



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

995C0139

## SENATE ENGROSSED NO. **HB1076** - 2/22/99

Introduced by: Representatives Haley, Cutler, Koetzle, and Lucas and Senators Daugaard, Everist, Hutmacher, Kloucek, Moore, and Olson

1 FOR AN ACT ENTITLED, An Act to appropriate federal funds for the continuation of the  
2 Visitation Enforcement Program Implementation Task Force and to provide for standard  
3 request forms for use in certain visitation and custody hearings.

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

5 Section 1. There is hereby annually appropriated to the Unified Judicial System one hundred  
6 thousand dollars (\$100,000) of federal fund authority for acceptance of a grant from the  
7 Department of Social Services of moneys obtained from Part D of Title IV (U.S.C. 651-669),  
8 as amended, in order to continue the operations of the Visitation Enforcement Program  
9 Implementation Task Force, created by Chapter 150 of the 1997 South Dakota Session Laws.  
10 The Unified Judicial System may expend no more than five thousand dollars of this appropriation  
11 to pay any expenses of the task force.

12 Section 2. The state court administrator shall approve vouchers and the state auditor shall  
13 draw warrants to pay expenditures authorized by this Act.

14 Section 3. That § 25-4A-2 be amended to read as follows:

15 25-4A-2. Any party granted visitation or custody rights to a child by a court decree may  
16 request the court to enter an order to show cause why the other party should not be held in

1 contempt of court for violation of the decree relating to visitation or custody of the child. Upon  
2 receipt of a written request for an order to show cause, the court may issue such an order and  
3 forthwith schedule a hearing date not less than thirty days in the future. No particular formality  
4 ~~may be~~ is required of the moving party in making a written request for an order to show cause.  
5 However, the clerk of the circuit court shall make available standard request forms with  
6 instructions for completion to be used by a moving party. The Department of Social Services  
7 shall prepare the standard request form.

1 **BILL HISTORY**

2 1/19/99 First read in House and referred to Appropriations. H.J. 85

3 1/26/99 Scheduled for Committee hearing on this date.

4 1/26/99 Appropriations Do Pass Amended, Passed, AYES 10, NAYS 0. H.J. 184

5 1/28/99 House of Representatives Do Pass Amended, Passed, AYES 67, NAYS 2. H.J. 251

6 1/29/99 First read in Senate and referred to Appropriations. S.J. 265

7 2/3/99 Scheduled for Committee hearing on this date.

8 2/18/99 Scheduled for Committee hearing on this date.

9 2/18/99 Appropriations Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 536

10 2/22/99 Motion to Amend, Passed. S.J. 624

11 2/22/99 Senate Do Pass Amended, Passed, AYES 34, NAYS 1. S.J. 625

12 2/22/99 Senate Title Amended Passed. S.J. 625

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

707C0457

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1116** - 2/19/99

Introduced by: Representatives Duenwald, Apa, Brown (Jarvis), Fryslie, Jaspers, Lintz, Napoli, Putnam, and Wetz and Senators Madden, Albers, and Flowers

1 FOR AN ACT ENTITLED, An Act to establish certain civil penalties for overweight vehicle  
2 violations.

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

4 Section 1. That § 32-22-55 be amended to read as follows:

5 32-22-55. Any person who is convicted of the offense of operating a motor vehicle upon the  
6 public highways of this state with weight upon any wheel, axle, or groups of axles, or upon more  
7 than one thereof, greater than the maximum permitted by §§ 32-22-2 to 32-22-33, inclusive,  
8 32-22-47 and 32-22-48 ~~shall be fined in addition to, and not in substitution for, any other~~  
9 ~~penalties now provided by law for such offense, in addition to any criminal penalty provided by~~  
10 law for such offense, shall be assessed a civil penalty in the following amounts:

11 (1) In an amount equal to five cents per pound for each pound of such excess or  
12 combined excess weight over one thousand pounds if such excess is three thousand  
13 pounds or less;

14 (2) In an amount equal to ten cents per pound for each pound of such excess or combined  
15 excess weight if such excess exceeds three thousand pounds and is four thousand  
16 pounds or less;

1       (3)    In an amount equal to fifteen cents per pound for each pound of such excess or  
2            combined excess weight if such excess exceeds four thousand pounds and is five  
3            thousand pounds or less;

4       (4)    In an amount equal to twenty-five cents per pound for each pound of such excess or  
5            combined excess weight if such excess is more than five thousand pounds.

6       The ~~fine~~ civil penalty schedule in this section is assessed at a single rate according to the  
7       cents per pound penalty for the highest weight violation.

8       Section 2. Any civil penalty assessed pursuant to § 32-22-55 shall be treated as a fine  
9       collected for violations of state laws and shall be paid to the treasurer of the county in which  
10      imposed and distributed among and between all of the several public schools incorporated in  
11      such county in proportion to the number of children in each, of school age, as fixed by law  
12      pursuant to Article VIII, section 3, of the South Dakota Constitution.

1 **BILL HISTORY**

2 1/22/99 First read in House and referred to Transportation. H.J. 127

3 1/27/99 Scheduled for Committee hearing on this date.

4 1/27/99 Transportation Deferred to another day.

5 2/1/99 Scheduled for Committee hearing on this date.

6 2/3/99 Scheduled for Committee hearing on this date.

7 2/3/99 Transportation Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 344

8 2/5/99 House of Representatives Do Pass Amended, Passed, AYES 52, NAYS 10. H.J. 404

9 2/8/99 First read in Senate and referred to Transportation. S.J. 382

10 2/11/99 Scheduled for Committee hearing on this date.

11 2/16/99 Scheduled for Committee hearing on this date.

12 2/18/99 Scheduled for Committee hearing on this date.

13 2/18/99 Transportation Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 539

14 2/18/99 Transportation Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

456C0152

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1176** - 2/19/99

Introduced by: Representatives Apa, Diedrich (Larry), and Napoli and Senators Flowers,  
Lawler, and Staggers

1 FOR AN ACT ENTITLED, An Act to require an applicant to pay the actual costs of postage  
2 and handling for mailing license plates and stickers.

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

4 Section 1. That § 32-5-82 be amended to read as follows:

5 32-5-82. On receipt of any application under §§ 32-5-2 and 32-5-3, the county treasurer,  
6 ~~except as provided in this chapter,~~ shall deliver to the owner, ~~without expense to the applicant,~~  
7 ~~or, upon request by the applicant and upon the payment by the applicant of a fee of three dollars~~  
8 ~~when number plates and stickers are required or fifty cents when only number stickers are~~  
9 ~~required for each motor vehicle registered, shall forward by mail or express to the owner, two~~  
10 ~~number plates or two number stickers, or both, which.~~ The plates or stickers shall bear the  
11 distinctive number contained in the application as mentioned in § 32-5-81. The applicant may  
12 request the county treasurer to mail the plates or stickers for a fee. If the applicant requests that  
13 the plates or stickers be express mailed, the applicant shall pay the actual costs of postage and  
14 handling. All fees received by the county treasurer for mailing or expressing of the plates or  
15 stickers shall be deposited by the treasurer in the county general fund.

16 Section 2. That § 32-9-7 be amended to read as follows:

1       32-9-7. On receipt of an application under § 32-9-6 and payment of the commercial motor  
2 vehicle fee, required by this chapter, and upon satisfactory evidence that the applicant has  
3 complied with all laws, rules, and regulations of this state covering motor vehicles and motor  
4 carriers, and if a motor carrier for hire, that the applicant has received from the public utilities  
5 commission a certificate, permit, or registration under chapter 49-28, the county treasurer shall  
6 issue to the applicant a receipt which shall identify the motor vehicle, trailer, or semitrailer, and  
7 shall assign to it a number, which shall be endorsed upon the application and receipt, and shall  
8 issue to the applicant a commercial motor vehicle certificate bearing the number. The certificate  
9 shall be placed and carried in the vehicle in a conspicuous place and is subject to examination  
10 upon demand by any officer of this state, county, or municipality. The county treasurer shall issue  
11 to the applicant two commercial motor vehicle plates for each motor vehicle. The applicant may  
12 request the county treasurer to mail the plates for a fee ~~of three dollars or the stickers for a fee~~  
13 ~~of fifty cents.~~ If the applicant requests that the plates be mailed, the applicant shall pay the actual  
14 costs of postage and handling. If the applicant requests that the plates or decals be express  
15 mailed, the applicant shall pay any costs for the express mailing service. The plates shall set forth  
16 the amount of gross weight in figures, and shall be in colors and designs for each classification  
17 specified in § 32-9-15. The plates shall be securely fastened to the front and rear end of each  
18 commercial motor vehicle in a conspicuous place. The county treasurer shall deposit in the  
19 county general fund any fees received for mailing or expressing the plates or stickers. A violation  
20 of this section is a Class 2 misdemeanor.

1 **BILL HISTORY**

2 1/26/99 First read in House and referred to Local Government. H.J. 193

3 2/4/99 Scheduled for Committee hearing on this date.

4 2/4/99 Local Government Do Pass, Passed, AYES 13, NAYS 0. H.J. 388

5 2/8/99 House of Representatives Deferred to another day. H.J. 420

6 2/10/99 Motion to Amend, Passed. H.J. 465

7 2/10/99 House of Representatives Do Pass Amended, Passed, AYES 65, NAYS 2. H.J. 465

8 2/10/99 House of Representatives Title Amended Passed. H.J. 466

9 2/11/99 First read in Senate and referred to Transportation. S.J. 454

10 2/18/99 Scheduled for Committee hearing on this date.

11 2/18/99 Transportation Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 539

12 2/18/99 Transportation Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

329C0558

SENATE COMMERCE COMMITTEE  
ENGROSSED NO. **HB1177** - 2/19/99

Introduced by: Representatives Fischer-Clemens, Brown (Jarvis), Duniphan, Garnos, Napoli,  
and Wilson and Senators Daugaard, Everist, Flowers, Hainje, and Moore

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Examiners of Psychologists to  
2 dismiss certain complaints.

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

4 Section 1. That chapter 36-27A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 If the board determines that any complaint was frivolous or clearly unfounded in fact, the  
7 board may dismiss the complaint and, by separate and unanimous vote of the board, may  
8 expunge such complaint from the record of the licensee.

1 **BILL HISTORY**

2 1/26/99 First read in House and referred to Commerce. H.J. 193

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/9/99 Commerce Do Pass, Passed, AYES 13, NAYS 0. H.J. 428

5 2/9/99 Commerce Place on Consent Calendar.

6 2/10/99 House of Representatives Do Pass, Passed, AYES 66, NAYS 0. H.J. 463

7 2/11/99 First read in Senate and referred to Commerce. S.J. 454

8 2/18/99 Scheduled for Committee hearing on this date.

9 2/18/99 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 540

10 2/18/99 Commerce Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

709C0706

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB1186** - 2/19/99

Introduced by: Representatives Hunt and Cerny and Senators Frederick and Lange

1 FOR AN ACT ENTITLED, An Act to restrict access by minors to obscene materials on certain  
2 public access computers and to limit liability for certain related actions.

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

4 Section 1. Any public school that provides a public access computer shall do one or both of  
5 the following:

6 (1) Equip the computer with software that will limit minor's ability to gain access to  
7 obscene materials or purchase internet connectivity from an internet service provider  
8 that provides filter services to limit access to obscene materials;

9 (2) Develop and implement by January 1, 2001, a local policy that establishes measures  
10 to restrict minors from computer access to obscene materials.

11 Section 2. Any public library that provides a public access computer shall develop and  
12 implement, by January 1, 2001, a local policy that establishes measures to restrict minors from  
13 computer access to obscene materials.

14 Section 3. Any public school that complies with section 1 of this Act or any public library  
15 that complies with section 2 of this Act may not be held liable for any damages that may arise  
16 from a minor gaining access to obscene materials through the use of a public access computer

1 that is owned or controlled by the public school or public library.

2 Section 4. For the purposes of this Act, obscene material is defined pursuant to subdivision

3 22-24-27(11).

4 Section 5. For the purposes of this Act, a public access computer is any computer that is

5 located in a public school or public library.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to Judiciary. H.J. 209

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/1/99 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 310

5 2/4/99 Motion to Amend, Passed, AYES 49, NAYS 15. H.J. 378

6 2/4/99 House of Representatives Do Pass Amended, Passed, AYES 45, NAYS 21. H.J. 379

7 2/4/99 House of Representatives Title Amended Passed. H.J. 380

8 2/5/99 First read in Senate and referred to Education. S.J. 347

9 2/11/99 Scheduled for Committee hearing on this date.

10 2/16/99 Scheduled for Committee hearing on this date.

11 2/18/99 Scheduled for Committee hearing on this date.

12 2/18/99 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 554

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

823C0790

## SENATE ENGROSSED NO. **HB1258** - 2/22/99

Introduced by: Representatives Peterson, Fischer-Clemens, Jaspers, Koetzle, and Munson  
(Donald) and Senators Munson (David), Brown (Arnold), Drake, and Flowers

1 FOR AN ACT ENTITLED, An Act to exempt motor vehicle rental companies from certain  
2 insurance regulations and provide for primary coverage.

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

4 Section 1. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The provisions of this chapter do not apply to any individual who, in connection with the  
7 rental of a motor vehicle, provides contract options to the standard rental agreement which  
8 provide motor vehicle and travel related coverages through authorized insurers for a rental  
9 period not to exceed ninety days.

10 Section 2. That § 58-23-4 be amended to read as follows:

11 58-23-4. When an automobile insurance policy is in force for anyone engaged in the business  
12 of selling, repairing, servicing, storing, or parking motor vehicles and the person or organization  
13 allows the use of a vehicle with or without consideration to any other person or organization and  
14 the vehicle is involved in an accident out of which bodily injury or property damage to third  
15 persons or damage to the insured vehicle arises, the following automobile insurance policies shall  
16 be applicable:

- 1       (1)    In the event no other automobile insurance policy is in force at the time of the  
2            accident for the person or organization using the vehicle, the coverage provided by  
3            the motor vehicle owner's automobile policy shall extend to the borrower in the event  
4            the owner's automobile insurance policy extends coverage to said borrower.
- 5       (2)    In the event that another automobile insurance policy is in force for the person or  
6            organization using the vehicle, any coverage provided by the motor vehicle owner's  
7            automobile insurance policy shall be excess coverage only but limited by the terms of  
8            the owner's applicable automobile insurance policy. The coverages in the policy  
9            afforded the person or organization using the vehicle shall be primary. Any policy of  
10          insurance sold by a car rental company shall be considered the primary coverage.

1 **BILL HISTORY**

2 1/29/99 First read in House and referred to Commerce. H.J. 268

3 2/4/99 Scheduled for Committee hearing on this date.

4 2/4/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 363

5 2/8/99 House of Representatives Do Pass Amended, Passed, AYES 55, NAYS 13. H.J. 419

6 2/9/99 First read in Senate and referred to Commerce. S.J. 409

7 2/16/99 Scheduled for Committee hearing on this date.

8 2/18/99 Scheduled for Committee hearing on this date.

9 2/18/99 Commerce Do Pass, Passed, AYES 5, NAYS 2. S.J. 539

10 2/19/99 Senate Deferred to another day. S.J. 607

11 2/22/99 Motion to Amend, Passed. S.J. 622

12 2/22/99 Senate Do Pass Amended, Passed, AYES 25, NAYS 10. S.J. 623

13 2/22/99 Senate Title Amended Passed. S.J. 623

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

934C0816

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB1271** - 2/19/99

Introduced by: Representatives Fitzgerald, Burg, Clark, Hennies, and McCoy and Senators  
Kleven and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing of  
2 counselor applicants.

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

4 Section 1. That chapter 36-32 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any applicant who entered a doctoral or master degree program in counseling at any  
7 accredited institution of higher education in South Dakota, or other accredited institution of  
8 higher education, at the discretion of the board, between July 1, 1990, and June 30, 1998, and  
9 who has been and continues to be enrolled in that program until graduation is entitled to apply  
10 for licensure under the provisions of § 36-32-13, as the provisions of § 36-32-13 existed on June  
11 30, 1998. The provisions of this section apply only to applicants who successfully complete such  
12 program before July 1, 2000.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to Commerce. H.J. 282

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/9/99 Commerce Do Pass Amended, Passed, AYES 9, NAYS 4. H.J. 429

5 2/11/99 House of Representatives Do Pass Amended, Passed, AYES 45, NAYS 23. H.J. 493

6 2/12/99 First read in Senate and referred to Commerce. S.J. 487

7 2/18/99 Scheduled for Committee hearing on this date.

8 2/18/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 539

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0871

## SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1297** - 2/19/99

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the circumstances under which it is not required  
2 to provide reasonable efforts to reunite parents with children adjudicated as abused and  
3 neglected.

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

5 Section 1. That § 26-8A-21.1 be amended to read as follows:

6 26-8A-21.1. Nothing in § 26-8A-21 requires reunification of a child with a parent who:

7 (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-  
8 22-19.1, 22-22-22, or 26-10-1 or subdivision 22-22-1(1) or (2);

9 (2) Committed a crime defined in § 22-18-1.1 against the child or another child of such  
10 parent; ~~or~~

11 (3) Has had parental rights to another child involuntarily terminated by a prior legal  
12 proceeding ~~under § 26-8A-26;~~

13 (4) Has a documented history of abuse and neglect associated with chronic alcohol or  
14 drug abuse; or

15 (5) Has demonstrated inability to protect the child from substantial harm or the risk of  
16 substantial harm, and the child has been removed from the parent's custody because

1           the child has been adjudicated abused and neglected by a court on at least one  
2           previous occasion.

3           Section 2. That § 26-8A-26.1 be amended to read as follows:

4           26-8A-26.1. In addition to the provisions of § 26-8A-26, the court may find that good cause  
5 exists for termination of parental rights of a parent who:

6           (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-  
7           22-19.1, 22-22-22, or 26-10-1 or subdivision 22-22-1(1) or (2);

8           (2) Committed a crime defined in § 22-18-1.1 against the child or another child of such  
9           parent; ~~or~~

10          (3) Has had parental rights to another child involuntarily terminated by a prior legal  
11          proceeding under § 26-8A-26;

12          (4) Has a documented history of abuse and neglect associated with chronic alcohol or  
13          drug abuse; or

14          (5) Has demonstrated inability to protect the child from substantial harm or the risk of  
15          substantial harm, and the child has been removed from the parent's custody because  
16          the child has been adjudicated abused and neglected by a court on at least one  
17          previous occasion.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 287

3 2/2/99 Referred to State Affairs. H.J. 319

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/8/99 State Affairs Do Pass Amended, Failed, AYES 5, NAYS 8.

6 2/8/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 6. H.J. 411

7 2/10/99 Motion to Amend, Passed. H.J. 468

8 2/10/99 House of Representatives Do Pass Amended, Passed, AYES 50, NAYS 18. H.J. 469

9 2/11/99 First read in Senate and referred to State Affairs. S.J. 455

10 2/17/99 Scheduled for Committee hearing on this date.

11 2/17/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 550

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

283C0874

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HCR1010** - 2/23/99

Introduced by: Representatives Fischer-Clemens, Burg, Cerny, Chicoine, Clark, Davis, Diedrich (Elmer), Hanson, Kazmerzak, Koehn, Koetzle, Lockner, McIntyre, Patterson, Sutton (Daniel), Sutton (Duane), Waltman, Weber, Wetz, Wilson, and Windhorst and Senators Olson, Dennert, Duxbury, Flowers, Hutmacher, Kloucek, Lange, Madden, Moore, Munson (David), Reedy, Staggers, and Symens

1 A CONCURRENT RESOLUTION, Urging Congress to inform the public of the costs of long-  
2 term care and to promote coverage of individuals under long-term care insurance.

3 WHEREAS, as the baby boom generation begins to retire, funding Social Security and  
4 Medicare will put a strain on the financial resources of younger Americans; and

5 WHEREAS, In many states Medicaid is being used for middle income elderly people to fund  
6 long-term care expenses; and

7 WHEREAS, in the coming decade, people over age sixty-five will represent up to twenty  
8 percent or more of the population, and the proportion of the population composed of individuals  
9 who are over age eighty-five, who are most likely to be in need of long-term care, may double  
10 or triple; and

11 WHEREAS, with nursing home care now costing thirty-six thousand five hundred dollars  
12 on average per year, long-term care expenses can have a catastrophic effect on families, wiping  
13 out a lifetime of savings before a spouse, parent, or grandparent becomes eligible for Medicaid;  
14 and

1       WHEREAS, many people are unaware that most long-term care costs are not covered by  
2 Medicare and that Medicaid covers long-term care only after the person's assets have been  
3 exhausted; and

4       WHEREAS, widespread use of private long-term care insurance has the potential to protect  
5 families from the catastrophic costs of long-term care services while, at the same time, easing the  
6 burden on Medicaid as the baby boom generation ages; and

7       WHEREAS, the federal government has endorsed the concept of private long-term care  
8 insurance by establishing federal tax rules for tax-qualified policies in the Health Insurance  
9 Portability and Accountability Act of 1996; and

10       WHEREAS, the federal government has ensured the availability of quality long-term care  
11 insurance products and sales practices by adopting strict consumer protections in the Health  
12 Insurance Portability and Accountability Act of 1996:

13       NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-  
14 fourth Legislature of the State of South Dakota, the Senate concurring therein, that the federal  
15 government be urged to take all appropriate steps to inform the public about the financial risks  
16 posed by rapidly increasing long-term care costs and about the need for families to plan for their  
17 long-term care needs; and

18       BE IT FURTHER RESOLVED, that the federal government be urged to take all appropriate  
19 steps to inform the public that Medicare does not cover most long-term care costs and that  
20 Medicaid covers long-term care costs only when the beneficiary has exhausted his or her assets;  
21 and

22       BE IT FURTHER RESOLVED, that the federal government be urged to take all appropriate  
23 steps not only to encourage employers to offer private long-term care insurance coverage to  
24 employees, but also to encourage both working-aged people and older citizens to obtain long-  
25 term care insurance either through their employers or on their own; and

1       BE IT FURTHER RESOLVED, that the appropriate committees of Congress, together with  
2       the Department of Health and Human Services and other appropriate federal agencies, be urged  
3       to develop specific ideas for encouraging Americans to plan for their own long-term care needs;  
4       and

5       BE IT FURTHER RESOLVED, that the congressional tax-writing committees, together  
6       with the Department of the Treasury be urged to determine whether the tax rules for long-term  
7       care insurance need to be modified to ensure that the rules adequately facilitate the affordability  
8       of long-term care insurance.

1 **BILL HISTORY**

2 2/23/99 Scheduled for Committee hearing on this date.

3 2/23/99 Commerce Adopt Resolution as Amended, AYES 11, NAYS 1.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

555C0055

## SENATE ENGROSSED NO. **SB1** - 1/25/99

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

Introduced by: Senators Olson, Brosz, and Dennert and Representatives Diedrich (Larry), Broderick, Chicoine, Cutler, Monroe, Smidt, and Waltman at the request of the Interim Taxation Committee

1 FOR AN ACT ENTITLED, An Act to revise the procedure for the valuation of real property.

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

3 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any real property which sells for more than one hundred fifty percent of its assessed value,  
6 may not be used for the purpose of valuing other real property. The sale of any real property  
7 which is not used for the purpose of valuing other real property pursuant to this section may not  
8 be used in any sales ratio study.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 15

3 1/13/99 Senate Referred to Taxation. S.J. 39

4 1/15/99 Scheduled for Committee hearing on this date.

5 1/20/99 Taxation Do Pass, Passed, AYES 9, NAYS 0. S.J. 126

6 1/20/99 Scheduled for Committee hearing on this date.

7 1/21/99 Senate Deferred to another day. S.J. 148

8 1/25/99 Senate Do Pass Amended, Passed, AYES 34, NAYS 0. S.J. 181

9 1/25/99 Senate Title Amended Passed. S.J. 182

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

359C0136

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

### **SB5** - 1/29/99

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

Introduced by: Senators Benson, Brown (Arnold), Drake, Lange, Reedy, Valandra, and Vitter  
and Representatives Jaspers, Lockner, Weber, and Wetz at the request of the  
Interim Agriculture Committee

1 FOR AN ACT ENTITLED, An Act to establish the value added agriculture subfund and provide  
2 for its funding and disbursement.

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

4 Section 1. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 There is created within the revolving economic development and initiative fund created in  
7 § 1-16G-3 the value added agriculture subfund. The purpose of the subfund created by this  
8 section is to make grants or loans for agricultural development, feasibility studies, or marketing.

9 Section 2. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The Board of Economic Development shall designate three million dollars of the money in  
12 the revolving economic development and initiative fund for the purposes of the value added  
13 agriculture subfund.

14 Section 3. That § 10-47B-119 be amended to read as follows:

1       10-47B-119. Any motor fuel consumer may apply for and obtain a refund of fuel taxes  
2 imposed and paid to this state, for motor fuel purchased and used by the consumer in motor  
3 vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes; or  
4 used in vehicles or equipment for nonhighway commercial uses. The portion of this refund  
5 attributed to nonhighway use of motor vehicles shall be calculated by multiplying the motor  
6 vehicle's average miles per gallon during the claim period times the number of nonhighway miles  
7 the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported  
8 by actual individual vehicle fuel disbursement records and odometer readings. The portion of this  
9 refund attributed to nonhighway machinery and equipment shall be supported by individual  
10 vehicle fuel disbursement records. Three cents per gallon of each tax refund shall be deposited  
11 in the value added agriculture subfund created in section 1 of this Act. For the purposes of this  
12 section, the refund applies to any purchases of motor fuel made after July 1, 1999.

13       Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
14 follows:

15       The Board of Economic Development shall administer the value added agriculture subfund,  
16 and make grants or loans from the value added agriculture subfund. The value added agriculture  
17 subfund shall be used to develop and promote value added agriculture in South Dakota including  
18 the initial or subsequent production, use, or processing of any form of agricultural commodity,  
19 product, or by-product in this state. For projects which involve a separate agricultural research  
20 component, the Board of Economic Development shall consult with the research services of  
21 South Dakota State University.

22       Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
23 follows:

24       In connection with the administration of the value added agriculture subfund, the Board of  
25 Economic Development may, pursuant to chapter 1-26, adopt such rules as it deems necessary

1 to implement the purposes of this Act, including:

- 2 (1) Setting the application procedures for those who apply for loans or grants from the  
3 value added agriculture subfund;
- 4 (2) Establishing criteria to determine which applicants will receive such loans or grants;
- 5 (3) Governing the use of proceeds of such loans or grants;
- 6 (4) Establishing criteria for the terms and conditions upon which such loans or grants  
7 shall be made, including the terms of security given, if any, to secure such loans; and
- 8 (5) Governing the use of proceeds by lenders of funds advanced to the lenders by the  
9 board including the terms and conditions upon which the proceeds shall be loaned to  
10 borrowers for the purposes described in this Act.

11 Section 6. That § 1-16G-24 be amended to read as follows:

12 1-16G-24. Earnings on the revolving economic development and initiative fund and the value  
13 added agriculture subfund may be used for the administrative costs of the Division of Finance  
14 of the Governor's Office of Economic Development. Such earnings shall be expended in  
15 accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers  
16 approved by the commissioner of the Governor's Office of Economic Development. Eligible  
17 expenses may not exceed total interest earnings during the previous fiscal year prior to the  
18 deduction of loan losses for the same fiscal year.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 16

3 1/19/99 Scheduled for Committee hearing on this date.

4 1/19/99 Agriculture and Natural Resources Deferred to another day.

5 1/28/99 Scheduled for Committee hearing on this date.

6 1/28/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 1.

7 S.J. 228

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0291

## SENATE ENGROSSED NO. **SB27** - 2/2/99

Introduced by: The Committee on Education at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to require the conduct of criminal background checks for  
2 certain persons employed by the Board of Regents.

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

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Each person hired at the South Dakota School for the Blind and Visually Impaired and the  
7 South Dakota School for the Deaf to serve as superintendent or principal, in a teaching or  
8 teaching assistant position, in a certificated or licensed clinical employment position, or on the  
9 residence hall staff in any capacity shall agree to submit to a background investigation, by means  
10 of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of  
11 Investigation. The hiring institution shall submit completed fingerprint cards to the Division of  
12 Criminal Investigation before the prospective new employee enters into service. If no  
13 disqualifying record is identified at the state level, the fingerprints shall be forwarded by the  
14 Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal  
15 history record check. Any person whose employment is subject to the requirements of this  
16 section may enter into service on a temporary basis pending receipt of results from the  
17 background investigation. The employing institution may, without liability, withdraw its offer of

1 employment or terminate the temporary employment without notice if the report reveals that the  
2 person has been convicted of any crime involving moral turpitude, including traffic in narcotics,  
3 that might justify suspension or revocation of a teaching license pursuant to § 13-42-10, or  
4 otherwise reveals circumstances that reasonably suggest that the person should not be employed  
5 in the special school setting.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Education. S.J. 20

3 1/28/99 Scheduled for Committee hearing on this date.

4 1/28/99 Education Do Pass, Passed, AYES 4, NAYS 3. S.J. 227

5 1/29/99 Senate Deferred to another day. S.J. 261

6 2/1/99 Motion to Amend, Passed. S.J. 282

7 2/1/99 Senate Do Pass Amended, Passed, AYES 32, NAYS 1. S.J. 282

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0244

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB38** - 2/16/99

Introduced by: The Committee on Appropriations at the request of the Department of  
Environment and Natural Resources

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding the transfer of funds  
2 from the regulated substance response fund and to make an appropriation to the fund.

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

4 Section 1. That § 34A-12-3.2 be repealed.

5 ~~—34A-12-3.2. On July first of each year, the state treasurer shall transfer all amounts in excess~~  
6 ~~of one million seven hundred fifty thousand dollars from the regulated substance response fund~~  
7 ~~established pursuant to § 34A-12-3, to the environment and natural resources fee fund~~  
8 ~~established pursuant to § 1-40-30 to be expended in the manner and for the purposes of that~~  
9 ~~fund.~~

10 Section 2. There is hereby appropriated from the environment and natural resources fee fund  
11 established pursuant to § 1-40-30, the sum of five hundred sixty-seven thousand seventy-two  
12 dollars (\$567,072), to the regulated substance response fund created pursuant to § 34A-12-3,  
13 to be expended for the purposes provided for in chapter 34A-12.

14 Section 3. That § 34A-12-4 be amended to read as follows:

15 34A-12-4. When necessary in the performance of ~~his~~ the secretary's duties under  
16 §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.31, 34A-11-9, 34A-11-10,

1 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45,  
2 45-6D-60, and 45-9-68 and Title 34A relative to discharges, the secretary may expend funds  
3 from the response fund to provide for the costs of investigations, emergency remedial efforts,  
4 corrective actions, and managerial or administrative activities associated with such activities. The  
5 secretary's use of the response fund shall be based upon the following:

- 6 (1) In the case of an investigation, when the secretary determines that a discharge ~~has~~  
7 probably requiring an emergency remedial effort may have occurred and that the  
8 general operating budget of the department for such purposes is not adequate to  
9 cover the costs of the necessary investigatory activities;
- 10 (2) In the case of an emergency remedial effort, when the secretary determines that a  
11 discharge has occurred and that corrective actions shall be immediately undertaken  
12 to protect an imminent threat to the public health or safety or to contain a discharge  
13 which, if not immediately contained, shall in time pose a significantly greater threat  
14 to public health or safety or to the environment of this state than if such action is not  
15 immediately taken;
- 16 (3) In the case of a discharge not of an emergency nature when the secretary determines  
17 that a discharge has occurred, that a responsible party or liability fund capable of  
18 performing the corrective actions either cannot be identified or refuses to undertake  
19 corrective actions, and that corrective actions shall be undertaken to protect the public  
20 health, safety, welfare, or environment of the state.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Appropriations. S.J. 22

3 1/22/99 Scheduled for Committee hearing on this date.

4 1/26/99 Scheduled for Committee hearing on this date.

5 2/12/99 Scheduled for Committee hearing on this date.

6 2/12/99 Appropriations Do Pass Amended, Passed, AYES 10, NAYS 0. S.J. 468

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0223

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB49** - 2/22/99

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

1 FOR AN ACT ENTITLED, An Act to repeal the subsequent injury fund.

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

3 Section 1. That chapter 62-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Administration of the subsequent injury fund by the Division of Insurance and reimbursement  
6 of complete and valid claims shall continue until approved, denied, or settled. Any claim for  
7 reimbursement from the subsequent injury fund shall be filed by June 30, 1999. Only those claims  
8 timely filed with the division by June 30, 1999, pursuant to the requirements of § 62-4-34.1 in  
9 effect prior to July 1, 1999, and completed by October 1, 1999, pursuant to the requirements set  
10 forth in § 62-4-34.4 in effect prior to July 1, 1999, shall be eligible for reimbursement from the  
11 subsequent injury fund. Any claim timely filed by June 30, 1999, and completed by October 1,  
12 1999, as set forth in this section, shall be approved or denied by the division pursuant to the  
13 requirements of §§ 62-4-34 to 62-4-36.3, inclusive, in effect prior to July 1, 1999. The division  
14 shall continue to make any necessary assessments pursuant to the requirements set forth in § 62-  
15 4-35 in effect prior to July 1, 1999, until all eligible claims completed as set forth in this section  
16 that are approved by the division or determined by the court to be eligible for reimbursement are

1 paid, and until all matters in litigation concerning the subsequent injury fund are resolved. Any  
2 claim in matters being litigated concerning the subsequent injury fund is not eligible for interest  
3 or costs. Any remaining balance in the fund after all obligations of the fund have been satisfied  
4 shall be deposited in the general fund. Priority of payment shall be determined as of the date and  
5 time they are determined by the division to be complete and valid. No claim against the  
6 subsequent injury fund is vested until it is complete as set forth in this section. Any completed  
7 claim regardless of the date of injury or the date of notice of claim is subject to the two-thirds  
8 method of reimbursement pursuant to § 62-4-34 in effect prior to July 1, 1999.

9 Section 2. That § 62-4-34 be repealed.

10 ~~—62-4-34. If an employee who has previously sustained an injury, or suffers from a preexisting~~  
11 ~~condition, receives a subsequent compensable injury resulting in additional permanent partial or~~  
12 ~~permanent total disability so that the degree or percentage of disability caused by the~~  
13 ~~combination of the subsequent injury and the preexisting injury or condition is substantially~~  
14 ~~greater than that which resulted from the last injury, considered alone, and if the employee is~~  
15 ~~entitled to receive compensation on the basis of the combined disabilities, the employer shall pay~~  
16 ~~all medical and hospital expenses and compensation provided by this title. The employer shall be~~  
17 ~~reimbursed from the "subsequent injury fund" for two-thirds of all compensation, medical and~~  
18 ~~hospital expenses paid to or on behalf of the injured employee due to the subsequent injury. If~~  
19 ~~the subsequent compensable injury of the employee results in the death of the employee and it~~  
20 ~~has been determined that the death would not have occurred except for the preexisting disability,~~  
21 ~~the employer shall pay all compensation provided by this title.~~

22 Section 3. That § 62-4-34.1 be repealed.

23 ~~—62-4-34.1. Any claim against the subsequent injury fund shall be filed with the division of~~  
24 ~~insurance within ninety days from the date of the final decision by the department that a~~  
25 ~~compensable injury exists resulting in additional permanent partial or permanent total disability,~~

1 or approval by the department of settlement between the parties. No claim may be filed prior to  
2 a decision or approval of settlement from the department. The division shall conduct an  
3 investigation and make a decision on the claim within thirty days of the filing of a complete claim  
4 as set forth in § 62-4-34.4 or within a time agreed upon between the claimant and the  
5 department.

6 Section 4. That § 62-4-34.2 be repealed.

7 ~~62-4-34.2. If the division denies a claim made against the subsequent injury fund, the~~  
8 ~~employer may request a hearing. The hearing shall be conducted by a hearing examiner appointed~~  
9 ~~by the secretary of labor. The attorney general shall represent the subsequent injury fund. The~~  
10 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

11 Section 5. That § 62-4-34.4 be repealed.

12 ~~62-4-34.4. A claim is considered complete if it contains records, reports, or any other~~  
13 ~~evidence which shows the following:~~

14 ~~(1) The claim was filed with the appropriate agency within ninety days from the date a~~  
15 ~~decision or approval of an agreement is obtained from the department;~~

16 ~~(2) The final decision or approved agreement from the department finding that the injury~~  
17 ~~is a subsequent injury and is a compensable injury resulting in additional permanent~~  
18 ~~partial or permanent total disability;~~

19 ~~(3) The total amount of compensation, medical and hospital expenses, paid to or on~~  
20 ~~behalf of the employee by the employer if self insured, or the insurance carrier of an~~  
21 ~~employer;~~

22 ~~(4) Reimbursement requested by specific amount, and the calculations which justify the~~  
23 ~~amount requested;~~

24 ~~(5) Medical documentation specifically setting forth that the employee incurred any prior~~  
25 ~~injury, compensable or noncompensable, which caused disability;~~

1 ~~— (6) Medical documentation specifically setting forth the degree or percentage of disability~~  
2 ~~attributable to any prior injury, and the reasons for arriving at those determinations;~~

3 ~~— (7) Medical documentation specifically setting forth that the employee incurred a~~  
4 ~~compensable subsequent injury which caused additional permanent partial or~~  
5 ~~permanent total disability;~~

6 ~~— (8) Medical documentation specifically setting forth the degree or percentage of disability~~  
7 ~~reasonably attributable to the subsequent injury standing alone, as if no other injury~~  
8 ~~had occurred, and the reasons for arriving at those determinations;~~

9 ~~— (9) Medical documentation specifically setting forth the degree or percentage of disability~~  
10 ~~attributable to the combined injuries that also establishes that the disability attributable~~  
11 ~~to the combined injuries is substantially greater than the disability attributable to the~~  
12 ~~subsequent injury standing alone, as if no other injury had occurred, and the reasons~~  
13 ~~for arriving at those determinations;~~

14 ~~— (10) If the degree or percentage of disability attributable to the combined injuries is greater~~  
15 ~~than the sum total of the degree or percentage of disability attributable to any prior~~  
16 ~~injury standing alone and the subsequent injury standing alone, supporting medical~~  
17 ~~documentation, including vocational rehabilitative evaluations and reports, if~~  
18 ~~applicable; and~~

19 ~~— (11) Any other information deemed pertinent by the Division of Insurance during the~~  
20 ~~course of its continuing investigation of the merits of a claim.~~

21 ~~— An incomplete claim is considered filed if filed within the ninety-day statute of limitations~~  
22 ~~established in § 62-4-34.1, but the thirty days for completion of the investigation of the claim~~  
23 ~~does not begin to run until the claim is complete.~~

24 Section 6. That § 62-4-34.5 be repealed.

25 ~~— 62-4-34.5. All claim reimbursements, costs and expenses, including attorney fees and~~

1 ~~employee salaries incurred exclusively for defending and administering the subsequent injury~~  
2 ~~fund, shall be paid from the fund. All claim reimbursements from the subsequent injury fund are~~  
3 ~~continuously appropriated.~~

4 Section 7. That § 62-4-34.6 be repealed.

5 ~~62-4-34.6. No governmental entity located within the state which elects to exercise the~~  
6 ~~exemption from the insurance or security requirements specified in § 62-5-6 is eligible for~~  
7 ~~participation in the subsequent injury fund for the purpose of assessment and reimbursement.~~

8 Section 8. That § 62-4-35 be repealed.

9 ~~62-4-35. In case of the death of an employee covered by this title, if no person is entitled to~~  
10 ~~compensation, the employer, or if insured, the employer's insurance carrier, shall pay to the~~  
11 ~~Division of Insurance the sum of five hundred dollars to be deposited in the subsequent injury~~  
12 ~~fund. The Division of Insurance shall assess each insurance carrier of every employer, or every~~  
13 ~~employer, if self-insured, an amount equal to four percent of all workers' compensation, including~~  
14 ~~medical, hospital, and indemnity expenses, paid to or on behalf of an injured employee during~~  
15 ~~the calendar year next preceding the due date of the payments, which shall be deposited in the~~  
16 ~~subsequent injury fund. The assessment shall be made at any time the fund falls below two~~  
17 ~~hundred thousand dollars. The payment shall be made immediately upon notification to the~~  
18 ~~carrier or self-insured by the division. Each insurance carrier of every employer, or every~~  
19 ~~employer, if self-insured, shall be required to participate in the subsequent injury fund and pay~~  
20 ~~assessments except as provided in § 62-4-34.6. Failure of an insurance carrier of an employer,~~  
21 ~~or an employer, if self-insured, to respond within twenty days of receipt to a notice of assessment~~  
22 ~~from the Division of Insurance shall, unless good cause is shown, have the effect of making that~~  
23 ~~insurance carrier of an employer or a self-insured employer ineligible for reimbursement from the~~  
24 ~~subsequent injury fund for any subsequent injury incurred or claim made from the date the~~  
25 ~~assessment is made for a period of one year subsequent to the date the assessment is actually~~

1 ~~paid. Failure of an insurance carrier of an employer, or an employer, if self-insured, to pay an~~  
2 ~~assessment other than for good cause shown, shall also be grounds for administrative action to~~  
3 ~~be taken by the division or department against an insurance carrier of an employer or an~~  
4 ~~employer, if self-insured, concerning their status and authority to continue being authorized~~  
5 ~~insurance carriers or self-insured employers in the State of South Dakota.~~

6 Section 9. That § 62-4-36.1 be repealed.

7 ~~—62-4-36.1. The Division of Insurance shall serve as administrator of the subsequent injury~~  
8 ~~fund.~~

9 Section 10. That § 62-4-36.2 be repealed.

10 ~~—62-4-36.2. If the Division of Insurance determines that administrative action is necessary~~  
11 ~~against the continued authorization of the status and authority of an insurance carrier of an~~  
12 ~~employer for failure to pay an assessment other than for good cause shown, the division shall~~  
13 ~~commence administrative action pursuant to the provisions of Title 58 and chapter 1-26.~~

14 Section 11. That § 62-4-36.3 be repealed.

15 ~~—62-4-36.3. If the Division of Insurance determines that administrative action is necessary~~  
16 ~~against the continued authorization of the status and authority of a self-insured employer for~~  
17 ~~failure to pay an assessment other than for good cause shown, and that self-insured employer has~~  
18 ~~been issued a certificate of exemption by the Department of Labor pursuant to § 62-5-5, the~~  
19 ~~division shall commence administrative action by petitioning the department for a hearing. The~~  
20 ~~hearing shall be conducted by a hearing examiner appointed by the secretary of labor. The~~  
21 ~~attorney general or counsel for the division shall represent the subsequent injury fund. The~~  
22 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

23 Section 12. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as  
24 follows:

25 An employer is civilly liable for wrongful discharge if it terminates an employee in retaliation

1 for filing a lawful workers' compensation claim. The burden of proof is on the employee to prove  
2 the dismissal was in retaliation for filing a workers' compensation claim.

3 Section 13. No employer may discriminate in hiring any prospective employee due to a  
4 preexisting injury if the preexisting injury does not affect the prospective employee's ability to  
5 perform the work for which the prospective employee is being hired.

6 Section 14. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 If an employee who has previously sustained an injury, or suffers from a preexisting  
9 condition, receives a subsequent compensable injury, the current employer shall pay all medical  
10 and hospital expenses and compensation provided by this title.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Commerce. S.J. 24

3 1/14/99 Scheduled for Committee hearing on this date.

4 1/19/99 Scheduled for Committee hearing on this date.

5 1/19/99 Commerce Deferred to another day.

6 1/21/99 Scheduled for Committee hearing on this date.

7 1/26/99 Scheduled for Committee hearing on this date.

8 1/26/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

9 1/27/99 Referred to Commerce. S.J. 212

10 1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1.

11 2/2/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 302

12 2/3/99 First read in House and referred to Judiciary. H.J. 356

13 2/19/99 Scheduled for Committee hearing on this date.

14 2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 634

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0264

## SENATE ENGROSSED NO. **SB60** - 2/18/99

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

1 FOR AN ACT ENTITLED, An Act to establish certain criteria for the state trunk highway  
2 system.

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

4 Section 1. That § 31-4-1 be amended to read as follows:

5 31-4-1. The state trunk highway system shall be as designated ~~and adopted~~ by the Legislature  
6 ~~from time to time is hereby perpetuated in statute. In designating the state trunk highway system,~~  
7 the Legislature shall consider, but not be limited to, the following primary factors:

8 (1) Highways which are functionally classified as arterials as approved by the Federal  
9 Highway Administration;

10 (2) Highways providing service to a state or federal recreational access area;

11 (3) The proximity of other state trunk highways and highways providing duplicating or  
12 similar service;

13 (4) The cost of construction, maintenance, right-of-way, and the extent of needs on the  
14 state system;

15 (5) The traffic volumes and other traffic survey data; and

16 (6) The desirability of providing an integrated system to serve interstate travel, county

1           seats, and cities of four hundred fifty population or greater.

2           An existing highway segment may not be removed from the state trunk highway system  
3           unless an agreement for transfer of maintenance responsibility has been executed by the  
4           Department of Transportation and the local government unit to which the title and maintenance  
5           responsibility would be transferred.

6           Section 2. The Transportation commission may designate, by rules promulgated pursuant to  
7           chapter 1-26, a segment of the state trunk highway system as a minimum maintenance road if the  
8           commission determines that the segment is used only occasionally or intermittently for passenger  
9           or commercial travel. The commission shall publish a list of the state highway segments proposed  
10          to be designated as minimum maintenance segments each year and provide an opportunity for  
11          public input pursuant to chapter 1-26 before making the final designations. The commission shall  
12          identify the beginning and end points of the segment designated as minimum maintenance. A  
13          minimum maintenance segment may be maintained at a level less than the minimum standards for  
14          full maintenance roads, but shall be maintained at the level required to serve the occasional or  
15          intermittent traffic.

16          Section 3. The Department of Transportation shall post signs on a minimum maintenance  
17          segment of road to notify motor vehicle drivers that it is a minimum maintenance segment and  
18          that travel on the road is at the driver's own risk. The signs shall be posted at the entry points to  
19          and at regular intervals along a minimum maintenance segment. A properly posted sign is prima  
20          facie evidence that adequate notice of a minimum maintenance has been given to the motor  
21          vehicle driver.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Transportation. S.J. 26

3 1/21/99 Scheduled for Committee hearing on this date.

4 1/21/99 Transportation Do Pass, Passed, AYES 7, NAYS 0. S.J. 141

5 1/21/99 Transportation Place on Consent Calendar.

6 1/25/99 Senate Deferred to another day. S.J. 182

7 1/27/99 Senate Deferred to another day. S.J. 220

8 1/28/99 Referred to Transportation. S.J. 239

9 2/4/99 Scheduled for Committee hearing on this date.

10 2/11/99 Scheduled for Committee hearing on this date.

11 2/11/99 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 445

12 2/11/99 Transportation Place on Consent Calendar.

13 2/17/99 Motion to Amend, Passed. S.J. 527

14 2/17/99 Senate Do Pass Amended, Passed, AYES 25, NAYS 9. S.J. 527

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0535

## SENATE ENGROSSED NO. **SB75** - 2/11/99

Introduced by: Senators Daugaard, Halverson, Olson, and Shoener and Representatives Roe, Fischer-Clemens, Michels, and Peterson

1 FOR AN ACT ENTITLED, An Act to establish an insurance fraud unit within the Division of  
2 Insurance to investigate and prosecute insurance fraud.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Insurer," in addition to those persons defined under subdivision 58-1-2(12), any  
6 person or entity transacting insurance with or without a certificate of authority issued  
7 by the director of insurance. The term also means health maintenance organizations,  
8 legal service insurance corporations, prepaid limited health service organizations,  
9 dental and other similar health service plans, and, notwithstanding subdivision 58-1-  
10 3(1), fraternal benefit societies;

11 (2) "Statement," includes any application for insurance, notice, statement, proof of loss,  
12 denial, bill of lading, receipt for payment, invoice, account, estimate of property  
13 damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays,  
14 test results, or other evidence of loss, injury, or expense, whether oral, written, or  
15 computer-generated; and

16 (3) "Designee," the Department of Commerce and Regulation, the attorney general, any

1 state's attorney, any duly constituted criminal investigative department or agency of  
2 the State of South Dakota or of the United States, any county or municipal law  
3 enforcement agency having investigative jurisdiction, and any other person whose  
4 services are contracted for by the insurance fraud prevention unit.

5 Section 2. For purposes of this Act, a person commits a fraudulent insurance act if the  
6 person:

- 7 (1) Knowingly and with intent to defraud or deceive issues or possesses fake or  
8 counterfeit insurance policies, certificates of insurance, insurance identification cards,  
9 or insurance binders;
- 10 (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives  
11 money for the purpose of purchasing insurance and converts the money to the  
12 person's own benefit or for a purpose not intended or authorized by an insured or  
13 prospective insured;
- 14 (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
15 premiums, credits, or other property of an insurer or person engaged in the business  
16 of insurance or of an insured or prospective insured;
- 17 (4) Knowingly and with intent to defraud or deceive makes any false entry of a material  
18 fact in or pertaining to any document or statement filed with or required by the  
19 Division of Insurance;
- 20 (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
21 or destroys assets or records of an insurer or other person engaged in the business of  
22 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
23 of an insurer or other person engaged in the business of insurance;
- 24 (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
25 prepares with knowledge or belief that it will be presented to or by an insurer, or any

1 agent of an insurer, any statement as part of a claim, in support of a claim, or in denial  
2 of a claim for payment or other benefit pursuant to an insurance policy knowing that  
3 the statement contains any false, incomplete, or misleading information concerning  
4 any fact or thing material to a claim;

5 (7) Assists, abets, solicits, or conspires with another to prepare or make any statement  
6 that is intended to be presented to or by an insurer or person in connection with or in  
7 support of any claim for payment or other benefit, or denial, pursuant to an insurance  
8 policy knowing that the statement contains any false, incomplete, or misleading  
9 information concerning any fact or thing material to the claim; or

10 (8) Makes any false or fraudulent representations as to the death or disability of a policy  
11 or certificate holder in any statement or certificate for the purpose of fraudulently  
12 obtaining money or benefit from an insurer.

13 Any violation of this section for an amount of five hundred dollars or less is a Class 1  
14 misdemeanor. Any violation of this section for an amount in excess of five hundred dollars is a  
15 Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

16 Section 3. The insurance fraud prevention unit through its investigator or attorney may do  
17 the following:

18 (1) The investigator or attorney may initiate and conduct independent investigations if the  
19 unit has cause to believe that a fraudulent insurance act has been or may be  
20 committed;

21 (2) The investigator or attorney may review reports or complaints of alleged fraudulent  
22 insurance acts to determine whether such reports require further investigation and to  
23 conduct such investigation;

24 (3) The investigator or attorney may undertake independent studies to determine the  
25 extent of fraudulent insurance acts;

1 (4) The investigator or attorney may promote awareness of insurance fraud through  
2 educational seminars and other education programs for the insurance industry and the  
3 general public;

4 (5) The attorney, subject to applicable criminal or civil law and procedure, may prosecute  
5 fraudulent insurance acts on behalf of the state through criminal and civil proceedings;  
6 and

7 (6) The investigator or attorney may cooperate with federal, state, and local law  
8 enforcement, prosecuting attorneys, and the attorney general in the investigation and  
9 prosecution of fraudulent insurance acts.

10 Section 4. In order to investigate and prosecute activities involving fraudulent insurance acts,  
11 the director of insurance shall employ a sufficient staff to be known as the insurance fraud  
12 prevention unit which shall include a minimum of one clerical employee, one investigator, and  
13 one attorney.

14 Section 5. The insurance fraud prevention unit may prosecute fraudulent insurance acts  
15 through criminal or civil proceedings. The attorney general may appoint the insurance fraud  
16 prevention unit attorney as an assistant attorney general for purposes of prosecuting cases of  
17 fraudulent insurance acts. The unit attorney may have all the powers attributed to the insurance  
18 fraud prevention unit in section 3 of this Act. Prosecution may not proceed unless the director  
19 and the attorney general are consulted and give their written approval. The unit attorney, after  
20 consultation with and approval by the director and the attorney general, may refer or request  
21 assistance from other persons delineated in subdivision (3) of section 1 of this Act for the  
22 prosecution of fraudulent acts. All costs associated with the prosecution of fraudulent insurance  
23 acts, including those incurred by designees assisting or acting on behalf of the insurance fraud  
24 prevention unit, may be paid by the insurance fraud prevention unit fund.

25 Section 6. The insurance fraud prevention unit investigators may investigate violations of this

1 Act. The unit investigators shall be qualified pursuant to the requirements of §§ 23-3-41, 23-3-  
2 42, and 23-3-44 and have all the powers and authority of law enforcement officers while  
3 performing duties pursuant to this Act. The insurance fraud prevention unit, after consultation  
4 with and written approval by the director and the attorney general, may refer or request  
5 assistance from persons delineated in subdivision (3) of section 1 of this Act for the investigation  
6 of fraudulent insurance acts. All costs associated with the investigation of fraudulent insurance  
7 acts, including those incurred by designees assisting or acting on behalf of the insurance fraud  
8 prevention unit, may be paid by the insurance fraud prevention unit fund.

9 Section 7. If the insurance fraud prevention unit or its designees initiate civil action against  
10 any person and that person is found by a court of competent jurisdiction to have committed a  
11 fraudulent insurance act as set forth in section 2 of this Act, that person is subject to a civil  
12 penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the  
13 second violation, and fifteen thousand dollars for each subsequent violation. Civil penalties paid  
14 under this section shall be deposited in the insurance fraud prevention unit fund. An action under  
15 this section may be in lieu of criminal prosecution under the laws of this state and may not be  
16 commenced until after consultation with and written approval by the director and the attorney  
17 general.

18 Section 8. Any costs associated with the administration and operation of the insurance fraud  
19 prevention unit, including salaries and the costs set forth in sections 5 and 6 of this Act, shall be  
20 paid from the insurance fraud prevention unit fund. All disbursements from the insurance fraud  
21 prevention unit fund shall be continuously appropriated.

22 Section 9. Costs and expenses incurred in any investigation or other action arising out of a  
23 violation under this Act may be sought in any judgment or court decree. Any recovered costs,  
24 except civil or criminal penalties, shall be deposited by the unit or its designees in the insurance  
25 fraud prevention unit fund. The court may make such additional orders or judgments as may be

1 necessary to restore to any person in interest any compensation which may have been acquired  
2 by means of any act prohibited in section 2 of this Act.

3 Section 10. Notwithstanding any other section of this Act, the unit or its designees, and a  
4 person alleged to have committed a fraudulent insurance act as set forth in section 2, are not  
5 prohibited from entering into a written agreement upon commencement of a civil action in which  
6 the person alleged to have committed a fraudulent insurance act does not admit or deny the  
7 charges but consents to payment of the civil penalty.

8 Section 11. For purposes of investigating and prosecuting insurance fraud, the insurance  
9 fraud prevention unit is subject to the provisions of this Act and the procedures set forth in Title  
10 15 or Title 23A if applicable and if not in conflict with this Act.

11 Section 12. All investigative records and files of the insurance fraud prevention unit are  
12 confidential. The investigative records of the insurance fraud prevention unit may not be released  
13 except pursuant to a court order. An investigator is not subject to subpoena in civil actions  
14 concerning any matter of which the investigator has knowledge regarding a pending insurance  
15 fraud investigation by the division, unless so ordered by the court.

16 Section 13. Any person acting in good faith is immune from civil liability for filing a report  
17 with or for furnishing any information relating to suspected, anticipated, or completed fraudulent  
18 insurance acts to:

- 19 (1) The Department of Commerce and Regulation and the director of insurance;
- 20 (2) Any governmental agency established to detect and prevent fraud;
- 21 (3) Law enforcement officials;
- 22 (4) The Department of Labor;
- 23 (5) Any insurer or insurance agent;
- 24 (6) The National Association of Insurance Commissioners; and
- 25 (7) Any nonprofit organization established to detect and prevent insurance fraud, if the

1 organization is approved by the director pursuant to rules promulgated by the director  
2 under chapter 1-26 setting forth the standards, criteria, and procedures necessary to  
3 obtain approval.

4 If a civil action is commenced against a person for damages related to the filing of a report  
5 or the furnishing of information under this section and the court determines that the person acted  
6 in good faith in filing the report or furnishing the information, the person filing the report or  
7 furnishing the information may recover costs or disbursements under chapter 15-17, including  
8 reasonable attorney's fees.

9 If the trier of fact concludes that the person filing the report or furnishing the information was  
10 not acting in good faith, the person filing a civil action may recover costs or disbursements under  
11 chapter 15-17, including reasonable attorney's fees.

12 This section does not abrogate or modify in any way any common law or statutory privilege  
13 or immunity.

14 Section 14. The Division of Insurance shall assess each insurer holding a certificate of  
15 authority to transact the business of insurance in this state a fee of two hundred fifty dollars to  
16 be remitted and payable to the Division of Insurance to be deposited in a separate account,  
17 entitled the insurance fraud prevention unit fund. The Division of Insurance may not make an  
18 assessment until the fund falls below one hundred thousand dollars. If the fund falls below one  
19 hundred thousand dollars, the Division of Insurance shall notify each insurer of its payment  
20 obligation. Upon receipt of the notice of assessment from the Division of Insurance each insurer  
21 shall immediately make a two hundred fifty dollar payment to the fund. Failure of an insurer to  
22 submit full payment of the assessment to the division within twenty days of receipt of the notice  
23 of assessment, unless good cause is shown, may be grounds for administrative action to be taken  
24 by the division against an insurer.

25 Section 15. The provisions of this Act do not:

- 1 (1) Preempt the authority or relieve the duty of any other law enforcement agency to  
2 investigate, examine, and prosecute suspected violations of law;
- 3 (2) Prevent or prohibit a person from voluntarily disclosing any information concerning  
4 insurance fraud to any law enforcement agency;
- 5 (3) Limit any of the powers granted elsewhere by the laws of this state to the director of  
6 insurance or the Division of Insurance to investigate and examine possible violations  
7 of law and to take appropriate action; or
- 8 (4) Limit any of the powers granted elsewhere by the laws of this state to any state  
9 agency to investigate and examine possible violations of law and to take appropriate  
10 action.

11 Section 16. The Division of Insurance shall annually report to the Legislature concerning the  
12 activities of the insurance fraud prevention unit including the number and type of cases  
13 investigated, the outcome of such investigations, and costs and expenditures incurred during such  
14 investigations.

15 Section 17. Each authorized insurer shall, every three years after the effective date of this  
16 Act, reevaluate its rates based upon the impact that fraud prevention has had upon its rates,  
17 considering the impact of this Act and the impact of any fraud prevention units of the insurer or  
18 other fraud prevention organization and appropriate accumulated data and, if justified by the  
19 insurer's actuary, reduce its rates.

20 Section 18. That § 58-33-37 be amended to read as follows:

21 58-33-37. Any person who knowingly makes any false or fraudulent statement or  
22 representation with reference to any application for insurance ~~shall be~~ is guilty of a Class 1  
23 misdemeanor. Any person who knowingly presents or causes to be presented a false or  
24 fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof  
25 in support of such a claim for the payment of a loss upon a contract of insurance, or who

1 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss,  
2 or other document or writing, with intent that the same may be presented or used in support of  
3 such a claim, ~~shall be~~ is guilty of a Class 1 misdemeanor if such claim is for an amount of ~~two~~  
4 five hundred dollars or less, and ~~shall be~~ is guilty of a Class 4 felony if such claim exceeds ~~two~~  
5 five hundred dollars.

1 **BILL HISTORY**

2 1/20/99 First read in Senate and referred to Commerce. S.J. 130

3 1/26/99 Scheduled for Committee hearing on this date.

4 1/28/99 Scheduled for Committee hearing on this date.

5 1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

6 2/2/99 Motion to Amend, Passed. S.J. 303

7 2/2/99 Senate Do Pass Amended, Failed, AYES 21, NAYS 12. S.J. 303

8 2/2/99 Intent to reconsider. S.J. 303

9 2/3/99 Senate Reconsidered, AYES 30, NAYS 5. S.J. 318

10 2/3/99 Senate Placed on Calendar. S.J. 318

11 2/4/99 Senate Deferred to another day. S.J. 337

12 2/8/99 Senate Deferred to another day. S.J. 370

13 2/10/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 6. S.J. 428

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

736C0589

## SENATE ENGROSSED NO. **SB87** - 2/9/99

Introduced by: Senators Halverson, Brosz, Ham, and Olson and Representatives Diedrich  
(Larry), Hunt, and McNenny

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the annual property  
2 tax bill.

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

4 Section 1. That § 10-21-1.1 be amended to read as follows:

5 10-21-1.1. The county treasurer shall send a written tax bill to each taxpayer against whom  
6 a property tax has been assessed. Property tax bills sent to taxpayers may reflect the breakdown  
7 of the tax by tax levies. The property tax bill shall also separately state the amount of any taxes  
8 due as a result of a local decision to exceed the tax increase limits set forth in § 10-13-36 or  
9 10-12-43 and shall be marked by an asterisk. The notice shall include the statement:  
10 "INDICATES A LOCAL DECISION TO OPT OUT OF THE TAX LIMITATION." If the local  
11 vote to increase taxes had not passed, your taxes would not have included the items marked with  
12 an asterisk (\*). If the treasurer does not mail the property tax receipts described in §§ 10-21-14  
13 and 10-21-15, the treasurer shall indicate in the property tax bill or a notice enclosed with the  
14 bill that the treasurer does not intend to send a receipt unless requested by the taxpayer. The  
15 county treasurer shall provide to a taxpayer a tax levy sheet, if the tax levy breakdown is not  
16 shown on the tax bill, or upon the taxpayer's request. The annual levy sheet shall contain an

- 1 example of the computation of the total tax for an individual. The secretary of revenue shall
- 2 prescribe a uniform form which shall be used by the county treasurer for notification of taxpayers
- 3 as required by this section.

1 **BILL HISTORY**

2 1/21/99 First read in Senate and referred to Local Government. S.J. 146

3 1/27/99 Scheduled for Committee hearing on this date.

4 2/1/99 Scheduled for Committee hearing on this date.

5 2/3/99 Scheduled for Committee hearing on this date.

6 2/3/99 Local Government Do Pass Amended, Passed, AYES 5, NAYS 1. S.J. 316

7 2/5/99 Senate Deferred to another day. S.J. 357

8 2/8/99 Motion to Amend, Passed. S.J. 373

9 2/8/99 Senate Do Pass Amended, Passed, AYES 26, NAYS 8. S.J. 373

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

934C0354

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB109** - 1/25/99

Introduced by: Senators Staggers, Albers, Dennert, Lange, and Reedy and Representatives Wilson, Chicoine, Hagen, Haley, Hanson, Klaudt, Koetzle, Kooistra, Lucas, McIntyre, Monroe, Nachtigal, and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for the public announcement of capital  
2 punishment execution dates.

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

4 Section 1. That § 23A-27A-17 be amended to read as follows:

5 23A-27A-17. The week so appointed ~~must begin~~ shall be not less than six months nor more  
6 than eight months after the date of judgment. The time of execution within such week shall be  
7 left to the discretion of the warden to whom the warrant is directed, who shall cause the  
8 execution to be performed ~~between the hours of 12:01 a.m. and 6:00 a.m.~~ on some day of such  
9 week, ~~but no previous.~~ Not less than forty-eight hours prior to the execution, the warden shall  
10 make a public announcement of the day ~~or~~ and hour of the execution ~~shall be made except to the~~  
11 ~~persons as may be invited or permitted to be present as provided in §§ 23A-27A-34 and~~  
12 ~~23A-27A-35.~~

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Judiciary. S.J. 162

3 1/25/99 Scheduled for Committee hearing on this date.

4 1/25/99 Judiciary Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 173

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0619

## SENATE ENGROSSED NO. **SB110** - 2/2/99

Introduced by: Senator Paisley and Representative Koskan

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the electronic filing  
2 of tax returns and tax payments.

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

4 Section 1. That § 10-59-32 be amended to read as follows:

5 10-59-32. The secretary may authorize any person required to file returns or reports and  
6 remit taxes or fees under the chapters set forth in § 10-59-1 to remit the taxes or fees by  
7 electronic transmission. ~~For persons~~ Any person required to file returns and remit taxes on a  
8 monthly basis ~~and who remit~~ remit taxes by electronic transmission, as authorized by the  
9 secretary, shall file returns ~~shall be filed separately from the electronic transfer of remittances,~~  
10 ~~and such returns shall be filed~~ by electronic means on or before the ~~last~~ twenty-third day of the  
11 month following each monthly period. Remittances transmitted electronically shall be made on  
12 or before the second to the last day of the month following each monthly period ~~and~~.  
13 Remittances are considered to have been made on the date that the remittance is credited to the  
14 bank account designated by the treasurer of the State of South Dakota. For purposes of making  
15 any electronic transfers of remittances provided for in this title, the last day and the second to  
16 the last day of the month shall mean the last day and the second to the last day of the month  
17 which ~~is~~ are not a Saturday or Sunday or a state or federal holiday.

1 Section 2. That § 10-45-27 be amended to read as follows:

2 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts  
3 are subject to sales tax in this state during the periods specified by this section shall make a return  
4 and remittance to the Department of Revenue on forms prescribed and furnished by the  
5 department in the following manner:

6 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the  
7 return and remit the tax on or before the twentieth day of the month following each  
8 monthly period;

9 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the  
10 return and remit the tax on or before the last day of the month following each  
11 two-month period;

12 (3) Any person whose tax liability is one thousand dollars or more annually and who  
13 remits the tax by electronic transfer to the state, shall file the return by electronic  
14 means on or before the twenty-third day of the month following each monthly period  
15 and remit the tax on or before the second to the last day of the month following each  
16 monthly period.

17 The secretary of revenue may grant an extension of not more than five days for filing a return  
18 and remittance.

19 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return  
20 or remittance is not made on time.

21 Section 3. That § 10-46A-1.6 be amended to read as follows:

22 10-46A-1.6. Any person who is the holder of a contractor's excise tax license or is a  
23 contractor whose receipts are subject to contractor's excise tax in this state during the periods  
24 specified by this section shall make a return and remittance to the Department of Revenue on  
25 forms prescribed and furnished by the department in the following manner:

- 1       (1) Any person whose tax liability is one thousand dollars or more annually, shall file the  
2           return and remit the tax on or before the twentieth day of the month following each  
3           monthly period;
- 4       (2) Any person whose tax liability is less than one thousand dollars annually, shall file the  
5           return and remit the tax on or before the last day of the month following each  
6           two-month period;
- 7       (3) Any person whose tax liability is one thousand dollars or more annually and who  
8           remits the tax by electronic transfer to the state, shall file the return by electronic  
9           means on or before the twenty-third day of the month following each monthly period  
10          and remit the tax on or before the second to the last day of the month following each  
11          monthly period.

12       The secretary of revenue may grant an extension of not more than five days for filing a return  
13       and remittance. Unless an extension is granted, the person with the tax liability shall pay the  
14       penalty or interest as provided by § 10-59-6 if a return or remittance is not made on time.

15       Section 4. That § 10-46B-1.4 be amended to read as follows:

16       10-46B-1.4. Any person who is the holder of a contractor's excise tax license or is a  
17       contractor whose receipts are subject to contractor's excise tax in this state during the periods  
18       specified by this section shall make a return and remittance to the Department of Revenue on  
19       forms prescribed and furnished by the department in the following manner:

- 20       (1) Any person whose tax liability is one thousand dollars or more annually, shall file the  
21           return and remit the tax on or before the twentieth day of the month following each  
22           monthly period;
- 23       (2) Any person whose tax liability is less than one thousand dollars annually, shall file the  
24           return and remit the tax on or before the last day of the month following each  
25           two-month period;

1       (3) Any person whose tax liability is one thousand dollars or more annually and who  
2           remits the tax by electronic transfer to the state, shall file the return by electronic  
3           means on or before the twenty-third day of the month following each monthly period  
4           and remit the tax on or before the second to the last day of the month following each  
5           monthly period.

6       The secretary of revenue may grant an extension of not more than five days for filing a return  
7       and remittance. Unless an extension is granted, the person with the tax liability shall pay the  
8       penalty or interest as provided by § 10-59-6 if a return or remittance is not made on time.

9       Section 5. That § 10-59-33 be amended to read as follows:

10       10-59-33. Any return, report, or remittance which is required to be filed under the taxes  
11       specified in § 10-59-1, ~~shall be considered~~ is timely filed if mailed, postage prepaid, on or before  
12       the due date of the reporting period, and is received by the department. If the due date falls on  
13       a Sunday, or a holiday enumerated in §§ 1-5-1 and 1-5-1.1, the return ~~shall be considered~~ is  
14       timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday,  
15       Sunday, or holiday. A United States Postal Service postmark ~~shall be~~ is evidence of the date of  
16       mailing for the purpose of timely filing of returns, reports, or remittances. The provisions of this  
17       section do not apply to a return filed by electronic means.

18       Section 6. The effective date of this Act is October 1, 1999.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Taxation. S.J. 162

3 1/27/99 Scheduled for Committee hearing on this date.

4 1/27/99 Taxation Do Pass, Passed, AYES 6, NAYS 3. S.J. 209

5 1/28/99 Senate Deferred to another day. S.J. 243

6 1/29/99 Motion to Amend, Passed. S.J. 260

7 1/29/99 Senate Deferred to another day. S.J. 260

8 2/1/99 Senate Do Pass, Passed, AYES 31, NAYS 2. S.J. 283

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

491C0496

SENATE TAXATION COMMITTEE

ENGROSSED NO. **SB111** - 1/28/99

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

Introduced by: Senators Paisley and Everist and Representatives Koskan, Diedrich (Larry), and Wilson

1 FOR AN ACT ENTITLED, An Act to establish certain provisions regarding the taxation of the  
2 gross receipts of a professional employer organization.

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

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of chapter 10-45, gross receipts of a professional employer organization  
7 includes only those amounts received as administrative fees from a client company, whether on  
8 a fee-for-service basis or as a percentage of total receipts from the client company. The gross  
9 receipts do not include any other amount paid by the client company to the professional employer  
10 organization for the benefit of any employee, including wages, salaries, payroll taxes, payroll  
11 deductions, workers compensation costs, insurance premiums, welfare benefits, and retirement  
12 benefits.

13 Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 For the purposes of section 1 of this Act, the term, professional employer organization,

1 means a firm which:

- 2 (1) Creates a co-employer relationship with the employees of a client company by
- 3 assuming responsibility for payroll, benefits, and other human resources functions;
- 4 (2) Covers at least seventy-five percent of the client company's full-time or full-time
- 5 equivalent employees; and
- 6 (3) Maintains separate books and records of account for each client company.

7 Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 The provisions of this Act do not apply to the providing of temporary help services or to any  
10 other arrangement whereby a firm temporarily assigns employees of the firm to support or  
11 supplement a client company's regular work force in special situations such as employee  
12 absences, temporary skill shortages, seasonal workloads and special assignments, or projects.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Taxation. S.J. 162

3 1/27/99 Scheduled for Committee hearing on this date.

4 1/27/99 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 209

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

870C0282

## SENATE ENGROSSED NO. **SB115** - 2/2/99

Introduced by: Senators Dennert, Lange, and Moore and Representatives Cutler, Hunt, Lucas, Sutton (Daniel), Waltman, and Weber

1 FOR AN ACT ENTITLED, An Act to require a landowner to apply to the director of  
2 equalization and to request the use of the marshland soils rating classification to value certain  
3 agricultural land.

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

5 Section 1. That § 10-6-33.21 be amended to read as follows:

6 10-6-33.21. ~~The~~ If an application is submitted pursuant to section 2 of this act, the director  
7 of equalization shall take into consideration and make adjustments in setting the assessed value  
8 for agricultural land which has been inundated by floods and is not farmable during the past three  
9 growing seasons. The director of equalization shall use the marshland soils rating classification  
10 pursuant to §§ 10-6-33.2 and 10-6-33.7 to determine the assessed value of the acreage inundated  
11 and not farmable.

12 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 If agricultural land has been inundated by floods and was not farmable during the past three  
15 growing seasons, any landowner or the landowner's agent or attorney may request the director  
16 of equalization to specially assess the land for the purpose of taxation by submitting an

1 application before November first. The landowner or the landowner's agent or attorney shall  
2 describe on the application the portion of the agricultural land that has been inundated by floods  
3 and was not farmable during the past three growing seasons.

1 **BILL HISTORY**

2 1/25/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 176

3 1/28/99 Scheduled for Committee hearing on this date.

4 1/28/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 0.

5 S.J. 230

6 1/28/99 Agriculture and Natural Resources Place on Consent Calendar.

7 2/2/99 Motion to Amend, Passed. S.J. 301

8 2/2/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 301

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

725C0625

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB127** - 1/29/99

Introduced by: Senators Everist and Lawler and Representatives Michels, Haley, Hunt, Solum,  
and Wilson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the financial  
2 arrangements school districts may have with the Health and Educational Facilities Authority.

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

4 Section 1. That § 13-13-39 be amended to read as follows:

5 13-13-39. The ~~Division of Education~~ Department of Education and Cultural Affairs shall  
6 apportion the foundation program funds to each eligible school district and shall prepare such  
7 a list of apportionments in triplicate. One copy shall be filed with the state auditor as a voucher,  
8 one copy to each school district, and one copy shall be retained in the files of the ~~division~~  
9 department.

10 The state auditor shall issue the warrant to each school district when the apportionment  
11 voucher is presented for the total amount of the foundation program funds each school district  
12 is to receive, subject to any reduction necessitated by the issuance of a warrant to the health and  
13 educational facilities authority as provided below.

14 If the ~~Division of Education~~ Department of Education and Cultural Affairs receives written  
15 notice from the Health and Educational Facilities Authority of a pledge of foundation program  
16 funds or other amounts under Title 13 by a school district pursuant to a lease, resolution,

1 certificate, or other arrangement ~~under any lease~~ with the authority or any ~~note~~ bond, certificate,  
2 note, or other obligation issued to or in connection with a program sponsored by the Health and  
3 Educational Facilities Authority for school districts in anticipation of funds under Title 13, the  
4 ~~Division of Education~~ Department of Education and Cultural Affairs shall deduct from amounts  
5 otherwise due to a school district for the current month and the next two succeeding months  
6 under the apportionment of foundation program funds or other amounts under Title 13 an  
7 amount sufficient to pay rentals, bonds, notes, certificates, or other amounts then due but unpaid  
8 and ~~other amounts pledged to pay any promissory notes~~ the amount so deducted shall be paid  
9 to the authority or any financial institution designated by the authority acting as a fiduciary in  
10 connection therewith, all as specified by the authority. A record of the amount so pledged as  
11 security or otherwise payable to the authority shall be filed with the state auditor.

12 The state auditor shall issue a warrant to the authority for the deducted amount specified by  
13 the Health and Educational Facilities Authority as above provided. No pledge by a school district  
14 of foundation program funds or other amounts under Title 13 for any other purpose may be  
15 permitted and if made is voidable at the election of the Health and Educational Facilities  
16 Authority.

17 Section 2. That § 13-13-74 be amended to read as follows:

18 13-13-74. ~~Payment~~ Except as provided in § 13-13-39, payment from funds provided in aid  
19 of the public schools in any school fiscal year shall be made in twelve monthly installments on  
20 or about the thirtieth of each month. For the period July first to December thirty-first, inclusive,  
21 the total of the six payments shall be one-half of local need of current school fiscal year less local  
22 effort for the period July first to December thirty-first, inclusive. For the period January first to  
23 June thirtieth, inclusive, the total of the six payments shall be one-half of local need of current  
24 school fiscal year less local effort for the period January first to June thirtieth, inclusive.

25 Section 3. That § 13-16-7 be amended to read as follows:

1 13-16-7. The school board of any school district of this state may at its discretion authorize  
2 an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation on  
3 the taxable valuation of the district for the capital outlay fund for assets as defined by § 13-16-6  
4 or for its obligations under a resolution, lease-purchase agreement, capital outlay certificate, or  
5 other arrangement with the Health and Educational Facilities Authority. Taxes collected pursuant  
6 to such levy may be irrevocably pledged by the school board to the payment of principal of and  
7 interest on installment purchase contracts or capital outlay certificates entered into or issued  
8 pursuant to § 13-16-6 or 13-16-6.2 or lease-purchase agreements or other arrangement with the  
9 Health and Educational Facilities Authority and, so long as any capital outlay certificates are  
10 outstanding ~~or~~, installment agreement payments, lease-purchase agreements, or other  
11 arrangements are unpaid, the school board of any district may be compelled by mandamus or  
12 other appropriate remedy to levy an annual tax sufficient to pay principal and interest thereon,  
13 but not to exceed the three dollars per thousand dollars of taxable valuation in any year  
14 authorized to be levied hereby.

15 Section 4. That § 13-16-29 be amended to read as follows:

16 13-16-29. There is created a separate trust fund designated the school district ~~lease~~  
17 repayment fund consisting of all revenues with respect to school district lease, resolution,  
18 certificate, or other arrangement, or any bond, note, or certificate issued to or in connection with  
19 a program sponsored by the Health and Educational Facilities Authority for school districts and  
20 entered into under §§ 13-13-39, 13-16-6.4, 13-16-7 and §§ 13-19-27 to 13-19-29, inclusive. The  
21 Health and Educational Facilities Authority may pledge revenues received or to be received by  
22 the fund to secure bonds, notes or other obligations issued under §§ 13-13-39, 13-16-6.4,  
23 13-16-7 and §§ 13-19-27 to 13-19-29, inclusive. The authority may create sub-funds or accounts  
24 within the repayment fund created under this section as the authority considers necessary.

25 Section 5. That § 13-19-27 be amended to read as follows:

1 13-19-27. Any school ~~board~~ district may enter into lease-purchase agreements ~~with or other~~  
2 financing arrangement with or issue capital outlay certificates to the Health and Educational  
3 Facilities Authority for capital improvements, the acquisition of equipment, or improvement of  
4 school facilities that the school board considers necessary or appropriate or as a result of a  
5 consolidation or proposed consolidation of one school district with another school district. All  
6 such leases, capital outlay certificates, or other arrangements shall be in accordance with the  
7 provisions of §§ 13-8-39, 13-20-1, and 13-24-10.

8 Section 6. That § 13-19-28 be amended to read as follows:

9 13-19-28. The terms of the lease-purchase agreement, resolution, certificate, or other  
10 arrangement, or any bond, note, or certificate issued to or in connection with a program  
11 sponsored by the Health and Educational Facilities Authority for school districts and shall  
12 contain such terms as the health and educational facilities authority considers necessary, including  
13 without limitation, terms of default, remedies, representations and covenants of the ~~lessee~~ school  
14 district.

15 Section 7. That § 13-19-29 be amended to read as follows:

16 13-19-29. If capital outlay certificates are issued to, or a lease-purchase agreement, or other  
17 financing arrangement is entered into with the Health and Educational Facilities Authority as  
18 authorized by §§ 13-13-39, 13-16-6.4, 13-16-7, 13-16-29, 13-19-27, and 13-19-28 ~~has been~~  
19 ~~entered into or, and~~ a school district has pledged foundation program funds or other state aid  
20 provided under Title 13 to secure its obligations under or pursuant to a lease, resolution,  
21 certificate, or other arrangement with the Health and Educational Facilities Authority and there  
22 are amounts due but not yet paid by a school district, no cash receipts from the collection of any  
23 taxes, from foundation program aid or state aid under chapter 13-13 or from the collection of  
24 tuition charges may be expended for any purpose except paying the amounts due under the lease,  
25 resolution, certificate, or other arrangement as specified by written notice by or on behalf of the

1 Health and Educational Facilities Authority. In the event of a failure to pay amounts due the  
2 Health and Educational Facilities Authority, moneys from foundation program aid or state aid  
3 under Title 13 shall first be applied to pay the amounts which are due but not yet paid to the  
4 authority, any trustee acting as a fiduciary on behalf of any holders of bonds, notes, or other  
5 certificates in connection with any such arrangement and any such holders. If this application is  
6 insufficient, cash receipts from the collection of any pledged taxes and tuition charges shall be  
7 applied to pay the amounts which are due but not yet paid to the authority, any such trustee, and  
8 any such holders.

9 Section 8. That § 13-19-30 be amended to read as follows:

10 13-19-30. Any school district may enter into an agreement with the Health and Educational  
11 Facilities Authority and any financial institution acting as trustee or paying agent for bonds,  
12 leases, certificates, or other obligations ~~of the authority,~~ issued for the purpose of implementing  
13 § 13-19-29. The agreement may contain such provisions as the authority deems necessary and  
14 may provide that the financial institution may act as trustee for the benefit of and on behalf of the  
15 authority and be held accountable as the trustee of an express trust for the application and  
16 disposition of the foundation program aid and state aid under Title 13 and other funds or  
17 amounts pledged by any school district, including the income and proceeds therefrom, solely for  
18 the uses and purposes as provided in the agreement. A copy of the agreement and any revisions  
19 or supplements to it, shall be filed with the secretary of the Department of Education and  
20 Cultural Affairs to perfect the lien and security interest of the authority in the foundation  
21 program aid and state aid under Title 13 and other funds or amounts pledged by any school  
22 district. No filing, recording, possession, or other action under the uniform commercial code or  
23 any other law of this state may be required to perfect the lien and security interest of the  
24 authority. The lien and security interest of the authority is deemed perfected, and the trust for  
25 the benefit of the authority so created is binding ~~on and after~~ as of the date when the school

1 district makes such pledge, notwithstanding the time of the filing with the secretary of the  
2 Department of Education and Cultural Affairs, against all parties having prior ~~unperfected~~ or  
3 subsequent liens, security interests, or claims of any kind in tort, in contract or otherwise.

1 **BILL HISTORY**

2 1/25/99 First read in Senate and referred to Education. S.J. 179

3 1/28/99 Scheduled for Committee hearing on this date.

4 1/28/99 Education Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 227

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

880C0473

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB128** - 2/22/99

Introduced by: Senators Vitter, Albers, Ham, and Madden and Representatives Hennies,  
Duniphan, Jaspers, and Lintz

1 FOR AN ACT ENTITLED, An Act to criminalize the possession of certain contraband in  
2 juvenile correctional facilities and the delivery of certain contraband to juvenile correctional  
3 facilities.

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

5 Section 1. No alcoholic beverages, controlled substances as defined by chapter 34-20B,  
6 hallucinogens, marijuana, or weapons as defined in subdivision 22-1-2(10), may be possessed by  
7 any juvenile in or on the grounds of a juvenile correctional facility. No prescription or  
8 nonprescription drugs may be possessed by any juvenile in or on the grounds of a juvenile  
9 correctional facility except by order of a physician. Such order shall be in writing and for a  
10 definite period.

11 Section 2. No employee or other person may deliver or procure to be delivered, or have in  
12 such person's possession with intent to deliver, to any juvenile in or on the grounds of any  
13 juvenile correctional facility, or deposit or conceal in or on the grounds of a juvenile correctional  
14 facility, or in any mode of transport entering the grounds of a juvenile correctional facility and  
15 its ancillary facilities used to house juveniles, any article or thing contrary to § 24-11-47 with  
16 intent that any juvenile obtain or receive the same. A violation of this section is a Class 6 felony.

1 Section 3. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined  
4 in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections  
5 under § 1-15-1.4.

1 **BILL HISTORY**

2 1/25/99 First read in Senate and referred to Judiciary. S.J. 179

3 1/27/99 Scheduled for Committee hearing on this date.

4 1/27/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 209

5 1/29/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 264

6 2/1/99 First read in House and referred to committee assignment waived. H.J. 300

7 2/2/99 Referred to Judiciary. H.J. 332

8 2/17/99 Scheduled for Committee hearing on this date.

9 2/17/99 Judiciary Deferred to another day.

10 2/19/99 Scheduled for Committee hearing on this date.

11 2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 633

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

653C0695

HOUSE JUDICIARY COMMITTEE  
ENGROSSED NO. **SB162** - 2/23/99

Introduced by: Senators Everist, Halverson, and Rounds and Representatives Michels, Cutler,  
and Hunt

1 FOR AN ACT ENTITLED, An Act to increase the penalty for second convictions for criminal  
2 pedophilia.

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

4 Section 1. That § 22-22-30.1 be amended to read as follows:

5 22-22-30.1. Criminal pedophilia is any act of sexual penetration accomplished with a victim  
6 less than thirteen years of age by any person twenty-six years of age or older under any  
7 circumstances not constituting incest as defined in subdivision 22-22-1(6). Criminal pedophilia  
8 is a Class 1 felony. If any person is convicted of criminal pedophilia, the court shall impose a  
9 minimum sentence of twenty-five years for a first offense. If any person is convicted for a second  
10 offense, the court shall impose a sentence of life without parole.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to Judiciary. S.J. 213

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/1/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 272

5 2/3/99 Senate Do Pass Amended, Passed, AYES 34, NAYS 1. S.J. 320

6 2/4/99 First read in House and referred to Judiciary. H.J. 384

7 2/19/99 Scheduled for Committee hearing on this date.

8 2/22/99 Scheduled for Committee hearing on this date.

9 2/22/99 Judiciary Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 659

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

574C0747

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB171** - 2/22/99

Introduced by: Senators Dunn (Rebecca), Duxbury, Hutmacher, Kloucek, Lange, Lawler, Reedy, and Symens and Representatives Volesky, Apa, Brown (Jarvis), Diedtrich (Elmer), Duniphan, Engbrecht, Hennies, Koskan, McIntyre, Patterson, Richter, and Sutton (Daniel)

1 FOR AN ACT ENTITLED, An Act to require the suspension of driving privileges in connection  
2 with certain acts of vandalism.

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

4 Section 1. That chapter 22-34 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 In addition to any other penalty imposed by law, if any person is convicted of violating, or  
7 any person under the age of eighteen is adjudicated to have violated, the provisions of § 22-34-1  
8 or 22-34-27, and if the crime occurred while driving a motor vehicle or while being a passenger  
9 in a motor vehicle, the court shall order the driving privileges of such person suspended for:

- 10 (1) Thirty days, if the damage is two hundred dollars or less;
- 11 (2) Ninety days, if the damage is over two hundred dollars but less than one thousand  
12 dollars; and
- 13 (3) One hundred eighty days, if the damage is one thousand dollars or more.

14 For the purposes of this Act, all acts of vandalism that are part of a course of conduct shall  
15 be considered one violation for the purposes of determining damage. For the purposes of this

1 Act, all acts of vandalism that are part of a course of conduct involving driving a motor vehicle  
2 or being a passenger in a motor vehicle shall be deemed to have occurred while driving a motor  
3 vehicle or being a passenger in a motor vehicle.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to Transportation. S.J. 215

3 2/2/99 Scheduled for Committee hearing on this date.

4 2/4/99 Scheduled for Committee hearing on this date.

5 2/4/99 Transportation Do Pass, Passed, AYES 6, NAYS 1. S.J. 333

6 2/5/99 Senate Deferred to another day. S.J. 358

7 2/8/99 Senate Do Pass, Passed, AYES 21, NAYS 12. S.J. 376

8 2/9/99 First read in House and referred to Judiciary. H.J. 449

9 2/17/99 Scheduled for Committee hearing on this date.

10 2/17/99 Judiciary Deferred to another day.

11 2/19/99 Scheduled for Committee hearing on this date.

12 2/19/99 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 633

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

646C0479

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB190** - 2/2/99

Introduced by: Senators Vitter, Albers, Daugaard, Ham, Lawler, and Madden and  
Representatives Hennies, Duniphan, and McCoy

1 FOR AN ACT ENTITLED, An Act to prohibit certain sexual acts between certain jail and  
2 juvenile correctional facility employees and prisoners and to provide a penalty therefor.

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

4 Section 1. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any person employed at any jail or juvenile correctional facility, who knowingly engages in  
7 an act of sexual contact or sexual penetration with another person who is in detention and under  
8 the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class  
9 6 felony.

10 Section 2. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined  
13 in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections  
14 under § 1-15-1.4.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Judiciary. S.J. 232

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/1/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 272

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

419C0698

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB200** - 2/22/99

Introduced by: Senators Rounds and Brosz and Representatives Brown (Richard) and Hennies

1 FOR AN ACT ENTITLED, An Act to increase the penalty for possessing certain drugs near  
2 schools and certain other youth-oriented facilities.

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

4 Section 1. That § 22-42-19 be amended to read as follows:

5 22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, ~~or 22-42-4~~, 22-42-5,  
6 ~~or 22-42-6~~ or a felony violation of § 22-42-7, if such activity has taken place:

7 (1) In, on, or within one thousand feet of real property comprising a public or private  
8 elementary or secondary school or a playground; or

9 (2) In, on, or within five hundred feet of real property comprising a public or private  
10 youth center, public swimming pool, or video arcade facility;

11 is guilty of a Class 4 felony. The sentence imposed for a conviction under this section carries a  
12 minimum sentence of imprisonment in the state penitentiary of five years. Any sentence imposed  
13 under this section shall be consecutive to any other sentence imposed for the principal felony.

14 The court may not place on probation, suspend the execution of the sentence, or suspend the  
15 imposition of the sentence of any person convicted of a violation of this section. However, the  
16 sentencing court may impose a sentence other than that specified in this section if the court finds

1 that mitigating circumstances exist which require a departure from the mandatory sentence  
2 provided for in this section. The court's finding of mitigating circumstances allowed by this  
3 section and the factual basis relied upon by the court shall be in writing.

4 It is not a defense to the provisions of this section that the defendant did not know the  
5 distance involved. It is not a defense to the provisions of this section that school was not in  
6 session.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Judiciary. S.J. 234

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/8/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 1. S.J. 366

6 2/10/99 Senate Do Pass Amended, Passed, AYES 31, NAYS 2. S.J. 434

7 2/11/99 First read in House and referred to State Affairs. H.J. 491

8 2/19/99 Scheduled for Committee hearing on this date.

9 2/19/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 6. H.J. 634

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

880C0863

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB228** - 2/23/99

Introduced by: Senator Vitter

1 FOR AN ACT ENTITLED, An Act to increase the penalty for certain assaults in jails.

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

3 Section 1. That § 22-18-29 be amended to read as follows:

4 22-18-29. Any person confined in a county or municipal jail ~~or in a juvenile detention facility~~  
5 who intentionally throws, smears, or otherwise causes blood, emesis, mucus, semen, excrement,  
6 or human waste to come in contact with a county or municipal jail ~~or juvenile detention facility~~  
7 employee, or visitor, or volunteer authorized by the county or municipal jail ~~or juvenile detention~~  
8 ~~facility~~, or person under contract assigned to the county or municipal jail ~~or juvenile detention~~  
9 ~~facility~~ is guilty of a ~~Class 2 misdemeanor~~ Class 1 misdemeanor.

10 Section 2. That chapter 22-18 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any juvenile confined in a juvenile detention facility who intentionally throws, smears, or  
13 otherwise causes blood, emesis, mucus, semen, excrement, or human waste to come in contact  
14 with a juvenile detention facility employee, or visitor, or volunteer authorized by the juvenile  
15 detention facility, or person under contract assigned to the juvenile detention facility is guilty of  
16 a Class 2 misdemeanor.

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to Judiciary. S.J. 277

3 2/5/99 Scheduled for Committee hearing on this date.

4 2/5/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 365

5 2/10/99 Senate Do Pass Amended, Passed, AYES 31, NAYS 2. S.J. 435

6 2/11/99 First read in House and referred to Judiciary. H.J. 491

7 2/19/99 Scheduled for Committee hearing on this date.

8 2/19/99 Judiciary Deferred to another day.

9 2/22/99 Scheduled for Committee hearing on this date.

10 2/22/99 Judiciary Do Pass Amended, Passed, AYES 8, NAYS 4. H.J. 659

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0805

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB235** - 2/10/99

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to require the disclosure of information to prospective  
2 enrollees of managed care plans.

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

4 Section 1. This Act applies to any health carrier who offers a managed care plan as defined  
5 in §§ 58-17-91 and 58-18-64.

6 Section 2. Any health carrier shall provide to any prospective enrollee written information  
7 describing the terms and conditions of the plan. If the plan is described orally, easily understood,  
8 truthful, objective terms shall be used. All written plan descriptions shall be readable, easily  
9 understood, truthful, and in an objective format. The format shall be standardized among each  
10 plan that a health carrier offers so that comparison of the attributes of the plans is facilitated.

11 The following specific information shall be communicated:

12 (1) Coverage provisions, benefits, and any exclusions by category of service, provider,  
13 and if applicable, by specific service;

14 (2) Any and all authorization or other review requirements, including preauthorization  
15 review, and any procedures that may lead the patient to be denied coverage for or not  
16 be provided a particular service;

- 1       (3)    The existence of any financial arrangements or contractual provisions with review  
2            companies or providers of health care services that would directly or indirectly limit  
3            the services offered, restrict referral, or treatment options;
- 4       (4)    Explanation of how plan limitations impact enrollees, including information on  
5            enrollee financial responsibility for payment of coinsurance or other non-covered or  
6            out-of-plan services;
- 7       (5)    A description of the accessibility and availability of services, including a list of  
8            providers participating in the managed care network and of the providers in the  
9            network who are accepting new patients, the addresses of primary care physicians and  
10           participating hospitals, and the specialty of each provider in the network; and
- 11      (6)    A description of any drug formulary provisions in the plan and the process for  
12            obtaining a copy of the current formulary upon request. There shall be a process for  
13            requesting an exception to the formulary and instructions as to how to request an  
14            exception to the formulary.

15       Section 3. Nothing in this Act applies to dental only, vision only, accident only, school  
16      accident, travel, or specified disease plans or plans that primarily provide a fixed daily, fixed  
17      occurrence, or fixed per procedure benefit without regard to expenses incurred. The provisions  
18      of this Act only apply to oral or written communications specifically designed to elicit an  
19      application for insurance.

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to State Affairs. S.J. 278

3 2/8/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/8/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 391

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0808

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB236** - 2/10/99

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish standards for network adequacy and quality of  
2 care in managed care plans and to require the registration of managed care entities.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Closed plan," a managed care plan that requires covered persons to use participating  
6 providers under the terms of the managed care plan and does not provide any benefits  
7 for out-of-network services except for emergency services;

8 (2) "Consumer," someone in the general public who may or may not be a covered person  
9 or a purchaser of health care, including employers;

10 (3) "Covered benefits" or "benefits," those health care services to which a covered person  
11 is entitled under the terms of a plan;

12 (4) "Covered person," a policyholder, subscriber, enrollee, or other individual  
13 participating in a plan;

14 (5) "Director," the director of the Division of Insurance;

15 (6) "Discounted fee for service," a contractual arrangement between a health carrier and  
16 a provider or network of providers under which the provider is compensated in a

1 discounted fashion based upon each service performed and under which there is no  
2 contractual responsibility on the part of the provider to manage care, to serve as a  
3 gatekeeper or primary care provider, or to provide or assure quality of care. A  
4 contract between a provider or network of providers and a health maintenance  
5 organization is not a discounted fee for service arrangement;

6 (7) "Emergency medical condition," the sudden and, at the time, unexpected onset of a  
7 health condition that requires immediate medical attention, where failure to provide  
8 medical attention would result in serious impairment to bodily functions or serious  
9 dysfunction of a bodily organ or part, or would place the person's health in serious  
10 jeopardy;

11 (8) "Emergency services," health care items and services furnished or required to evaluate  
12 and treat an emergency medical condition;

13 (9) "Facility," an institution providing health care services or a health care setting,  
14 including hospitals and other licensed inpatient centers, ambulatory surgical or  
15 treatment centers, skilled nursing centers, residential treatment centers, diagnostic,  
16 laboratory and imaging centers, and rehabilitation and other therapeutic health  
17 settings;

18 (10) "Health benefit plan," a policy, contract, certificate, or agreement entered into, offered  
19 or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any  
20 of the costs of health care services;

21 (11) "Health care professional," a physician or other health care practitioner licensed,  
22 accredited, or certified to perform specified health services consistent with state law;

23 (12) "Health care provider" or "provider," a health care professional or a facility;

24 (13) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief  
25 of a health condition, illness, injury, or disease;

- 1 (14) "Health carrier," an entity subject to the insurance laws and regulations of this state,  
2 or subject to the jurisdiction of the director, that contracts or offers to contract, or  
3 enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of  
4 the costs of health care services, including a sickness and accident insurance company,  
5 a health maintenance organization, a nonprofit hospital, and health service  
6 corporation, or any other entity providing a plan of health insurance, health benefits,  
7 or health services;
- 8 (15) "Health indemnity plan," a health benefit plan that is not a managed care plan;
- 9 (16) "Intermediary," a person authorized to negotiate and execute provider contracts with  
10 health carriers on behalf of health care providers or on behalf of a network;
- 11 (17) "Managed care plan," a plan as defined in subdivisions 58-17-91(3) and 58-18-64(3);
- 12 (18) "Network," the group of participating providers providing services to a managed care  
13 plan;
- 14 (19) "Open plan," a managed care plan other than a closed plan that provides incentives,  
15 including financial incentives, for covered persons to use participating providers under  
16 the terms of the managed care plan;
- 17 (20) "Participating provider," a provider who, under a contract with the health carrier or  
18 with its contractor or subcontractor, has agreed to provide health care services to  
19 covered persons with an expectation of receiving payment, other than coinsurance,  
20 copayments or deductibles, directly or indirectly from the health carrier;
- 21 (21) "Quality assessment," the measurement and evaluation of the quality and outcomes  
22 of medical care provided to individuals, groups, or populations;
- 23 (22) "Quality improvement," the effort to improve the processes and outcomes related to  
24 the provision of care within the health plan;
- 25 (23) "Secretary," the secretary of the Department of Health.

1 Section 2. This Act applies to all health carriers that offer managed care plans.

2 Section 3. A health carrier providing a managed care plan shall maintain a network that is  
3 sufficient in numbers and types of providers to assure that all services to covered persons will  
4 be accessible without unreasonable delay. In the case of emergency services, covered persons  
5 shall have access twenty-four hours per day, seven days per week. Sufficiency shall be  
6 determined in accordance with the requirements of this section, and may be established by  
7 reference to any reasonable criteria used by the carrier, including: provider-covered person ratios  
8 by specialty; primary care provider-covered person ratios; geographic accessibility; waiting times  
9 for appointments with participating providers; hours of operation; and the volume of  
10 technological and specialty services available to serve the needs of covered persons requiring  
11 technologically advanced or specialty care.

12 Section 4. In any case where the health carrier has an insufficient number or type of  
13 participating provider to provide a covered benefit, the health carrier shall ensure that the  
14 covered person obtains the covered benefit at no greater cost to the covered person than if the  
15 benefit were obtained from participating providers, or shall make other arrangements acceptable  
16 to the director.

17 Section 5. The health carrier shall establish and maintain adequate arrangements to ensure  
18 reasonable proximity of participating providers to the business or personal residence of covered  
19 persons.

20 Section 6. A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity,  
21 and legal authority of its providers to furnish all contracted benefits to covered persons. In the  
22 case of capitated plans, the health carrier shall also monitor the financial capability of the  
23 provider.

24 Section 7. In determining whether a health carrier has complied with any network adequacy  
25 provision of this Act, the director shall give due consideration to the relative availability of health

1 care providers in the service area and to the willingness of providers to join a network.

2 Section 8. A health carrier shall file with the director, in a manner and form defined by rules  
3 promulgated pursuant to chapter 1-26 by the director, an access plan meeting the requirements  
4 of this Act for each of the managed care plans that the carrier offers in this state. The carrier shall  
5 prepare an access plan prior to offering a new managed care plan, and shall annually update an  
6 existing access plan. The access plan shall describe or contain at least the following:

- 7 (1) The health carrier's network;
- 8 (2) The health carrier's procedures for making referrals within and outside its network;
- 9 (3) The health carrier's process for monitoring and assuring on an ongoing basis the  
10 sufficiency of the network to meet the health care needs of populations that enroll in  
11 managed care plans;
- 12 (4) The health carrier's methods for assessing the health care needs of covered persons  
13 and their satisfaction with services;
- 14 (5) The health carrier's method of informing covered persons of the plan's services and  
15 features, including the plan's grievance procedures and its procedures for providing  
16 and approving emergency and specialty care;
- 17 (6) The health carrier's system for ensuring the coordination and continuity of care for  
18 covered persons referred to specialty physicians, for covered persons using ancillary  
19 services, including social services and other community resources, and for ensuring  
20 appropriate discharge planning;
- 21 (7) The health carrier's process for enabling covered persons to change primary care  
22 professionals;
- 23 (8) The health carrier's proposed plan for providing continuity of care in the event of  
24 contract termination between the health carrier and any of its participating providers,  
25 or in the event of the health carrier's insolvency or other inability to continue

1 operations. The description shall explain how covered persons will be notified of the  
2 contract termination, or the health carrier's insolvency or other cessation of  
3 operations, and transferred to other providers in a timely manner; and

4 (9) Any other information required by the director to determine compliance with the  
5 provisions of this Act.

6 The provisions of subdivisions (2), (4), (6), (7), and (8), of this section, and the provisions  
7 regarding primary care provider-covered person ratios and hours of operation in section 3 of this  
8 Act do not apply to discounted fee-for-service only networks.

9 Section 9. A health carrier offering a managed care plan shall satisfy all the following  
10 requirements:

11 (1) A health carrier shall establish a mechanism by which the participating provider will  
12 be notified on an ongoing basis of the specific covered health services for which the  
13 provider will be responsible, including any limitations or conditions on services;

14 (2) In no event may a participating provider collect or attempt to collect from a covered  
15 person any money owed to the provider by the health carrier nor may the provider  
16 have any recourse against covered persons for any covered charges in excess of the  
17 copayment, coinsurance, or deductible amounts specified in the coverage;

18 (3) The provisions of this Act do not require a health carrier, its intermediaries or the  
19 provider networks with which they contract, to employ specific providers or types of  
20 providers that may meet their selection criteria, or to contract with or retain more  
21 providers or types of providers than are necessary to maintain an adequate network;

22 (4) A health carrier shall notify participating providers of the providers' responsibilities  
23 with respect to the health carrier's applicable administrative policies and programs,  
24 including payment terms, utilization review, quality assessment, and improvement  
25 programs, grievance procedures, data reporting requirements, confidentiality

- 1 requirements, and any applicable federal or state programs;
- 2 (5) A health carrier may not prohibit or penalize a participating provider from discussing  
3 treatment options with covered persons irrespective of the health carrier's position on  
4 the treatment options, from advocating on behalf of covered persons within the  
5 utilization review or grievance processes established by the carrier or a person  
6 contracting with the carrier or from, in good faith, reporting to state or federal  
7 authorities any act or practice by the health carrier that jeopardizes patient health or  
8 welfare;
- 9 (6) A health carrier shall contractually require a provider to make health records available  
10 to the carrier upon request but only those health records necessary to process claims,  
11 perform necessary quality assurance or quality improvement programs, or to comply  
12 with any lawful request for information from appropriate state authorities. Any person  
13 that is provided records pursuant to this section shall maintain the confidentiality of  
14 such records and may not make such records available to any other person who is not  
15 legally entitled to the records;
- 16 (7) A health carrier and participating provider shall provide at least sixty days written  
17 notice to each other before terminating the contract without cause. If a provider is  
18 terminated without cause or chooses to leave the network, upon request by the  
19 provider or the covered person and upon agreement by the provider to follow all  
20 applicable network requirements, the carrier shall permit the covered person to  
21 continue an ongoing course of treatment for ninety days following the effective date  
22 of contract termination. In the event of a covered person that has entered a second  
23 trimester of pregnancy at the time of contract termination as specified in this section,  
24 the continuation of network coverage through that provider shall extend to the  
25 provision of postpartum care directly related to the delivery;

- 1 (8) A health carrier shall notify the participating providers of their obligations, if any, to  
2 collect applicable coinsurance, copayments, or deductibles from covered persons  
3 pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify  
4 covered persons of their personal financial obligations for noncovered services;
- 5 (9) A health carrier shall establish a mechanism by which the participating providers may  
6 determine in a timely manner whether or not a person is covered by the carrier.

7 Section 10. In any contractual arrangement between a health carrier and an intermediary, the  
8 following shall apply:

- 9 (1) A health carrier's ultimate statutory responsibility to monitor the offering of covered  
10 benefits to covered persons shall be maintained whether or not any functions or duties  
11 are contractually delegated or assigned to the intermediary;
- 12 (2) A health carrier shall have the right to approve or disapprove participation status of  
13 a subcontracted provider in its own or a contracted network for the purpose of  
14 delivering covered benefits to the carrier's covered persons;
- 15 (3) A health carrier shall maintain copies of all intermediary health care subcontracts at  
16 its principal place of business in the state, or ensure that it has access to all  
17 intermediary subcontracts, including the right to make copies to facilitate regulatory  
18 review, upon twenty days prior written notice from the health carrier;
- 19 (4) If applicable, an intermediary shall transmit utilization documentation and claims paid  
20 documentation to the health carrier. The carrier shall monitor the timeliness and  
21 appropriateness of payments made to providers and health care services received by  
22 covered persons;
- 23 (5) An intermediary shall maintain the books, records, financial information and  
24 documentation of services provided to covered persons and preserve them for  
25 examination pursuant to chapter 58-3;

1 (6) An intermediary shall allow the director access to the intermediary's books, records,  
2 financial information, and any documentation of services provided to covered persons,  
3 as necessary to determine compliance with this Act;

4 (7) A health carrier shall have the right, in the event of the intermediary's insolvency, to  
5 require the assignment to the health carrier of the provisions of a provider's contract  
6 addressing the provider's obligation to furnish covered services.

7 Section 11. A health carrier shall file with the director sample contract forms proposed for  
8 use with its participating providers and intermediaries. A health carrier shall submit material  
9 changes to a sample contract that would affect a provision required by this Act or any rules  
10 promulgated pursuant to this Act to the director for approval thirty days prior to use. Changes  
11 in provider payment rates, coinsurance, copayments, or deductibles, or other plan benefit  
12 modifications are not considered material changes for the purpose of this section. If the director  
13 takes no action within thirty days after submission of a material change to a contract by a health  
14 carrier, the change is deemed approved. The health carrier shall maintain provider and  
15 intermediary contracts and provide copies to the division or department upon request.

16 Section 12. The execution of a contract by a health carrier does not relieve the health carrier  
17 of its liability to any person with whom it has contracted for the provision of services, nor of its  
18 responsibility for compliance with the law or applicable regulations. Any contract shall be in  
19 writing and subject to review by the director, if requested.

20 Section 13. In addition to any other remedies permitted by law, if the director determines that  
21 a health carrier has not contracted with enough participating providers to assure that covered  
22 persons have accessible health care services in a geographic area, or that a health carrier's access  
23 plan does not assure reasonable access to covered benefits, or that a health carrier has entered  
24 into a contract that does not comply with this Act, or that a health carrier has not complied with  
25 a provision of this Act, the director may institute a corrective action that shall be followed by the

1 health carrier, or may use any of the director's other enforcement powers to obtain the health  
2 carrier's compliance with this Act.

3 Section 14. The director may, after consultation with the secretary, promulgate pursuant to  
4 chapter 1-26 reasonable rules to protect the public in its purchase of network health insurance  
5 products, achieve the goals of this Act by ensuring adequate networks and by assuring quality  
6 of health care to the public that purchases network products. The rules may include:

- 7 (1) Definition of terms;
- 8 (2) Provider/covered person ratios;
- 9 (3) Geographic access requirements;
- 10 (4) Accessibility of care;
- 11 (5) Contents of reports and filings;
- 12 (6) Notification requirements;
- 13 (7) Selection criteria;
- 14 (8) Recordkeeping;
- 15 (9) Setting of quality criteria based upon type of network; and
- 16 (10) Quality assurance/quality improvement plans.

17 Section 15. Each managed care entity, as defined in §§ 58-18-64 and 58-17-91, shall register  
18 with the director prior to engaging in any managed care business in this state. The registration  
19 shall be subject to the provisions of §§ 58-18-71 to 58-18-75, inclusive, and any applicable rules  
20 promulgated pursuant to those sections.

21 Section 16. A health carrier that provides managed care plans shall develop and maintain the  
22 infrastructure and disclosure systems necessary to measure the quality of health care services  
23 provided to covered persons on a regular basis and appropriate to the types of plans offered by  
24 the health carrier. A health carrier shall:

- 25 (1) Utilize a system designed to assess the quality of health care provided to covered

1 persons and appropriate to the types of plans offered by the health carrier. The system  
2 shall include systematic collection, analysis, and reporting of relevant data in  
3 accordance with statutory and regulatory requirements. The level of quality  
4 assessment activities undertaken by a health plan may vary based on the plan's  
5 structure with the least amount of quality assessment activities required being those  
6 plans which are open and the provider network is simply a discounted fee for service  
7 preferred provider organization;

8 (2) File a written description of the quality assessment program with the director in the  
9 prescribed general format, which shall include a signed certification by a corporate  
10 officer of the health carrier that the filing meets the requirements of this Act.

11 Section 17. A health carrier that issues a closed plan, or a combination plan having a closed  
12 component, shall, in addition to complying with the requirements of section 16 of this Act,  
13 develop and maintain the internal structures and activities necessary to improve the quality of  
14 care being provided. Quality improvement activities for a health carrier subject to the  
15 requirements of this section should, at a minimum, involve:

16 (1) Developing a written quality improvement plan designed to analyze both the  
17 processes and outcomes of the health care delivered to covered persons;

18 (2) Establishing an internal system to implement the quality improvement plan and to  
19 specifically identify opportunities to improve care and using the findings of the system  
20 to improve the health care delivered to covered persons; and

21 (3) Assuring that participating providers have the opportunity to participate in  
22 developing, implementing, and evaluating the quality improvement system.

23 The health carrier shall provide a copy of the quality improvement plan to the director or  
24 secretary, if requested.

25 Section 18. Nothing in this Act applies to health carrier's plans that do not contain provider

1 networks or to dental only, vision only, accident only, school accident, travel, or specified  
2 disease plans or plans that primarily provide a fixed daily, fixed occurrence, or fixed per  
3 procedure benefit without regard to expenses incurred.

4 Section 19. If the director and secretary find that the requirements of any private accrediting  
5 body meet the requirements of network adequacy, quality assurance, or quality improvement as  
6 set forth in this Act, the carrier may, at the discretion of the director and secretary, be deemed  
7 to have met the applicable requirements.

8 Section 20. That § 58-41-12 be amended to read as follows:

9 58-41-12. Upon receipt of an application for issuance of a certificate of authority, the  
10 director shall forthwith transmit copies of such application and accompanying documents to the  
11 secretary. The secretary shall determine whether the applicant for a certificate of authority has:

12 (1) Demonstrated the willingness and potential ability to assure that health care services  
13 will be provided in a manner to assure both the availability and accessibility of  
14 adequate personnel and facilities ~~and in a manner enhancing availability, accessibility~~  
15 ~~and continuity of service~~ consistent with the requirements of this Act;

16 (2) Arrangements, established in accordance with regulations promulgated by the  
17 secretary for an ongoing quality of health care assurance program consistent with the  
18 requirements of this Act concerning health care processes and outcomes;

19 (3) A procedure, established in accordance with regulations promulgated by the secretary,  
20 to develop, compile, evaluate, and report statistics relating to the cost of its  
21 operations, the pattern of utilization of its services, the availability and accessibility  
22 of its services, and such other matters as may be reasonably required by the secretary;  
23 and

24 (4) Reasonable provisions for emergency and out-of-area health care services.

25 Section 21. That § 58-41-53 be repealed.

1 ~~58-41-53. No health maintenance organization or representative may allow providers under~~  
2 ~~agreement with a health maintenance organization to have recourse against enrollees for amounts~~  
3 ~~above those specified in the evidence of coverage as the periodic prepayment, or copayment, for~~  
4 ~~health care services. Violation of this section is a Class 2 misdemeanor.~~

5 Section 22. Nothing in this Act applies to health carriers that only offer individual policies  
6 if:

7 (1) The policy does not use an individual or group to determine where or when services  
8 will be rendered, the course of treatment, or who will provide the services;

9 (2) The policy does not require pre-authorization for services provided under the policy;  
10 and

11 (3) The difference in policy benefits does not exceed ten percent whether an insured used  
12 a participating provider or nonparticipating provider.

13 Section 23. The Division of Insurance shall separately monitor complaints regarding managed  
14 care for any policy that is exempt pursuant to section 22 of this Act.

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to State Affairs. S.J. 278

3 2/8/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/8/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 392

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

750C0861

## SENATE ENGROSSED NO. **SB243** - 2/18/99

Introduced by: Senators Benson, Drake, Duxbury, Hainje, and Lawler and Representatives  
Duenwald, Derby, and Juhnke

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of specialty license plates and  
2 organization decals.

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

4 Section 1. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 An owner of a motor vehicle, who is a resident of this state, who has a valid South Dakota  
7 driver's license or South Dakota identification number as assigned by the Department of  
8 Commerce and Regulation, may upon request receive a set of specialty license plates that allow  
9 for the placement of an organization decal on the plates. The specialty plates are in lieu of regular  
10 license plates issued by the county treasurer and may only be used on noncommercial vehicles  
11 that are licensed according to §§ 32-5-6 and 32-5-6.3. If the specialty plates are requested at the  
12 time of initial application for title and registration of the vehicle, no additional fees are charged  
13 for the plates above the costs involved in registering the vehicle. If the specialty plates are  
14 requested later or if the vehicle has current South Dakota plates, the owner shall surrender the  
15 current plates and pay a ten dollar fee for the specialty plates. This fee is in addition to any  
16 applicable costs involved in the registration of the vehicle.

1 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 To qualify for an organizational decal, an organization shall be a nonprofit corporation, or  
4 a group of nonprofit corporations with a common purpose, on file with the secretary of state's  
5 office and shall have a minimum of two hundred members and shall meet the following  
6 requirements:

- 7 (1) The primary activity or interest of the organization or group of organizations serves  
8 the community, contributes to the welfare of others, and is not offensive or  
9 discriminatory in its purpose, nature, activity, or name;
- 10 (2) The name and purpose of the organization or group of organizations does not  
11 promote any specific product or brand name that is provided for sale; and
- 12 (3) The purpose of the organization or group of organizations does not promote a  
13 specific religion, faith, or anti-religious belief.

14 Section 3. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 At the time of application, the organization or group of organizations shall furnish the  
17 department with the following:

- 18 (1) A copy of its articles of incorporation for each organization;
- 19 (2) A copy of its charter or by-laws for each organization;
- 20 (3) Any Internal Revenue Service rulings of each organization's nonprofit tax exemptions  
21 status;
- 22 (4) A completed decal design with the organizational logo and the organizational name,  
23 or in the case of a group of organizations, a decal design which clearly depicts the  
24 common purpose or theme of the group; and
- 25 (5) A completed application for organization decals on a form provided by the

1 department.

2 Section 4. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Upon approval of an application for organization decals and approval of the design of the  
5 organization decal, the department shall furnish the decals to the organization. The organization  
6 shall purchase at minimum one hundred sets of the organization decals. The organization shall  
7 reimburse the department for the cost of the decals, plus a fifteen percent administrative fee. The  
8 organization shall establish criteria for an applicant to qualify for the organization decals and the  
9 fee to be charged for the decals. The organization is responsible for the administration and  
10 issuance of the decals. Decals other than those authorized and issued by the department are not  
11 permitted on license plates. Misuse of the decals or use of unauthorized decals is a Class 2  
12 misdemeanor.

13 Section 5. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Upon the sale or transfer of a vehicle bearing specialty license plates that display an  
16 organization decal, the plates shall remain with the owner and upon approval by the department  
17 may be transferred to another vehicle. Anyone receiving organization license plates shall at the  
18 time of obtaining the specialty plates purchase from the county treasurer a temporary permit. The  
19 permit is valid for fifteen days and costs fifteen dollars. The permit shall be vehicle specific and  
20 shall be affixed to the vehicle by the seller at the time of sale or transfer of the vehicle. The new  
21 owner of the vehicle may use the permit in the interim of registering the vehicle. The permit may  
22 not be used for any other purpose than stated. Misuse of the temporary permit is a Class 2  
23 misdemeanor.

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to Transportation. S.J. 279

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/11/99 Scheduled for Committee hearing on this date.

5 2/11/99 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 445

6 2/16/99 Senate Deferred to another day. S.J. 506

7 2/17/99 Motion to Amend, Passed. S.J. 528

8 2/17/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 528

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0866

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB246** - 2/4/99

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the service of a  
2 summons.

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

4 Section 1. That § 15-6-4(c) be amended to read as follows:

5 15-6-4(c). The summons may be served by the sheriff or a constable of the county or other  
6 comparable political subdivision where the defendant may be found, or in the District of  
7 Columbia by the United States marshal or a deputy, or by any other person not a party to the  
8 action who at the time of making such service is an elector of the any state in which such service  
9 is to be made. If the defendant to be served is an Indian residing in Indian country, the summons  
10 may be served by a person not a party to the action who at the time of making such service is an  
11 elector of any state. The service shall be made and the summons returned with proof of the  
12 service, with all reasonable diligence, to the plaintiff's attorney, if any, otherwise to the plaintiff.  
13 The plaintiff or the plaintiff's attorney may by endorsement on the summons fix a time for the  
14 service thereof, and the service shall be made accordingly.

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to Judiciary. S.J. 280

3 2/3/99 Scheduled for Committee hearing on this date.

4 2/3/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 315

5 2/3/99 Judiciary Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

804C0836

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SCR8** - 2/23/99

Introduced by: Senators Dennert, Benson, Bogue, Daugaard, Flowers, Hutmacher, Kloucek, Lange, Lawler, Reedy, Symens, and Valandra and Representatives Burg, Apa, Cutler, Duenwald, Hagen, Haley, Jaspers, Kazmerzak, Lucas, Nachtigal, Sutton (Daniel), Waltman, and Weber

1 A CONCURRENT RESOLUTION, Expressing opposition to the proposed merger between  
2 Cargill, Incorporated and Continental Grain Corporation.

3 WHEREAS, American livestock and grain producers currently face unprecedented  
4 challenges to their ability to earn their livelihood; and

5 WHEREAS, many of the problems that livestock producers face are the result of anti-  
6 competitive pricing and marketing practices; and

7 WHEREAS, it is extremely important that independent producers have confidence that there  
8 is real competition when they begin to make production and marketing decisions for their  
9 livestock; and

10 WHEREAS, a merger has been proposed between Cargill, Incorporated, an international  
11 farm and food processor, and Continental Grain Corporation, a worldwide grains company; and

12 WHEREAS, the proposed merger between Cargill and Continental continues the trend of  
13 small producers and family farmers being adversely affected by the operations of giant  
14 corporations and exacerbates problems caused by diminishing levels of competition in the  
15 agriculture:

1       NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-fourth Legislature  
2 of the State of South Dakota, the House of Representatives concurring therein, that the South  
3 Dakota Legislature strongly urges the United States Congress, the United States Department of  
4 Justice, and the United States Department of Agriculture to investigate the proposed merger  
5 between Cargill, Incorporated, and Continental Grain Corporation for possible antitrust  
6 violations and other adverse impacts on the agricultural economy.

1 **BILL HISTORY**

2 2/11/99 Scheduled for Committee hearing on this date.

3 2/11/99 Agriculture and Natural Resources Adopt Resolution, AYES 9, NAYS 0. S.J. 444

4 2/12/99 Senate Adopt Resolution, AYES 31, NAYS 1. S.J. 478

5 2/22/99 Scheduled for Committee hearing on this date.

6 2/22/99 Concurred in resolution as amended, AYES 13, NAYS 0. H.J. 660