications and allow the nurse to delegate the administration of medications to unlicensed assistive personnel only if certain requirements are met; prohibit a facility from placing a child in restraint unless the child placement agency has given the facility permission and the use of restraint has been incorporated into the child's treatment plan; require a facility to document why a child was placed in restraint; prohibit a shelter care facility from using locked seclusion; clarify that the physical requirements for a room used for seclusion apply to those rooms used exclusively for seclusion; require a staff person to

		continuously observe and monitor a child placed in seclusion for the purpose of evaluating the child's physical and psychological well being and ensuring that the child does not inflict self-injury; require a staff person to be physically present in the seclusion room when necessary to assure the child's safety; limit placement in seclusion or restraint to two consecutive hours if the child is between the ages of 9 and 17, and to one hour if the child is under age 9; require the facility to provide a monthly report on the child's progress to the placement agency and allow the 30-day progress report to be incorporated into the quarterly review and treatment plan amendment; require the facility to send a copy of the monthly report to the child's parent or guardian if the parent or guardian was involved in the child's placement or is actively involved in the treatment planning; require the facility to develop written policies in certain, specified areas, to inform the child's parent or guardian of the facility's policies, and to make copies of the policies available on request; amend rules relating to residential treatment centers to define the terms "emergency safety intervention," "personal restraint," "program director," and "treatment plan"; change the term, "case service plan" to "treatment plan"; allow a program director to have at least two years of relevant alternative child care experience and no longer limit the experience to a group child care setting; require a facility to have additional staff available on call and to post the list of available staff members by the facility's telephone; require the facility to have a written plan to assure that staff and emergency responders are available within a reasonable time in the event of an emergency; require the treatment plan to include a discharge plan that meets certain requirements and require the treatment plan to be signed by each of the individuals involved in developing the plan; require the facility to send a copy of the monthly report to the child's parent or guardian if the parent or guardian was involved in the child's placement or is actively involved in treatment planning; require the facility to

		send the plan amendments to the child's parent or guardian, if applicable; and require a facility to develop written policies in certain, specified areas, to inform the child's parent or guardian of the facility's policies, and to make copies of the policies available on request; amend rules relating to child placement agencies to repeal a rule relating to the completion of a statement of need before a license may be granted; and repeal a rule that established the minimum qualifications for an executive director; amend rules relating to intensive residential treatment centers to define the terms "emergency safety intervention," "personal restraint," "program director," and "seclusion"; change the term "case service plan" to "treatment plan"; allow a facility to seek certification from the Commission of Accreditation of Rehabilitation Facilities in the area of behavioral health or child and youth services; allow a program director to have two years of relevant alternative child care experience and no longer limit that experience to the group care setting; change the staff qualification requirements for direct care staff to require at least one of every three staff members on duty to have a bachelor's degree in a behavioral or social science or two years of post-high school education and at least one year of experience working with children in a group care setting and specify that a staff member who does not meet these requirements must work under the supervision of a staff member who does; require the facility to send a copy of the monthly report to the child's parent or guardian if the parent or guardian was involved in the child's placement or is actively involved in the treatment planning and require that plan amendments be sent to the child's parent or guardian, if applicable; require the facility to have additional child care staff on call and to post a list of the staff members on call by the facility's telephone; require the facility to have a written plan to assure that staff and other emergency responders are available within a reasonable time in the event of an emergency; require a facility to provide training in the use of seclusion and personal restraint and delete

		the use of the term "passive physical restraint"; require a facility to inform the child's parent or guardian of the facility's policies and to make copies of the policies available on request; delete a provision that required a licensed psychologist to complete a psychological evaluation within 14 days after placement and instead allow the psychologist to recommend the completion of other evaluations as part of the required assessment process; and repeal a rule relating to medication management; 34 SDR 142.
12-11-2007	Human Services: Division of Developmental Disabilities	Amend Family Support Services rules to add definitions, change the term of consumer to participant throughout the chapter, clarify the differences between the local family support program and the statewide family support program in the areas of: supports and services, eligibility, prior authorization of supports and services, and non-covered services. New rules are added regarding funding availability and the organized health care delivery system (OHCDS). Repeal rules on the local family support program review and the appeal of revocation of provider status. Expand the approval time of the local family support plan from 30 to 45 days. Reduce the number of days for determining eligibility for the local family support program from 60 to 45 days. Add to the list of non-covered expenses those services, items or supplies eligible for payment under another payment source. Clarify the language regarding statement of deficiencies and plan of correction updating the language and adding the OHCDS as the responsible party. Clarify the discontinuation of services adding eligibility criteria and expanding the notice to include any reason for discontinuation. Language is added that the department will not pay for any legal fees for representing the provider, participant or their representative in an appeal and adds a 10 day requirement to request a continuance of the hearing on appeal. Amend Family Support Waiver Services rules to provide definition of terms used in the chapter, define the scope and authority, provide the criteria for designation as an OHCDS, list the responsibilities of an

		OHCDS, provide requirements for subcontracts, provide the criteria for designation as an independent contractor providing service coordination, list the qualifications and responsibilities of an independent contractor, provide requirements for the submission of incident reports to the division and when the report shall be submitted, provide that a participant has the right to choose who delivers services to the participant, define an agency with choice model, clarify that eligibility for this program is set forth under the Department of Social Services administrative rules, describe the notification of services, provide for a waiting list and describe the priority status, provide a description of services, include requirements for the individualized service plan (ISP), the annual ISP meeting and any review or modifications, describe budget update requirements, provide requirements regarding the participant records including confidentiality, transfer, and retention of the records, provide requirements for the review of an OHCDS or independent contractor, statement of deficiencies, plan of correction and revocation of the provider agreement, outline the rights of the participants or their representative, require policies for any highly restrictive procedures, provide for a Human Rights Committee, describe the composition of the committee and human rights procedures, and provide requirements for any rights restriction, right of appeal or hearing; 34 SDR 145.
12-11-2007	Revenue and Regulation Gaming Commission	Amend Racing rules to include as a Class A violation for which there may be a summary suspension of racing license the failure to pay a wining pari-mutuel ticket or failure to allow customers of a multi-jurisdictional totalizator hub to withdraw funds from their accounts within appropriate time frames; define the terms "independent real time monitoring system" and "pari-mutuel ticket" under the multi-jurisdictional hub account wagering rules; set forth the requirements to be maintained within all totalizator rooms in multi-jurisdictional totalizator hub operations;

		require that computer systems at hubs be supported by an uninterruptible power supply to allow for system shutdown if power failures occur; require that the totalizator system utilized by the hub be capable of transmitting data in real time to an independent real time monitoring system; require that the mutual manager determine causes of errors in totalizator operation or independent monitoring systems and make necessary repairs and to notify the Executive Secretary within 24 hours after each occurrence of such errors; set forth the requirement of certain end-of-day reports, including balance report for wagering devices, wagering summary report for every pool and for each race, system balance report comparing pool and paid out totals, money room balance report showing cash added and subtracted from beginning day's balance, and IRS report showing winner's social security number, ticket number amount won and taxes withheld; require hubs to produce any reports requested by the Commission within 72 hours after the receipt of such request (reports may include, but are not limited to, odds progression report, ticket and transaction history report, terminal history report, outstanding ticket report, outstanding tickets cashed report, manually cashed tickets report, canceled tickets report, network balance report, teller inquiry report, wagering report, account history report, inter-track wager report, ticket history report and terminal history report, pool transmission report, and special reports); require hubs to produce daily logs to the Commission which include at a minimum: a teller/machine history log, ticket history log, user terminal log, system error log, system journal log, and account history log; and require hub personnel to maintain off-line logs which include at a minimum: system incident log, totalizator room access log and totalizator maintenance log; amend Gaming rules to clarify tournament buy-in definitions and to add to the definitions the term "tournament entry fee;" allow licensees the discretion to conduct game tournaments on dates of their choosing for tournaments with

		buy-ins or entry fees of $50 or less per player; exclude mandatory gratuities paid to licensed dealers from the adjusted gross proceeds of tournaments; and clarify that five cent or one cent stand alone progressive slot machines need not have close circuit surveillance until the prize has reached five thousand dollars; 34 SDR 155.
12-13-2007	Revenue and Regulation: Division of Insurance	Amend rules to revise the standards for long-term care coverage associated with assisted living benefits and to clarify a cross-reference related to long-term care partnership agent training; 34 SDR 141.
12-17-2007	Revenue and Regulation: Appraiser Certification Program	Amend rules to adopt the most recent edition of the uniform standards and add grounds for disciplinary action for failure to comply with a Final Order issued by the secretary; 34 SDR 139.
12-18-2007	Secretary of State: Board of Finance	Amend rules to increase the per diem rate for in-state lodging allowed while a state employee is on official business and to increase the annual salary required for persons recruited and hired to fill positions to be eligible to receive a moving allowance; 34 SDR 156.
1-10-2008	Game, Fish and Parks	Amend a List of Endangered Birds rule to change Peregrine falcon (*Falco peregrinus anatum*) to Peregrine falcon (*Falco peregrinus*) and Interior least tern (*Sterna albifrons athalassos*) to Interior least tern (*Sterna antillarum athalassos*); amend a List of Threatened Birds rule to change American dipper (*Circlus mexicanus*) to American dipper (*Cinclus mexicanus*) and Bald eagle (southern) (*Haliaeetus leucocephalus*) to Bald eagle (*Haliaeetus leucocephalus*); amend a List of Threatened Mammals rule to change Northern swift fox (*Vulpes velox hebes*) to Swift fox (*Vulpes velox*), River otter (*Lutra Canadensis interior*) to River otter (*Lontra Canadensis*), and delist Black Bear (*Ursus americanus*); amend a List of Endangered Fish rule to change Finscale dace (*Phoxinux neogaeus*) to Finescale dace (*Phoxinus neogaeus*); amend a List of Endangered Reptiles rule to change The lined snake (*Tropidoclonion lineatum*) to Lined snake (*Tropidoclonion lineatum*); and amend a List of Threatened Reptiles rule to

		change Eastern hognose snake (*Heterodon platyrhinos*) to Eastern hognose snake (*Heterodon platirhinos*); 34 SDR 142.

RULES REVIEW COMMITTEE MEETINGS

The next regular meeting of the Interim Rules Review Committee will be held Tuesday, December 4, 2007, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2007 interim: January 7, 2008.

Note: An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the Legislative Web site.

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