

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

446C0312

SENATE ENGROSSED NO. **HB1106** - 3/1/99

Introduced by: Representatives Wetz, Brown (Jarvis), Cutler, Diedrich (Elmer), Duenwald, Eccarius, Garnos, Hanson, Jaspers, Klaudt, McCoy, McNenny, Monroe, Smidt, and Sutton (Duane) and Senators Vitter, Benson, Bogue, Everist, and Symens

1 FOR AN ACT ENTITLED, An Act to repeal certain tax benefits available to railroads, to revise
2 certain provisions regarding the right of eminent domain for railroads, and to revise the
3 formula for assigning assessed railroad valuation to counties.

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

5 Section 1. That § 10-46-7 be amended to read as follows:

6 10-46-7. Tangible personal property, the storage, use, or other consumption of which this
7 state is prohibited from taxing under the Constitution or laws of the United States of America
8 or under the Constitution of this state, or tangible personal property sold to the United States,
9 the State of South Dakota, or any public or municipal corporation of the state which is for the
10 use, storage, or consumption of such public corporations ~~or which is sold to, used, or to be used~~
11 ~~as or in operating or maintaining any type of railroad company property which is classified by~~
12 ~~§ 10-28-1 as operating property~~, is hereby specifically exempt from the tax imposed by this
13 chapter, ~~provided, however, the exemption as to railroad operating property shall be limited to~~
14 ~~one-half of such tax imposed by this chapter.~~

15 Section 2. That § 10-28-21.1 be repealed.

1 ~~10-28-21.1. Credit against railroad tax for replacement or repair of rail line -- Exceptions.~~
2 ~~Any publicly operated railroad or railway corporation operating over rail lines located within this~~
3 ~~state may claim a credit against the tax levied on such rail lines for amounts which the railroad~~
4 ~~or railway corporation has certified as having been expended in the replacement and repair of~~
5 ~~such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for~~
6 ~~a credit pursuant to this section. The certification required by this section shall be on forms~~
7 ~~provided by the Department of Revenue. The labor and material expenses certified pursuant to~~
8 ~~this section shall be itemized separately. The credit provided in this section shall be applied~~
9 ~~proportionally across the railroad's entire mainline within this state. The credit shall be applied~~
10 ~~to tax liability over a three-year period in an amount equal to thirty-three and one-third percent~~
11 ~~the first year following certification; thirty-three and one-third percent of such an amount shall~~
12 ~~carry forward into the second year following certification; and thirty-three and one-third percent~~
13 ~~shall carry forward into the third year following certification. Each year's carryover shall be~~
14 ~~accumulated as a tax credit with other years' annual tax credits. No credit may be given for the~~
15 ~~repair or replacement of railway line necessitated by washout, fire, or train derailment. No rail~~
16 ~~line carrying over ten million gross ton miles per mile annually may receive a credit pursuant to~~
17 ~~this section. Any rail line which carries between five million and ten million gross ton miles per~~
18 ~~mile annually shall receive a credit for only one-half of the expenses certified pursuant to this~~
19 ~~section. The provisions of this section do not affect credits certified prior to January 30, 1994.~~

20 Section 3. That § 49-16A-1 be amended to read as follows:

21 49-16A-1. Terms used in this chapter mean:

- 22 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
23 in the business of transporting freight in intrastate commerce which it is accustomed
24 to and is capable of transporting from place to place in this state, for hire;
- 25 (2) "Department," the Department of Transportation created by chapter 1-44;

- 1 (3) "For hire," the condition of receiving remuneration of any kind, paid or promised,
2 either directly or indirectly, for the transportation of freight;
- 3 (4) "Freight," all property tendered for transportation by a railroad;
- 4 (5) "Railroad," a any association or corporation, or other entity, other than a state agency
5 or authority, engaged in operating a common carrier by rail regardless of motive
6 power used, excluding street railroads;
- 7 (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks,
8 interchanges, and all other fixtures and real property owned or operated by a railroad
9 to discharge its obligations as a common carrier by rail;
- 10 (7) "Shipper," a consignor or consignee;
- 11 (8) "Commission," the Transportation Commission created by § 1-44-4;
- 12 (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as
13 compensation for the acquisition of property desired by the applicant for the
14 construction or reconstruction of a road, including the economic costs or diminution
15 associated with or caused by the construction or reconstruction if there is a partial
16 taking of property.

17 Section 4. That § 49-16A-75 be amended to read as follows:

18 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way
19 as provided by statute, but only upon obtaining authority from the Governor or if directed by the
20 Governor, or the commission, based upon a determination by the Governor or the commission
21 that the railroad's exercise of the right of eminent domain would be for a public use consistent
22 with public necessity. The Governor or the commission shall consider the requirements of
23 sections 5, 6, and 7 of this Act when granting or denying an application for authority to use
24 eminent domain. The decision to grant or deny an application shall be made after reasonable
25 notice and opportunity to be heard, pursuant to chapter 1-26.

1 Any appeal, pursuant to chapter 1-26, taken from a decision of the Governor or the
2 commission shall be handled as an expedited appeal by the courts of this state.

3 Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The commission shall in accordance with chapter 1-26, promulgate rules:

- 6 (1) Establishing a form upon which a railroad may apply for authority to exercise the right
7 of eminent domain;
- 8 (2) Specifying the information to be submitted by an applicant; and
- 9 (3) Administering applications for authority to exercise the right of eminent domain.

10 Section 6. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The applicant has the burden of proving by a preponderance of the evidence that the exercise
13 of the right of eminent domain is a public use consistent with public necessity.

14 Section 7. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 A railroad's exercise of the right of eminent domain is a public use consistent with public
17 necessity only if the use of eminent domain:

- 18 (1) Has as purpose providing railroad transportation to shippers in South Dakota, for
19 commodities produced, manufactured, mined, grown, used, or consumed in South
20 Dakota;
- 21 (2) Is proposed by an applicant with the financial resources necessary to complete the
22 proposed construction or reconstruction along with any related facilities, construction,
23 or mitigation which are necessary to protect against harm to the public safety,
24 convenience, or other adverse socioeconomic or environmental impact, as evidenced
25 by a financing commitment from a lender or an investor or a combination of each with

1 adequate capitalization and resources to fulfill its commitment to build and complete
2 the project;

3 (3) Is proposed by an applicant who has negotiated in good faith to privately acquire
4 sufficient property without the use of eminent domain;

5 (4) Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that
6 plat sets forth the route of the road to be constructed or reconstructed, identifies each
7 affected landowner, and specifies the location, along with construction methods and
8 engineering specifications for all main lines, sidings, yards, bridges, crossings, safety
9 devices, switches, signals, and maintenance facilities; and

10 (5) Provides that electric utilities, public utilities, telecommunication companies, and rural
11 water systems have the right to the use of the right-of-way for the placement of
12 underground facilities, without fee, subject to reasonable regulation as to location and
13 placement.

14 Section 8. That § 10-28-16 be amended to read as follows:

15 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each
16 year, transmit to the county auditor of each county through which any railroad runs, a statement
17 showing the length of main track, of main line or lines, and the branches thereof and sidetracks
18 within such county, and the assessed value based on a statewide formula that weights traffic (ton
19 miles) ~~seventy-five~~ thirty-three and one-third percent and miles of track in the county by
20 ~~twenty-five~~ sixty-six and two-thirds percent. The county auditor shall then distribute the value
21 to each taxing district where the line runs on a per mile basis within the county.

22 Section 9. The provision of section 8 of this Act take effect upon the expiration of all
23 property tax credits certified pursuant to § 10-28-21.1, which is repealed pursuant to section 2
24 of this Act.

1 **BILL HISTORY**

2 1/21/99 First read in House and referred to State Affairs. H.J. 110

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

4 2/1/99 State Affairs Do Pass, Passed, AYES 7, NAYS 5. H.J. 277

5 2/2/99 House of Representatives Do Pass, Failed, AYES 26, NAYS 43. H.J. 329

6 2/2/99 Intent to reconsider. H.J. 330

7 2/3/99 House of Representatives Reconsidered, AYES 40, NAYS 27. H.J. 346

8 2/3/99 House of Representatives Deferred to another day. H.J. 347

9 2/9/99 Motion to Amend, Passed. H.J. 440

10 2/9/99 House of Representatives Do Pass Amended, Passed, AYES 42, NAYS 26. H.J. 441

11 2/10/99 First read in Senate and referred to State Affairs. S.J. 422

12 2/19/99 Scheduled for Committee hearing on this date.

13 2/22/99 Scheduled for Committee hearing on this date.

14 2/24/99 Scheduled for Committee hearing on this date.

15 2/24/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 659

16 2/26/99 Motion to Amend, Passed. S.J. 700

17 2/26/99 Motion to Amend, Passed. S.J. 701

18 2/26/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 6. S.J. 701

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0242

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. SB54 -
3/1/99

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the review of
2 necessity of treatment for court-ordered administration of psychotropic medication.

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

4 Section 1. That § 27A-12-3.16 be amended to read as follows:

5 27A-12-3.16. The court may authorize the administration of psychotropic medication for not
6 more than one year. The court's order shall terminate if the person is judicially restored as
7 competent to consent to or refuse the administration of psychotropic medication or if the
8 person's treating physician or the medical director of the facility or, if the facility does not have
9 a medical director, a consulting psychiatrist determines that the administration of psychotropic
10 medication is no longer necessary under the criteria set forth in § 27A-12-3.13. Transfer from
11 inpatient to outpatient treatment while the person is under an order of involuntary commitment
12 does not, in itself, terminate the court's order. The necessity of treatment with psychotropic
13 medication shall be reviewed and approved under the criteria in § 27A-12-3.13 at least every
14 thirty days by the treating physician and the medical director of the facility or, if the facility does
15 not have a medical director, a consulting psychiatrist after a personal examination of the person.

1 If the consulting psychiatrist was the person's treating physician while the person was a patient
2 at the Human Services Center, a personal examination need not take place as part of the review.

3 If the treating physician or the medical director or consulting psychiatrist determines that the
4 medication is no longer necessary under the criteria in § 27A-12-3.13, the court's order shall
5 terminate. A copy of the results of the personal examination and the determinations of the
6 treating physician and the medical director or consulting psychiatrist shall be made part of the
7 person's medical records.

8 Section 2. That § 27A-12-3.13 be amended to read as follows:

9 27A-12-3.13. The administrator or attending psychiatrist or facility director may petition the
10 circuit court for the authority to administer psychotropic medication to an involuntarily
11 committed patient if, ~~in the opinion of~~ after a personal examination, ~~the administrator or facility~~
12 ~~director~~ person's treating physician and the medical director or attending psychiatrist ~~and the~~
13 ~~person's treating physician~~, believe psychotropic medication will be medically beneficial to the
14 person and is necessary because:

- 15 (1) The person presents a danger to himself or others;
- 16 (2) The person cannot improve or his condition may deteriorate without the medication;
- 17 or
- 18 (3) The person may improve without the medication but only at a significantly slower
- 19 rate.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 25

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Health and Human Services Do Pass, Passed, AYES 5, NAYS 2. S.J. 60

5 1/19/99 Senate Do Pass, Passed, AYES 20, NAYS 13. S.J. 121

6 1/20/99 First read in House and referred to Health and Human Services. H.J. 101

7 2/17/99 Scheduled for Committee hearing on this date.

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

9 2/19/99 Health and Human Services Do Pass, Passed, AYES 10, NAYS 1. H.J. 632

10 2/22/99 House of Representatives Deferred to another day. H.J. 692

11 2/23/99 House of Representatives Deferred to another day. H.J. 725

12 2/24/99 Referred to Health and Human Services. H.J. 751

13 2/26/99 Scheduled for Committee hearing on this date.

14 2/26/99 Health and Human Services Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 796

15 2/26/99 Health and Human Services Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0241

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **SB64** -
3/1/99

Introduced by: The Committee on Health and Human Services at the request of the Department
of Human Services

1 FOR AN ACT ENTITLED, An Act to revise, repeal, and reenact certain provisions pertaining
2 to persons with developmental disabilities.

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

4 Section 1. That § 27B-1-1 be repealed.

5 ~~—27B-1-1. The term "mentally retarded" as used in this title shall include any person with~~
6 ~~significant subaverage general intellectual functioning and deficits in adaptive behavior.~~

7 Section 2. That § 27B-1-2 be repealed.

8 ~~—27B-1-2. Terms used in this Title mean:~~

9 ~~—(1)—"Adjustment training center," any private nonprofit organization which receives~~
10 ~~financial assistance from the state or its political subdivisions and which is established~~
11 ~~or organized for the purpose of providing evaluations, therapy, and intensive day and~~
12 ~~residential training and support services to individuals with a diagnosed developmental~~
13 ~~disability and which meets the adopted rules of the Department of Human Services~~
14 ~~for adjustment training centers;~~

15 ~~—(2)—"Administrator," the chief executive officer of a facility;~~

1 ~~—(3)—"County board of mental retardation," the county board of mental illness provided for~~
2 ~~in § 27A-7-1;~~

3 ~~—(4)—"Department," the Department of Human Services;~~

4 ~~—(5)—"Discharge," the official release of an individual from a facility by action of the facility~~
5 ~~or a county board of mental retardation;~~

6 ~~—(6)—"Educational services," deliberate attempts to facilitate the development of an~~
7 ~~individual;~~

8 ~~—(7)—"Facility," South Dakota Developmental Center ---- Redfield or any facility which is~~
9 ~~operated by the state, which regularly admits developmentally disabled persons and~~
10 ~~provides residential and other services;~~

11 ~~—(8)—"Habilitation," the process by which the staff of a facility assists a resident to acquire~~
12 ~~and maintain those life skills which enable him to cope more effectively with the~~
13 ~~demands of his physical, mental, and social efficiency. The term includes programs of~~
14 ~~formal and structured education and treatment;~~

15 ~~—(9)—"Resident" and "patient," any individual who resides in a facility and receives services~~
16 ~~therefrom;~~

17 ~~—(10)—"Responsible relative" or "legally responsible relative," the father, or mother, or both~~
18 ~~for their child or children, the husband for his wife and the wife for her husband;~~

19 ~~—(11)—"Treatment," the prevention, amelioration, or cure of a resident's physical disabilities~~
20 ~~or illnesses.~~

21 Section 3. That § 27B-1-3 be repealed.

22 ~~—27B-1-3. Terms used in this title mean:~~

23 ~~—(1)—"Developmental disability," a disability attributed to mental retardation, cerebral palsy,~~
24 ~~epilepsy, or other neurological impairment designated by the secretary of human~~
25 ~~services, which originates during the developmental period or originates as a result~~

1 of injury occurring anytime during the life of an individual, which can be expected to
2 continue indefinitely, which constitutes a substantial handicap, and which requires
3 services similar to those provided to mentally retarded persons;

4 ~~— (2) — "Developmentally disabled person," any person who suffers from a developmental~~
5 ~~disability.~~

6 Section 4. That § 27B-1-4 be repealed.

7 ~~— 27B-1-4. As used in this title, the term "qualified developmental disabilities professional"~~
8 ~~means a person who has specialized training or one year of experience in treating or working~~
9 ~~with the mentally retarded and is one of the following:~~

10 ~~— (1) — A psychologist with at least a master's degree from an accredited program in~~
11 ~~psychology;~~

12 ~~— (2) — A physician licensed to practice medicine or osteopathy;~~

13 ~~— (3) — An educator with a bachelor's degree in education from an accredited program;~~

14 ~~— (4) — A social worker with a bachelor's degree in social work from an accredited program,~~
15 ~~or in a field other than social work and at least one year of social work experience~~
16 ~~under the supervision of a qualified social worker;~~

17 ~~— (5) — A physical or occupational therapist;~~

18 ~~— (6) — A speech pathologist or audiologist;~~

19 ~~— (7) — A registered nurse;~~

20 ~~— (8) — A therapeutic recreation specialist who is a graduate of an accredited program;~~

21 ~~— (9) — A rehabilitation counselor who is certified by the committee on rehabilitation~~
22 ~~counselor certification; or~~

23 ~~— (10) — A case manager, with a bachelor's degree from an accredited program.~~

24 ~~— Except as provided in § 36-4-20, each qualified developmental disabilities professional shall~~
25 ~~meet all licensing and certification requirements promulgated by the state of South Dakota and~~

1 any state professional licensing board for persons engaged in the practice of the same profession
2 in South Dakota.

3 Section 5. That § 27B-1-5 be repealed.

4 ~~— 27B-1-5. No person shall be deemed incompetent to manage his affairs, to contract, to hold
5 professional or occupational or vehicle operator's licenses, to marry and obtain a divorce, to
6 register and vote, or to make a will, solely by reason of his admission or commitment to a facility
7 or because he was adjudicated mentally retarded.~~

8 Section 6. That § 27B-1-6 be repealed.

9 ~~— 27B-1-6. A mentally retarded individual shall be admitted to a facility only pursuant to the
10 provisions of this title.~~

11 Section 7. That § 27B-1-7 be repealed.

12 ~~— 27B-1-7. Any person who confines a person who is mentally retarded in any manner or in
13 any place other than is authorized by law, is guilty of a Class 1 misdemeanor.~~

14 Section 8. That § 27B-1-8 be repealed.

15 ~~— 27B-1-8. Any officer required to perform an act, and any person accepting an appointment
16 under the provisions of this title, who shall intentionally refuse or neglect to perform his duty as
17 herein prescribed, shall be guilty of a Class 1 misdemeanor, besides being liable to an action for
18 damages.~~

19 Section 9. That § 27B-1-9 be repealed.

20 ~~— 27B-1-9. The departments of health, education, social services, human services and other
21 agencies serving persons with developmental disabilities, shall collect data on the incidence and
22 prevalence of autism on all yearly developmental disability statistical studies, surveys and
23 disability tracking systems or counts reported by each of the departments.~~

24 ~~— Autism shall be individually listed on the tracking systems or counts, as are mental
25 retardation, deaf and visually handicapped.~~

1 ~~—The confidentiality of identifying data shall be protected under the provisions and procedures~~
2 ~~set forth at 34 CFR § 300.560 et seq. as in effect on July 1, 1988.~~

3 Section 10. That § 27B-1-10 be repealed.

4 ~~—27B-1-10. The Legislature hereby finds that:~~

5 ~~—(1)—Research does not support the long-term efficacy of aversive behavioral intervention;~~

6 ~~—(2)—The use of aversive or abusive treatment raises disturbing legal and ethical issues, and~~
7 ~~may well deprive the recipient of constitutional or statutory rights and be outside the~~
8 ~~ethical guidelines imposed upon the treatment professional;~~

9 ~~—(3)—Severely disabled persons have the same right to be treated with dignity and respect~~
10 ~~as all other citizens; and~~

11 ~~—(4)—The use of aversive and abusive treatments on persons with disabilities diminishes the~~
12 ~~dignity and humanity of the treatment professional and the disabled person.~~

13 Section 11. That § 27B-1-11 be repealed.

14 ~~—27B-1-11. Any agency, facility, school or person who provides services to persons with~~
15 ~~developmental disabilities shall be prohibited from using the following practices:~~

16 ~~—(1)—Corporal punishment—physical or verbal abuse, such as shaking, screaming, swearing,~~
17 ~~name calling or any other activity that would be damaging to an individual's physical~~
18 ~~well-being or self-respect;~~

19 ~~—(2)—Seclusion—placement of an individual alone in a room or other area from which egress~~
20 ~~is prevented;~~

21 ~~—(3)—Denial of food—preventing an individual from having access to a nutritionally~~
22 ~~adequate diet as a means of modifying behavior. Persons enrolled in residential~~
23 ~~programs or living units shall be expected to partake in meals at a predetermined~~
24 ~~scheduled time;~~

25 ~~—(4)—An individual served disciplining other individuals enrolled; and~~

1 ~~(5) Medication shall not be used as punishment, for the convenience of staff, as a~~
2 ~~substitute for a program, or in quantities that interfere with an individual's~~
3 ~~developmental program.~~

4 Section 12. That § 27B-1-12 be repealed.

5 ~~27B-1-12. All agencies providing treatment to persons with developmental disabilities shall~~
6 ~~review their treatment procedures to ensure compliance with §§ 27B-1-10 and 27B-1-11.~~

7 Section 13. That § 27B-1-13 be repealed.

8 ~~27B-1-13. This legislation shall be enforced by the appropriate state department by assuring~~
9 ~~adequate monitoring of, staffing of, and technical assistance to all agencies, schools or persons~~
10 ~~providing services to those with developmental disabilities.~~

11 Section 14. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The purposes of this title are to enhance environments and provide supports to enable
14 persons with developmental disabilities to achieve and maintain physical well-being, personal and
15 professional satisfaction, participation as community members, and safety from abuse, neglect,
16 and exploitation; and to promote and safeguard the human dignity, constitutional and statutory
17 rights, social well-being, and general welfare of all persons with developmental disabilities in the
18 state.

19 Section 15. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The Department of Human Services shall develop, adopt, approve, coordinate, monitor,
22 evaluate, and administer state and federally funded services for persons with developmental
23 disabilities and their families within South Dakota in cooperation with all governmental and
24 private resources and organizations concerned with developmental disabilities.

25 Within the limits of available resources, the department shall:

- 1 (1) Carry out all functions and duties required by statute through collaboration and
2 consultation with persons with developmental disabilities, their families, guardians,
3 community resources, organizations, and people who provide services throughout the
4 state;
- 5 (2) Develop and maintain a statewide system of community-based services that reflect the
6 choices and needs of persons with developmental disabilities and their families;
- 7 (3) Facilitate or provide technical assistance to community service providers in planning,
8 developing, and implementing services and supports for persons with developmental
9 disabilities;
- 10 (4) Cooperate with federal agencies in the administration of the federal statutes and acts
11 relating to developmental disabilities programs, accept the benefits of such federal
12 statutes and acts subject to chapter 4-8B, and comply with the requirements thereof;
- 13 (5) Conform the state plans to the federal requirements and submit them to the federal
14 agencies; and
- 15 (6) Maintain a data collection system on the prevalence of developmental disabilities,
16 including autism, based on the needs of persons with developmental disabilities in the
17 current service delivery system.

18 Section 16. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The Department of Human Services may establish and use state, regional, or local boards or
21 councils to assist in the planning and implementation of community services.

22 Section 17. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Terms used in this title mean:

- 25 (1) "Behavior intervention program," a written set of instructions for changing or

1 modifying the behavior of a person with a developmental disability that specifies
2 behavior objectives for completion, procedures, and data collection procedures and
3 written to increase desirable behaviors or decrease undesirable behaviors;

4 (2) "Community services provider," any person or entity, whether for-profit or not-for-
5 profit, which receives compensation for providing services to persons with
6 developmental disabilities;

7 (3) "Danger to others," behavior which supports a reasonable expectation that the person
8 will inflict serious physical injury upon another person in the very near future. Such
9 behavior shall be evidenced by recent acts which constitute a danger of serious
10 physical injury for another person. Such acts may include a recently expressed threat
11 if the threat is such that, if considering its context or person's recent previous acts, it
12 is substantially supportive of an expectation that the threat will be carried out;

13 (4) "Danger to self," recent behavior or related physical conditions which show there is
14 a danger of serious personal harm in the very near future as evidenced by an inability
15 to provide for some basic human needs such as food, clothing, shelter, physical health,
16 or personal safety;

17 (5) "Department," the Department of Human Services;

18 (6) "Director," the director of the South Dakota Developmental Center or a community
19 service provider;

20 (7) "Facility," the South Dakota Developmental Center in Redfield, South Dakota;

21 (8) "Informed consent," consent voluntarily, knowingly, and competently given without
22 any element of force, fraud, deceit, duress, threat, or other form of coercion, after
23 explanation of all information that a reasonable person would consider significant to
24 the decision in a manner reasonably comprehensible to general lay understanding;

25 (9) "Least restrictive," an intervention in the life of a person with a developmental

1 disability that is the least intrusive and disruptive to the person's life and represents the
2 least departure from normal patterns of living that can be effective in meeting the
3 person's developmental needs;

4 (10) "PASARR" or "Preadmission Screening/Annual Resident Review," a federally
5 mandated review of the application to a skilled nursing facility by a person with a
6 known or suspected mental illness and/or developmental disability in order to
7 determine if the skilled nursing facility or another community service provider can
8 appropriately serve the person's needs;

9 (11) "Qualified mental retardation professional," any person with at least one year of
10 experience working directly with mental retardation or other developmental
11 disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a
12 person who holds at least a bachelor's degree in a professional category.

13 Section 18. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 A developmental disability is any severe, chronic disability of a person that:

16 (1) Is attributable to a mental or physical impairment or combination of mental and
17 physical impairments;

18 (2) Is manifested before the person attains age twenty-two;

19 (3) Is likely to continue indefinitely;

20 (4) Results in substantial functional limitations in three or more of the following areas of
21 major life activity: self-care; receptive and expressive language; learning; mobility;
22 self-direction; capacity for independent living; and economic self-sufficiency; and

23 (5) Reflects the person's need for an array of generic services, met through a system of
24 individualized planning and supports over an extended time, including those of a life-
25 long duration.

1 Section 19. That § 27B-2-1 be repealed.

2 ~~—27B-2-1. The department of human services shall consider, determine and establish policy~~
3 ~~and exercise such coordination and programs for developmental disabilities; develop, maintain~~
4 ~~and operate programs for mental retardation, and coordinate the work of the state departments~~
5 ~~involved in programs of consultation, care and training and carry out the duties imposed in this~~
6 ~~title, or as otherwise authorized and assigned to the department by law.~~

7 Section 20. That § 27B-2-2 be repealed.

8 ~~—27B-2-2. The department of human services shall develop, adopt, approve and administer~~
9 ~~state plans of coordination in the field of developmental disabilities for the state of South Dakota~~
10 ~~in cooperation with all governmental and private departments, resources and organizations~~
11 ~~concerned with mental retardation.~~

12 Section 21. That § 27B-2-3 be repealed.

13 ~~—27B-2-3. The department of human services shall cooperate with federal agencies in the~~
14 ~~administration of the federal statutes and acts relating to developmental disabilities programs;~~
15 ~~accept the benefits of such federal statutes and acts subject to chapter 4-8B, and comply with the~~
16 ~~requirements thereof.~~

17 Section 22. That § 27B-2-4 be repealed.

18 ~~—27B-2-4. The department of human services shall conform the state plans and the federal~~
19 ~~requirements and submit them to the federal agencies in order to qualify for grants available to~~
20 ~~the state of South Dakota in the field of mental retardation.~~

21 Section 23. That § 27B-2-5 be repealed.

22 ~~—27B-2-5. The department of human services shall coordinate the utilization of existing~~
23 ~~facilities, state departments, boards or commissions involved in the field of mental retardation.~~

24 Section 24. That § 27B-2-6 be repealed.

25 ~~—27B-2-6. The department of human services may receive, acquire, have charge of, and~~

1 ~~operate all properties for the purposes authorized herein. The department may receive gifts and~~
2 ~~contributions from public and private sources and acquire other properties as an agency of the~~
3 ~~state of South Dakota and hold and use the same for purposes herein. However, it may not~~
4 ~~purchase, lease anything except office quarters as approved by the state commissioner of~~
5 ~~administration, sell, encumber or alienate any real property without the specific consent and prior~~
6 ~~approval of the Legislature.~~

7 Section 25. That § 27B-2-7 be repealed.

8 ~~—27B-2-7. It is the purpose of this chapter to provide that all developmentally disabled persons~~
9 ~~residing within this state may voluntarily receive appropriate services provided by the department~~
10 ~~of human services. A developmentally disabled person from another state or territory who enters~~
11 ~~this state for the purpose of receiving care, treatment, education or training shall retain the~~
12 ~~residence of his parent, guardian or agency standing in the place of parent or guardian.~~

13 Section 26. That § 27B-2-8 be repealed.

14 ~~—27B-2-8. The department of human services may, from existing department funds or special~~
15 ~~funds appropriated by the Legislature, establish and maintain contact with, and coordinate~~
16 ~~services for, developmentally disabled individuals and their families in order to assure that~~
17 ~~appropriate services are being received by disabled individuals and that anticipated or~~
18 ~~unanticipated changes in needs of such individuals, arising from any crisis, are recognized and~~
19 ~~appropriately met.~~

20 Section 27. That § 27B-2-9 be repealed.

21 ~~—27B-2-9. A developmentally disabled individual or any interested person may make~~
22 ~~application for department services by contacting in person or in writing any official state or field~~
23 ~~office of the department of human services, and submitting to an examination of his mental,~~
24 ~~physical and educational condition so that the department may determine whether he is in need~~
25 ~~of appropriate services.~~

1 Section 28. That § 27B-2-10 be repealed.

2 ~~—27B-2-10. A developmentally disabled individual or his parent or guardian may refuse~~
3 ~~services provided to them by the department of human services. If the developmentally disabled~~
4 ~~individual or his parent accepts services by the department, the department, parent, or disabled~~
5 ~~individual may terminate the services at any time.~~

6 Section 29. That § 27B-2-11 be repealed.

7 ~~—27B-2-11. The secretary of human services may adopt reasonable and necessary rules~~
8 ~~establishing standards for adjustment training centers and other nonpublic facilities and services~~
9 ~~for the mentally retarded and other developmentally disabled persons and for services to be~~
10 ~~provided by the department of human services under this title. Such rules may be adopted in the~~
11 ~~following areas:~~

12 ~~—(1)— Staff requirements;~~

13 ~~—(2)— Administration, audit requirements, and record keeping;~~

14 ~~—(3)— Services provided;~~

15 ~~—(4)— Client rights and safety;~~

16 ~~—(5)— Facility fire safety and sanitation requirements; and~~

17 ~~—(6)— Such other standards and requirements as are necessary for federal financial~~
18 ~~participation.~~

19 Section 30. That § 27B-2-12 be repealed.

20 ~~—27B-2-12. The department of human services shall consider the needs in the field of~~
21 ~~developmental disabilities and make recommendations to the Legislature and the Governor for~~
22 ~~changes in existing legislation.~~

23 Section 31. That § 27B-2-13 be repealed.

24 ~~—27B-2-13. This chapter shall not be construed as repealing chapter 34-7, but shall be held and~~
25 ~~construed separate and in addition thereto.~~

1 Section 32. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The Department of Human Services shall coordinate the utilization of existing facilities, state
4 departments, boards, or commissions involved in the field of developmental disabilities.

5 Section 33. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 The Department of Human Services may receive, acquire, have charge of, and operate all
8 properties for the purposes authorized by statute. The department may receive gifts and
9 contributions from public and private sources and acquire other properties as an agency of the
10 State of South Dakota and hold and use them for statutory purposes. However, it may not
11 purchase, lease anything except office quarters as approved by the state commissioner of
12 administration, sell, encumber, or alienate any real property without the specific consent and
13 prior approval of the Legislature.

14 Section 34. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 A person with a developmental disability from another state or territory who enters this state
17 for the purpose of receiving services or education shall retain the residence of that person's
18 parent, guardian, or agency standing in the place of the person's parent or guardian.

19 Section 35. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Any person with a developmental disability or any other interested person may make
22 application for department services by contacting in person or in writing any official state or field
23 office of the Department of Human Services, and participating in an evaluation which may
24 include mental, physical, and educational assessments so that the department may determine if
25 services are needed.

1 Section 36. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 A person with a developmental disability or that person's parent or guardian may refuse
4 services offered by the Department of Human Services. If the person with a developmental
5 disability or that person's parent or guardian accepts services from the department, the
6 department, that person's parent or guardian, or the person with a developmental disability may
7 terminate the services at any time.

8 Section 37. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The secretary of the department may promulgate, pursuant to chapter 1-26, reasonable and
11 necessary rules governing the procedure and conduct of contested cases, including notification
12 of the denial of services. Such rules shall be consistent with the procedure required by chapter
13 1-26.

14 Section 38. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The secretary of the Department of Human Services may promulgate, pursuant to chapter
17 1-26, reasonable and necessary rules establishing standards for community service providers,
18 South Dakota Developmental Center - Redfield, and other nonpublic facilities, services, and
19 supports for persons with developmental disabilities and for services and supports to be provided
20 or purchased by the Department of Human Services under this title. Such rules may be adopted
21 in the following areas:

- 22 (1) Staff requirements;
- 23 (2) Administration, audit requirements, and record keeping;
- 24 (3) Services and supports provided;

- 1 (4) Client rights and safety;
- 2 (5) Facility fire safety and sanitation requirements;
- 3 (6) Respite care;
- 4 (7) Family support;
- 5 (8) Preadmission Screening/Annual Resident Review (PASARR);
- 6 (9) Such other standards and requirements as are necessary for federal financial
- 7 participation; and
- 8 (10) Any other services and supports necessary to implement this title.

9 Section 39. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The Department of Human Services shall consider the needs in the field of developmental
12 disabilities and shall make recommendations to the Legislature and the Governor for changes in
13 existing legislation.

14 Section 40. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 This chapter may not be construed as repealing chapter 34-7, but shall be held and construed
17 separate and in addition to chapter 34-7.

18 Section 41. That § 27B-3-1 be repealed.

19 ~~— 27B-3-1. The facility for the mentally retarded as located and established upon the lands~~
20 ~~donated therefor and conveyed to this state at Redfield, Spink county, shall be known as the~~
21 ~~"South Dakota developmental center -- Redfield," and is under the control and supervision of~~
22 ~~the department of human services.~~

23 Section 42. That § 27B-3-2 be repealed.

24 ~~— 27B-3-2. The South Dakota developmental center -- Redfield shall be maintained for the~~
25 ~~purpose of providing treatment, training, instruction, care, habilitation, and support of~~

1 ~~developmentally disabled persons of this state.~~

2 Section 43. That § 27B-3-4 be repealed.

3 ~~—27B-3-4. The ultimate aim of each facility shall be to foster those behaviors that maximize~~
4 ~~the human qualities of each resident, increase the self-direction of his behavior, enhance his~~
5 ~~ability to cope with his environment, and return him to the community.~~

6 Section 44. That § 27B-3-5 be repealed.

7 ~~—27B-3-5. The secretary of human services shall appoint a competent administrator for the~~
8 ~~South Dakota developmental center -- Redfield, who shall serve at the pleasure of the secretary.~~

9 Section 45. That § 27B-3-6 be repealed.

10 ~~—27B-3-6. Such administrator shall have the supervision of the care, treatment, and education~~
11 ~~of the patients of such institution, under the direction of the secretary of human services and in~~
12 ~~accordance with the rules established by the department of human services.~~

13 Section 46. That § 27B-3-7 be repealed.

14 ~~—27B-3-7. Under the advice and consent of the secretary of human services, the administrator~~
15 ~~shall appoint instructors meeting the qualifications required of teachers of comparable work in~~
16 ~~the public schools of this state for the education of all patients, and other necessary employees~~
17 ~~for the management of such institution.~~

18 Section 47. That § 27B-3-8 be repealed.

19 ~~—27B-3-8. The administrator may receive and accept from any persons, organization or estate,~~
20 ~~gifts of money or personal property on behalf of the South Dakota developmental center --~~
21 ~~Redfield, or the patients therein, and use such gifts for the purposes specified by the donor if~~
22 ~~such use is consistent with the law. In the absence of a specified purpose, the administrator shall~~
23 ~~use such money or personal property for the benefit of the South Dakota developmental center~~
24 ~~-- Redfield or for the general benefit of the patients therein. The administrator shall keep an~~
25 ~~accurate record of the amount or kind of gift, the date received, manner expended, and the name~~

1 ~~and address of the donor. Any increase resulting from such gift may be used for the same~~
2 ~~purpose as the original gift.~~

3 Section 48. That § 27B-3-9 be repealed.

4 ~~—27B-3-9. Pursuant to reasonable rules adopted by the department of human services, the~~
5 ~~administrator of the South Dakota developmental center -- Redfield may receive a person for~~
6 ~~examination, evaluation and treatment, for the existence of mental retardation or the suitability~~
7 ~~of the subject for institutional care and training for a period not to exceed sixty days, upon the~~
8 ~~receipt of a written application by the parents or guardian, and upon payment in advance of one~~
9 ~~month's charge at the rate established pursuant to this chapter. The sixty-day limitation is not a~~
10 ~~limitation on the length of a voluntary admittance. Whenever the administrator accepts a person~~
11 ~~for examination, evaluation and treatment or accepts a person on a voluntary admission, he shall~~
12 ~~immediately notify the county board and county commissioners of the person's county of~~
13 ~~residence.~~

14 Section 49. That § 27B-3-9.1 be repealed.

15 ~~—27B-3-9.1. Every person voluntarily or involuntarily entering the facility shall prior to~~
16 ~~admission, be required to present to the administrator, certification from a licensed physician that~~
17 ~~he has received a test or tests for tuberculosis and is free from a contagious form of this disease~~
18 ~~and he has received or is in the process of receiving immunization against poliomyelitis,~~
19 ~~diphtheria, measles, pertussis, tetanus, or any other diseases as deemed necessary by the licensed~~
20 ~~physician in charge of immunizations at the facility, by such means of immunizations as are~~
21 ~~approved by the state board of health, or in the way of an alternative to such requirement shall~~
22 ~~present:~~

23 ~~—(1)—Certification from a licensed physician stating the physical condition of the person~~
24 ~~would be such that a test and immunization would endanger his life or health; or~~

25 ~~—(2)—A written statement signed by one parent or guardian that the person is an adherent~~

1 to a belief whose teachings are opposed to such test and immunization; or

2 ~~— (3) — A written statement signed by one parent or guardian requesting that the local health~~
3 ~~department or the facility give the test and immunization because the parents or~~
4 ~~guardians lack the means to pay for such tests and immunization; or~~

5 ~~— (4) — A written statement from a licensed physician requesting that the person not be~~
6 ~~immunized.~~

7 Section 50. That § 27B-3-9.2 be repealed.

8 ~~— 27B-3-9.2. The facility shall provide the test or tests for tuberculosis and the immunizations~~
9 ~~required to such residents as are not provided therewith by their parents or guardians and who~~
10 ~~have not been exempted.~~

11 Section 51. That § 27B-3-10 be repealed.

12 ~~— 27B-3-10. A resident in a state facility may be transferred to any other facility, or to a~~
13 ~~hospital operated by the state if the transfer would be in the best interest of the resident; the~~
14 ~~administrator of the sending facility approves the transfer; and the administrator of the receiving~~
15 ~~facility approves the transfer.~~

16 Section 52. That § 27B-3-11 be repealed.

17 ~~— 27B-3-11. The resident and his nearest relative or guardian shall be notified at least seven~~
18 ~~days prior to any transfer pursuant to § 27B-3-10, except that a transfer may be effected earlier~~
19 ~~if necessitated by an emergency. In addition, the resident may designate two other persons to~~
20 ~~receive the notice.~~

21 ~~— If a transfer is effected due to an emergency, the required notices shall be given as soon as~~
22 ~~possible, but not later than twenty-four hours after the transfer.~~

23 Section 53. That § 27B-3-12 be repealed.

24 ~~— 27B-3-12. The department of human services shall consult with the immediate family of any~~
25 ~~proposed transferee under chapter 27A-6 and, in the case of a proposed transferee from an~~

1 ~~institution of this state to an institution in another state, take no final action without approval of~~
2 ~~the county board of mental retardation.~~

3 Section 54. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The facility located and established upon lands donated and conveyed to this state at
6 Redfield, Spink County, shall be known as the South Dakota Developmental Center. The
7 supports and services provided by the South Dakota Developmental Center shall be under the
8 control and supervision of the Department of Human Services.

9 Section 55. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The South Dakota Developmental Center shall provide supports and services for persons
12 with developmental disabilities and other persons who may benefit from those supports and
13 services offered by the South Dakota Developmental Center. The South Dakota Developmental
14 Center may provide onsite and offsite additional supports and services in order to increase the
15 self-direction of each person with a developmental disability's behavior, and to enhance each
16 person with a developmental disability's ability to live in the least-restrictive environment.

17 Section 56. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Every person with a developmental disability voluntarily or involuntarily admitted to the
20 facility shall be free from communicable diseases as deemed necessary by a licensed physician in
21 charge of tests and immunizations at the facility, by such means of tests and immunizations as
22 are approved by the Department of Health or shall present:

- 23 (1) Certification from a licensed physician stating the physical condition of the person
24 with a developmental disability would be such that a test and immunization would
25 endanger the person's life or health; or

1 (2) A written statement signed by a parent or guardian of the person with a
2 developmental disability that the person is adherent to a belief whose teachings are
3 opposed to such test and immunization; or

4 (3) A written statement signed by a parent or guardian of the person with a
5 developmental disability requesting that the local health department or the facility give
6 the test and immunization because the parent or guardian lacks the means to pay for
7 such tests and immunization; or

8 (4) A written statement from a licensed physician requesting that the person with a
9 developmental disability not be immunized.

10 Section 57. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The facility shall provide the test and the immunizations required to such persons with
13 developmental disabilities as are not provided by a parent or guardian and who have not been
14 exempted pursuant to section 56 of this Act.

15 Section 58. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The secretary of the Department of Human Services shall appoint a director to act as the
18 chief executive officer of the South Dakota Developmental Center. The director shall supervise
19 the supports, services, and education of the persons served at the facility, under the direction of
20 the secretary of the Department of Human Services.

21 Section 59. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 No person may be admitted to the South Dakota Developmental Center other than as
24 authorized by law. Any person who detains a person with a developmental disability in any other
25 manner or in any other place than as authorized by law is guilty of a Class 1 misdemeanor.

1 Section 60. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Any person with a developmental disability may be admitted to the South Dakota
4 Developmental Center if the county review board orders commitment pursuant to the process
5 provided in this title.

6 Section 61. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Any person who is eighteen years of age or older and who has a developmental disability may
9 be admitted to the South Dakota Developmental Center on a voluntary admission basis in
10 accordance with procedures established by the Department of Human Services if an application
11 for admission has been executed by the person with a developmental disability, if the person is
12 competent to do so, or by the person's guardian.

13 Section 62. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person who is under the age of eighteen years and who has a developmental disability
16 may be admitted to the South Dakota Developmental Center on a voluntary admission basis in
17 accordance with procedures established by the Department of Human Services if an application
18 for admission has been executed by the person's parent, guardian, or, in the absence of a parent
19 or guardian, a person in loco parentis.

20 Section 63. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 If it is determined that any other person would benefit from supports and services offered at
23 the South Dakota Developmental Center that person may be admitted on a voluntary admission
24 basis in accordance with procedures established by the Department of Human Services.

25 Section 64. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Each person admitted to the South Dakota Developmental Center shall receive and complete
3 a comprehensive evaluation within thirty days of admission to determine the appropriateness of
4 continued supports and services at the facility. The appropriateness of continued supports and
5 services shall be reviewed at least annually.

6 Section 65. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Upon accepting a person for admission to the South Dakota Developmental Center, the
9 county auditor of the person's county of residence shall be notified by the facility's director.

10 Section 66. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Notwithstanding chapter 25-7, when any person is admitted to a facility only the admittee
13 is responsible for the cost of supports and services to the extent and in the manner provided by
14 this chapter. If the cost of supports and services is a proper charge of the federal government,
15 the costs shall be assessed against the appropriate agency of the federal government.

16 Section 67. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The Department of Human Services shall collect and process fees due to the state for the
19 cost of supports and services for persons with developmental disabilities.

20 Section 68. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The secretary of the Department of Human Services shall periodically determine the
23 individual cost of supports and services provided to persons in the facility.

24 Section 69. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 Any person in the facility who is determined by the secretary of the Department of Human
2 Services to be financially able to pay shall be charged the per diem rate.

3 Section 70. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Any person in the facility may apply to the secretary of the Department of Human Services
6 to pay less than the per diem rate. On receipt of such application, the secretary shall determine
7 the ability of the person in the facility to pay all or a part of the applicable charge.

8 Section 71. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Upon receipt of all information desired by the secretary of the Department of Human
11 Services, the secretary shall determine, based upon the financial ability of the person in the
12 facility, whether the person shall be charged with the full amount or a lesser amount. If a person
13 in the facility or county where the person in the facility resides, disagrees with the determination
14 of the secretary of the Department of Human Services, a grievance may be filed with the
15 secretary within thirty days from the date of such determination. However, such a grievance may
16 not be filed more than once each every six months. The decision of the secretary is final.

17 Section 72. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 If any person in the facility refuses or fails to make such payments, the charges may be
20 collected by a civil action brought in the name of the State of South Dakota. The state may
21 commence an action against such person for payments due, and any judgment obtained shall be
22 a lien upon the real property of such person, and shall be collected as other judgments. Any claim
23 arising under section 66 of this Act has the same force and effect against the real and personal
24 property of a deceased person as other debts of a decedent and shall be ascertained and
25 recovered in the same manner.

1 Section 73. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The statute of limitations upon any claim of the state for the care of a person in the facility
4 is three years and does not commence to run until the death of the person, but an action may be
5 commenced at any time during the life of the person.

6 Section 74. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Each county shall be assessed sixty dollars per month for each person receiving supports and
9 services at the South Dakota Developmental Center unless the responsibility therefore has been
10 placed upon the state at large. In the event of a dispute as to that person's residence, no payments
11 made by any county constitute an admission that the person in the facility is a resident of such
12 county. The procedures for determining the county of residence shall be that described in
13 sections 76 and 77 of this Act. These moneys shall be used to match federal funds which may be
14 made available under the provisions of Title XIX of the Social Security Act as amended, or its
15 successors, at the South Dakota Developmental Center.

16 Section 75. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 If a person with a developmental disability has been placed under the control of a child
19 welfare agency as defined by § 26-6-1 for adoption, and prior to adoption is found to have a
20 developmental disability, then the county board of mental retardation may direct that the
21 expenses for the care, education, and maintenance of such person be borne by the state at large
22 in which event no finding as to the county being legally obligated to support such person shall
23 be made. The board shall forthwith notify the board of social services who may petition for
24 letters of guardianship. For minors in the custody of the state, the county is not legally obligated
25 to pay for such person. Expenses for such person shall be borne by the state at large.

1 Section 76. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 If the administrator of a facility has cared for or maintained a person with a developmental
4 disability from a county and the state's attorney or the county commissioners of the county claim
5 that the person is not a proper charge against the county, the state's attorney or the county
6 commissioners shall notify the attorney general that the person in the facility is a proper charge
7 against another county, or against the state at large if the person in the facility is not a resident
8 of the state. The attorney general shall notify the county auditor of the county to file any proof
9 within thirty days from the date of such notification. Upon receipt of such, the attorney general
10 shall investigate the location of the residence of the person in the facility to determine if a county
11 and which county should be charged. The attorney general shall notify the county auditor and
12 the director of the South Dakota Developmental Center of the determination. Thereafter, the
13 administrator shall charge for supports and services according to the determination of the
14 attorney general.

15 Section 77. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 If any county is dissatisfied with the determination of the attorney general, the county may
18 appeal to the circuit court.

19 Section 78. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Expenses paid by one county, on behalf of any person at the South Dakota Developmental
22 Center whose residence is in another county, shall be refunded with lawful interest by the county
23 of residence.

24 Section 79. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 All charges to a county under section 35 of this Act shall be certified each month by the
2 secretary of the Department of Human Services to the county auditor. The billing shall include
3 an itemized listing of charges. The billing shall be sent to county auditors no later than the fifth
4 day of the month. Upon receiving the billing, the county shall pay the amount due to the state
5 remittance center within the time period established by chapter 4-3.

6 Section 80. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 All payments made in accordance with this chapter for the supports and services of persons
9 at the South Dakota Developmental Center shall be deposited in the general fund.

10 Section 81. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Any person in a state facility may be transferred to any other state or private facility if the
13 person would benefit from the treatment offered at the facility. A transfer may only be made with
14 the mutual consent of both facilities or agencies. No transfer may occur until all reasonable
15 efforts have been made to consult with the person and the person's nearest relative or guardian.
16 However, the transfer may be effected earlier if necessitated by an emergency. If an emergency
17 situation arises, the required notice shall be given as soon as possible thereafter.

18 Section 82. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The Department of Human Services, upon recommendation of the person's interdisciplinary
21 team, shall consult with the person with a developmental disability and that person's immediate
22 family or guardian regarding any proposed transfer from a facility of this state to a facility of
23 another state pursuant chapter 27A-6.

24 Section 83. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 Every person voluntarily entering a facility for persons with developmental disabilities shall
2 be given oral and written notice of release procedures upon admission. All persons voluntarily
3 entering the facility, regardless of age, have the right to discharge within twenty-four hours after
4 request.

5 Section 84. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A facility may temporarily detain a voluntarily admitted person with a developmental
8 disability for twenty-four hours after the request for discharge to initiate emergency commitment
9 procedures, pursuant to section 161 of this Act, if the person's interdisciplinary team determines
10 that the person presents an immediate danger to self or others as defined in section 160 of this
11 Act.

12 Section 85. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The director, based upon the recommendation of the person's interdisciplinary team, may at
15 any time discharge a voluntarily admitted person. If a person with a developmental disability was
16 voluntarily admitted by a parent or guardian, the director shall notify the parent or guardian of
17 the discharge ten days prior to the person's release and shall notify the parent or guardian of
18 other supports and services available in an alternative setting.

19 Section 86. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Any person with a developmental disability admitted to the facility pursuant to this title who
22 leaves the facility without authorization or fails to return to the facility while on an authorized
23 leave or other authorized absence from the facility, may be returned to the facility.

24 Section 87. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 The South Dakota Developmental Center shall notify the Spink County Sheriff of any
2 unauthorized absence from the facility. Any law enforcement officer knowing the whereabouts
3 of any person absent from the facility shall detain the absent person and immediately notify both
4 the South Dakota Developmental Center and the Spink County Sheriff. The South Dakota
5 Developmental Center shall arrange for the return of the person with a developmental disability
6 to the facility within forty-eight hours thereafter.

7 Section 88. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 If the director of a facility determines that a person eighteen years of age or older with a
10 developmental disability receiving services and supports from the facility requires a guardian or
11 conservator and there is no one qualified and willing to petition for letters of guardianship or
12 conservatorship, the director shall inform the secretary of the Department of Human Services.

13 Section 89. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Six months prior to the eighteenth birthday of each person with a developmental disability
16 in the facility, the person shall be evaluated by the facility to determine whether the person is
17 competent to execute an application for voluntary admission.

18 Section 90. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If the facility determines after evaluation pursuant to section 89 of this Act, that the person
21 with a developmental disability is not competent to execute an application for voluntary
22 admission or that the person otherwise requires the protective services of a guardian, that
23 person's parent, or if none, another interested person or entity shall be notified and requested to
24 file a petition for the appointment of a guardian. If no petition is filed, the director shall inform
25 the secretary of the Department of Human Services.

1 Section 91. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The director may receive and accept from any person, organization, or estate gifts of money
4 or personal property on behalf of the South Dakota Developmental Center or any person with
5 developmental disabilities residing in the center, and use such gifts for the purposes specified by
6 the donor if such use is consistent with law. In the absence of a specified purpose, the director
7 shall use such money or personal property for the benefit of the South Dakota Developmental
8 Center or for the general benefit of the persons with developmental disabilities residing in the
9 center. The director shall keep an accurate record of the name and address of the donor, the gift,
10 the date received, and the manner expended. Any increase resulting from such gift may be used
11 for the same purpose as the original gift.

12 Section 92. That § 27B-4-1 be repealed.

13 ~~27B-4-1. The department of human services may establish community services specifically~~
14 ~~designed to meet the needs of the developmentally disabled.~~

15 Section 93. That § 27B-4-2 be repealed.

16 ~~27B-4-2. The department of human services may establish and use state, regional, or local~~
17 ~~boards or councils to assist in the planning and implementation of this chapter.~~

18 Section 94. That § 27B-4-3 be repealed.

19 ~~27B-4-3. Each county shall annually budget and appropriate funds for the establishment,~~
20 ~~support or operation of community developmental disability services. The amount appropriated~~
21 ~~may not be less than ten cents per capita nor more than fifty cents per capita of the population~~
22 ~~of such county as shown by the most recently published federal-state cooperative program for~~
23 ~~population estimates printed by the United States department of commerce. The appropriation~~
24 ~~shall be made pursuant to § 27A-5-9.~~

25 Section 95. That § 27B-4-4 be repealed.

1 ~~— 27B-4-4. County funds generated by this chapter shall be utilized for approved projects~~
2 ~~within the regions in which the counties are located. Regions, or counties may, in their discretion,~~
3 ~~utilize all or a portion of the funds available to them to purchase services from without their~~
4 ~~region. Designated state funds shall be utilized to match the county and municipality funds at a~~
5 ~~rate to be determined by the secretary of human services and to fund community services of a~~
6 ~~statewide nature.~~

7 Section 96. That § 27B-4-5 be repealed.

8 ~~— 27B-4-5. Funds generated by this chapter shall be used for the purposes of providing~~
9 ~~individual services, group services, or arranging for purchase of services in facilities approved~~
10 ~~by the department of human services.~~

11 Section 97. That § 27B-4-6 be repealed.

12 ~~— 27B-4-6. Facilities and services receiving financial assistance from funds under this chapter~~
13 ~~shall be approved by the department of human services and meet all applicable standards adopted~~
14 ~~by the department.~~

15 Section 98. That § 27B-4-8 be repealed.

16 ~~— 27B-4-8. All rules, regulations, and standards relating to the implementation of this chapter~~
17 ~~will be established using the procedures set forth in chapter 1-26.~~

18 Section 99. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Each county may annually budget and appropriate funds for the establishment, support, or
21 operation of community service providers pursuant to § 27A-5-9.

22 Section 100. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Funds budgeted and appropriated under this chapter shall be used by community service
25 providers approved by the Department of Human Services.

1 Section 101. That § 27B-5-1 be repealed.

2 ~~—27B-5-1. An individual may be temporarily admitted to a facility for appropriate purposes,~~
3 ~~including respite care, if an application for temporary admission is executed by a person legally~~
4 ~~empowered to make the application and if it is determined by the administrator of the facility that~~
5 ~~the individual is suitable for admission. The services to be provided to the individual shall be~~
6 ~~determined by mutual agreement between the facility and the person making the application,~~
7 ~~except that no individual may be temporarily admitted for more than thirty days.~~

8 Section 102. That § 27B-5-2 be repealed.

9 ~~—27B-5-2. An individual with a developmental disability other than mental retardation is~~
10 ~~eligible for temporary and voluntary admission pursuant to §§ 27B-5-1 to 27B-5-6, inclusive,~~
11 ~~but is not eligible for board-ordered admission.~~

12 Section 103. That § 27B-5-3 be repealed.

13 ~~—27B-5-3. An individual eighteen years of age or older may be admitted to a facility on a~~
14 ~~voluntary admission basis pursuant to § 27B-5-1 if an application for his admission is executed~~
15 ~~by the individual himself if he is competent to do so, or by his guardian if he is not competent to~~
16 ~~do so, and if it is determined that he is suitable for admission.~~

17 Section 104. That § 27B-5-4 be repealed.

18 ~~—27B-5-4. An individual under eighteen years of age may be admitted to a facility on a~~
19 ~~voluntary parental or guardian admission basis pursuant to § 27B-5-1 if an application for his~~
20 ~~admission is executed by his parent, guardian, or, in the absence of a parent or guardian, a person~~
21 ~~in loco parentis, and if it is determined that he is suitable for admission.~~

22 Section 105. That § 27B-5-5 be repealed.

23 ~~—27B-5-5. The application for admission pursuant to § 27B-5-1 shall contain the facts which~~
24 ~~are the basis for the assertion that the individual meets the criteria of a developmentally disabled~~
25 ~~person, names and addresses of any witness to the facts, and if known the name and address of~~

1 ~~the nearest relative or guardian of the individual.~~

2 Section 106. That § 27B-5-6 be repealed.

3 ~~—27B-5-6. An application for voluntary parental or guardian admission shall contain in large~~
4 ~~type and simple language the substance of §§ 27B-5-7 to 27B-5-16, inclusive. At the time of~~
5 ~~admission, the rights set forth in the application shall be explained to the resident if he is at least~~
6 ~~thirteen years of age and to the person who executed the application for his admission. In~~
7 ~~addition, a copy of the application shall be given to the aforementioned persons and to one other~~
8 ~~person if designated by a resident who is at least thirteen years of age. If the resident was not~~
9 ~~thirteen years of age at the time of his admission, the rights mentioned above shall be explained~~
10 ~~to him upon his thirteenth birthday.~~

11 Section 107. That § 27B-5-7 be repealed.

12 ~~—27B-5-7. Prior to the voluntary admission of an individual, the individual may be received~~
13 ~~by a facility for up to sixty days in order for a preadmission examination to be conducted. No~~
14 ~~individual may be voluntarily admitted unless he has been given a preadmission examination by~~
15 ~~the facility for the purpose of determining his suitability for admission.~~

16 Section 108. That § 27B-5-8 be repealed.

17 ~~—27B-5-8. The preadmission examination shall include mental, physical, social, and~~
18 ~~educational evaluations, and shall be conducted under the supervision of a qualified~~
19 ~~developmental disabilities professional. The results of the examination shall be contained in a~~
20 ~~report to be made part of the individual's records, and the report shall also contain a statement~~
21 ~~indicating the least restrictive alternatives for treatment of the examined individual.~~

22 Section 109. That § 27B-5-9 be repealed.

23 ~~—27B-5-9. Objections to the admission of any voluntarily admitted resident, may be filed with~~
24 ~~the board of mental retardation for the county in which the individual is a resident or the county~~
25 ~~in which the facility is located by any person found suitable by the county board or by the~~

1 ~~resident himself if he is at least thirteen years of age. An objection may be made not more than~~
2 ~~thirty days after admission of the resident, but may be subsequently at any twelve-month interval~~
3 ~~following the date of the original objection or, if an original objection was not made, at any~~
4 ~~twelve-month interval following the date of admission.~~

5 Section 110. That § 27B-5-10 be repealed.

6 ~~—27B-5-10. Any objection to the admission of a voluntarily admitted resident shall be made~~
7 ~~in writing, except that if made by the resident, it may be communicated to the chairman of the~~
8 ~~board of mental retardation by any means, including but not limited to oral communication or~~
9 ~~informal letter. If the resident informs the facility that he desires to object to his admission, the~~
10 ~~facility shall assist him in submitting his objection to the board.~~

11 Section 111. That § 27B-5-11 be repealed.

12 ~~—27B-5-11. Upon receiving notice of an objection to the admission of a voluntarily admitted~~
13 ~~resident, the board of mental retardation shall schedule a hearing to be held within seven days,~~
14 ~~excluding Sundays and holidays. The board shall notify the person who objected, the resident,~~
15 ~~the person who executed the application, and the administrator of the facility of the time and~~
16 ~~place of the hearing.~~

17 ~~—The hearing shall be governed by those provisions of §§ 27B-7-2 to 27B-7-16, inclusive, that~~
18 ~~the board deems necessary to ensure that all relevant information is brought to its attention, and~~
19 ~~by the provisions of §§ 27B-5-12 to 27B-5-14, inclusive. Every resident shall be entitled to be~~
20 ~~represented by counsel.~~

21 Section 112. That § 27B-5-12 be repealed.

22 ~~—27B-5-12. The board of mental retardation shall sustain an objection to the admission of a~~
23 ~~voluntarily admitted resident and order the discharge of the resident if the resident is not in need~~
24 ~~of the care and treatment which is available at the facility or if an alternative to care and~~
25 ~~treatment in a facility is available and adequate to meet the resident's needs.~~

1 Section 113. That § 27B-5-13 be repealed.

2 ~~—27B-5-13. Unwillingness or inability of the parent, guardian, or person in loco parentis to~~
3 ~~provide for a voluntarily admitted resident's management, care, or residence shall not be grounds~~
4 ~~for refusing to sustain the objection and order discharge, but in that event the board of mental~~
5 ~~retardation may cause a proceeding to be convened in an appropriate court to ensure that~~
6 ~~suitable management, care, or residence for the resident is provided after his discharge.~~

7 Section 114. That § 27B-5-14 be repealed.

8 ~~—27B-5-14. Unless the board of mental retardation sustains an objection and orders the~~
9 ~~discharge of a voluntarily admitted resident, the facility may continue to provide residential and~~
10 ~~other services to the resident.~~

11 Section 115. That § 27B-5-15 be repealed.

12 ~~—27B-5-15. At least once annually each voluntarily admitted resident shall be reexamined to~~
13 ~~determine whether he is still suitable for residential habilitation.~~

14 Section 116. That § 27B-5-16 be repealed.

15 ~~—27B-5-16. A facility may detain a voluntarily admitted resident for a period not exceeding~~
16 ~~seven days from the time that the person who executed the application for the resident's~~
17 ~~admission gives written notice to the facility of his intention that the resident leave the facility.~~

18 Section 117. That § 27B-5-17 be repealed.

19 ~~—27B-5-17. Every person voluntarily entering a mental retardation facility shall be given a~~
20 ~~separate written notice of release procedures and be orally informed of release procedures.~~
21 ~~Detailed release procedures for voluntary admittance shall be permanently and prominently~~
22 ~~displayed in every ward. All persons voluntarily entering the facility regardless of age shall have~~
23 ~~the right to discharge upon request, as provided in § 27B-5-16.~~

24 Section 118. That § 27B-5-18 be repealed.

25 ~~—27B-5-18. The administrator of a facility may at any time, discharge a voluntarily admitted~~

1 resident whom the administrator deems suitable for discharge. If a resident was admitted on a
2 voluntary parental or guardian admission basis, the administrator shall notify the parent or
3 guardian of the discharge ten days prior to the resident's release. If board proceedings are
4 pending, the administrator shall notify the county board of mental retardation of the discharge.
5 In all discharges, the administrator shall notify the county auditor:

6 Section 119. That § 27B-6-1 be repealed.

7 ~~—27B-6-1. The county board of mental retardation shall make investigations of any complaints~~
8 ~~made by a responsible individual who alleges that a person is mentally retarded and not receiving~~
9 ~~proper care or education. If the county board determines that a person is mentally retarded, not~~
10 ~~receiving proper care and education, and there is no responsible relative to take custody of the~~
11 ~~person or petition for guardianship, the board shall notify the secretary of human services:~~

12 Section 120. That § 27B-6-2 be repealed.

13 ~~—27B-6-2. For the purposes of such investigation and examination as required in this chapter,~~
14 ~~each county board of mental retardation shall have access to the school records of any case under~~
15 ~~investigation; and all school superintendents, are hereby required to furnish such records upon~~
16 ~~demand. It shall be the duty of the department of social services, to assist the county board of~~
17 ~~mental retardation in making its investigations as provided in § 27B-6-1.~~

18 Section 121. That § 27B-6-3 be repealed.

19 ~~—27B-6-3. If any resident of a facility eighteen years of age or older, does not have a guardian~~
20 ~~or conservator and there is no one qualified and willing to petition for letters of guardianship or~~
21 ~~conservatorship, and the administrator of the facility determines that the resident requires the~~
22 ~~protective services of a guardian or conservator, the administrator shall inform the secretary of~~
23 ~~human services:~~

24 Section 122. That § 27B-6-4 be repealed.

25 ~~—27B-6-4. Six months prior to the eighteenth birthday of each resident in a facility, the~~

1 resident shall be evaluated by the facility for the purpose of determining whether he is competent
2 to execute an application for voluntary admission.

3 Section 123. That § 27B-6-5 be repealed.

4 ~~— 27B-6-5. If it is determined by the facility after evaluation pursuant to § 27B-6-4 that the~~
5 ~~resident is not competent to execute an application for voluntary admission or that the resident~~
6 ~~otherwise requires the protective services of a guardian, the resident's parent, or if none, another~~
7 ~~interested person or entity, shall be so notified and requested to file a petition for the~~
8 ~~appointment of a guardian. If no petition is filed, the administrator shall inform the secretary of~~
9 ~~human services.~~

10 Section 124. That § 27B-7-1 be repealed.

11 ~~— 27B-7-1. A board of mental retardation may order the admission to a facility of an individual~~
12 ~~who is mentally retarded and is not able, unassisted, to properly manage or care for his person~~
13 ~~so as to make it necessary or advisable for him to be under care.~~

14 Section 125. That § 27B-7-2 be repealed.

15 ~~— 27B-7-2. Any person may file with a board of mental retardation a verified petition which~~
16 ~~asserts that an individual meets the criteria for board-ordered admission as specified in~~
17 ~~§ 27B-7-1.~~

18 Section 126. That § 27B-7-3 be repealed.

19 ~~— 27B-7-3. If a petition filed pursuant to § 27B-7-2 appears on its face to be sufficient, the~~
20 ~~board of mental retardation shall order that the individual be examined and reports be prepared.~~
21 ~~The board shall appoint a qualified person who may be an employee of the state or the county~~
22 ~~to make the examination and to prepare a report containing the information required by~~
23 ~~§ 27B-7-6. The board shall give written notice of the petition to the department of human~~
24 ~~services which shall prepare a report containing a review of the individual's service needs and a~~
25 ~~recommendation as to appropriate service locations. The reports shall be filed within sixty days~~

1 from the receipt of the written notice from the board ordering the examination and reports:

2 Section 127. That § 27B-7-4 be repealed.

3 ~~—27B-7-4. If in the judgment of the board of mental retardation it becomes apparent that the~~
4 ~~individual will not comply with an order of examination, the board may seek the assistance of a~~
5 ~~peace officer to take the individual into protective custody and transport him to a facility or other~~
6 ~~suitable place for the ordered examination. It will be procedural in these circumstances that no~~
7 ~~record of arrest be charged against the individual.~~

8 Section 128. That § 27B-7-5 be repealed.

9 ~~—27B-7-5. After examination pursuant to § 27B-7-3 the individual shall be allowed to return~~
10 ~~home unless in the judgment of the board of mental retardation he requires immediate admission~~
11 ~~to a facility for the protection of himself or others pending the hearing, in which case the board~~
12 ~~shall enter an order to that effect.~~

13 Section 129. That § 27B-7-6 be repealed.

14 ~~—27B-7-6. The report required by § 27B-7-3 shall contain:~~

15 ~~—(1)—Evaluations of the individual's mental, physical, social, and educational condition;~~

16 ~~—(2)—A conclusion as to whether the individual meets the criteria for board-ordered~~
17 ~~admission specified in § 27B-7-1;~~

18 ~~—(3)—A list of available forms of care and treatment which may serve as an alternative to~~
19 ~~admission to a facility;~~

20 ~~—(4)—A recommendation as to the most appropriate living arrangement for the individual;~~
21 ~~and~~

22 ~~—(5)—The signatures of a physician or psychologist who performed an examination serving~~
23 ~~in part as the basis of the report.~~

24 Section 130. That § 27B-7-7 be repealed.

25 ~~—27B-7-7. The petition shall be dismissed by the board of mental retardation unless a physician~~

1 or a psychologist concludes, and that conclusion is stated in the report, that the individual meets
2 the criteria for board-ordered admission:

3 Section 131. That § 27B-7-8 be repealed.

4 ~~— 27B-7-8. Upon receipt of a petition and reports as provided for in §§ 27B-7-2 and 27B-7-3,~~
5 ~~the board of mental retardation shall:~~

6 ~~— (1) — Fix a date for a hearing within ten days, excluding Saturdays, Sundays and holidays~~
7 ~~of the board receipt of the reports;~~

8 ~~— (2) — Fix a place for a hearing, either in a facility or other convenient place, within or~~
9 ~~without the county;~~

10 ~~— (3) — Give five days written notice of the time and place of any hearing to the petitioner, to~~
11 ~~the individual asserted to meet the criteria for board-ordered admission, to the~~
12 ~~individual's attorney, to the prosecuting attorney or other attorney as specified in §~~
13 ~~27B-7-10, to the administrator of any facility to which the individual is admitted, and~~
14 ~~to the secretary of human services; and~~

15 ~~— (4) — After the hearing, give copies of all orders to the persons identified in subdivision (3).~~

16 Section 132. That § 27B-7-9 be repealed.

17 ~~— 27B-7-9. Hearings convened to determine whether an individual meets the criteria for~~
18 ~~board-ordered admission shall be governed by §§ 27B-7-1 to 27B-7-16, inclusive, except that~~
19 ~~they shall not perforce be applicable to the hearing provided for in §§ 27B-5-9 to 27B-5-14,~~
20 ~~inclusive.~~

21 Section 133. That § 27B-7-10 be repealed.

22 ~~— 27B-7-10. The state's attorney of the county in which a board of mental retardation is~~
23 ~~meeting shall participate, either in person or by assistant, in hearings convened by the board of~~
24 ~~his county under this chapter, except that a state's attorney need not participate in or be present~~
25 ~~at a hearing whenever a petitioner or some other appropriate person has retained private counsel~~

1 who will be present before the board and will present to the board the evidence for a finding that
2 the individual meets the criteria for board-ordered admission.

3 Section 134. That § 27B-7-11 be repealed.

4 ~~—27B-7-11. The individual asserted to meet the criteria for board-ordered admission shall be~~
5 ~~represented by counsel, such representation not being subject to waiver, and is entitled:~~

6 ~~—(1)—To be present at the hearing;~~

7 ~~—(2)—To obtain a continuance in order to adequately prepare a case;~~

8 ~~—(3)—To present documents and witnesses;~~

9 ~~—(4)—To cross-examine witnesses;~~

10 ~~—(5)—To require testimony in person from one physician or one psychologist who has~~
11 ~~personally examined him as provided in §§ 27B-7-3 and 27B-7-6; and~~

12 ~~—(6)—To waive the hearing, in which case the board of mental retardation may make a~~
13 ~~finding of fact and judgment based upon the written and other evidence before it.~~

14 Section 135. That § 27B-7-12 be repealed.

15 ~~—27B-7-12. Counsel appointed for an individual pursuant to this title shall be compensated in~~
16 ~~a reasonable and just manner for such services and for necessary expenses and costs incident to~~
17 ~~the proceedings in an amount to be fixed by the circuit judge. The costs described shall be~~
18 ~~allowed and paid out of the county mental retardation fund by the county treasurer or, if there~~
19 ~~is not a sufficient amount in said fund, they may be paid out of the general fund.~~

20 Section 136. That § 27B-7-13 be repealed.

21 ~~—27B-7-13. If the board of mental retardation finds that an individual does not meet the~~
22 ~~criteria for board-ordered admission, the board shall enter a finding to that effect, shall dismiss~~
23 ~~the petition, and shall direct that the individual be discharged if he has been admitted to a facility~~
24 ~~prior to the hearing.~~

25 Section 137. That § 27B-7-14 be repealed.

1 ~~—27B-7-14. Prior to ordering a course of care and treatment pursuant to § 27B-7-15, the~~
2 ~~board of mental retardation shall consider ordering a course of care and treatment which is an~~
3 ~~alternative to admission to a facility. To that end the board shall review the report submitted to~~
4 ~~it pursuant to § 27B-7-3.~~

5 Section 138. That § 27B-7-15 be repealed.

6 ~~—27B-7-15. If the individual is found to meet the criteria for admission, the board of mental~~
7 ~~retardation may order the individual to:~~

8 ~~—(1) Be admitted to a facility designated by the department of human services;~~

9 ~~—(2) Be admitted to any facility or private treatment center;~~

10 ~~—(3) Be placed under the control and care of the department of human services for~~
11 ~~placement in appropriate programs; or~~

12 ~~—(4) Receive care and treatment other than admission to a facility for a period of one year.~~

13 Section 139. That § 27B-7-16 be repealed.

14 ~~—27B-7-16. If the board of mental retardation finds that a program of care and treatment other~~
15 ~~than admission to a facility is adequate to meet the individual's care and treatment needs, the~~
16 ~~board shall order the individual to receive whatever care and treatment is appropriate pursuant~~
17 ~~to § 27B-7-15.~~

18 Section 140. That § 27B-7-17 be repealed.

19 ~~—27B-7-17. A person providing alternative care and treatment to an individual pursuant to~~
20 ~~§ 27B-7-15 may terminate the alternative care and treatment to an individual whom the provider~~
21 ~~thereof deems suitable for discharge and shall terminate the alternative care and treatment when~~
22 ~~the individual no longer meets the criteria for board-ordered admission.~~

23 ~~—Upon termination of alternative care and treatment, the board shall be so notified by the~~
24 ~~provider thereof.~~

25 Section 141. That § 27B-7-18 be repealed.

1 ~~— 27B-7-18. If at any time during the one-year period, provided for in subdivision (4) of~~
2 ~~§ 27B-7-15, it comes to the attention of the board of mental retardation either that an individual~~
3 ~~ordered to undergo a program of alternative care and treatment is not complying with the order~~
4 ~~or that the alternative care and treatment is not sufficient, the board may without a hearing and~~
5 ~~based upon the record and other available information:~~

6 ~~— (1) Consider other alternatives to admission to a facility, modify its original order, and~~
7 ~~direct the individual to undergo another program of alternative care and treatment for~~
8 ~~the remainder of the one-year period; or~~

9 ~~— (2) Enter a new order pursuant to § 27B-7-15 directing the individual be admitted to a~~
10 ~~facility. If the individual refuses to comply with this order, the board may direct a~~
11 ~~peace officer to take the individual into protective custody and transport him to that~~
12 ~~facility.~~

13 Section 142. That § 27B-7-19 be repealed.

14 ~~— 27B-7-19. The Department of Social Services may not order the admittance of an individual~~
15 ~~to the Redfield Developmental Center.~~

16 Section 143. That § 27B-7-20 be repealed.

17 ~~— 27B-7-20. Prior to ordering the admission of an individual, the board of mental retardation~~
18 ~~shall inquire into the adequacy of care and treatment to be provided to the individual by the~~
19 ~~facility to which the individual is to be admitted. Admission may not be ordered unless the facility~~
20 ~~can provide the individual with care and treatment which is adequate and appropriate to the~~
21 ~~individual's condition. No mentally retarded person may be admitted to the Redfield~~
22 ~~Developmental Center on civil commitment if suitable services and programs are available in the~~
23 ~~individual's community.~~

24 Section 144. That § 27B-7-21 be repealed.

25 ~~— 27B-7-21. Preference between a state facility and other community centers shall be given to~~

1 ~~the facility which is located nearest to the individual's residence, except when the individual~~
2 ~~requests otherwise or there are other compelling reasons for an order reversing the preference.~~

3 Section 145. That § 27B-7-22 be repealed.

4 ~~—27B-7-22. The administrator of a facility shall discharge a resident admitted by a board order~~
5 ~~when the resident no longer meets the criteria for board-ordered admission. The administrator~~
6 ~~shall notify the county board of mental retardation and the county auditor of the discharge.~~

7 Section 146. That § 27B-7-23 be repealed.

8 ~~—27B-7-23. If, upon the discharge of an individual admitted by board of mental retardation~~
9 ~~order or termination of alternative care and treatment to an individual receiving care and~~
10 ~~treatment pursuant to § 27B-7-15, it is determined that he would benefit from the receipt of~~
11 ~~further care and treatment, the facility or provider of alternative care and treatment may offer~~
12 ~~appropriate care and treatment to him on an outpatient basis, or may aid him to obtain care and~~
13 ~~treatment from another source.~~

14 Section 147. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Each county shall form a county review board which shall hear involuntary commitment
17 hearings and review continued commitments of persons with developmental disabilities in
18 accordance with sections 160 and 162 of this Act. The county review board shall consist of two
19 people appointed by the board of county commissioners for a three-year term and a magistrate
20 judge or lawyer appointed by the presiding circuit judge of the circuit in which the county is
21 situated. The two members appointed by the county commission shall be residents of the county.
22 The member appointed by the presiding circuit judge need not be a resident of the county. The
23 members of the county review board who are appointed by the board of county commissioners
24 may be appointed to more than one term, but may not serve more than two consecutive terms.
25 The law-trained magistrate or lawyer shall serve as the chair of the county review board. The

1 state's attorney for the county may not serve on the county review board. Each appointing
2 authority may also appoint alternates. Pursuant to chapter 1-24, two or more counties may
3 jointly contract to establish a county review board to serve all contracting counties.

4 Section 148. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Before entering upon the duties of office, each member of a county review board shall take
7 and subscribe an oath or affirmation to support the Constitution of the United States and the
8 Constitution of this state, and to discharge faithfully all official duties according to law, which
9 oath shall be filed in the office of the county auditor.

10 Section 149. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The county review board has jurisdiction over all applications or petitions for involuntary
13 commitment or for the safekeeping of persons subject to involuntary commitment within its
14 county, except in cases otherwise specially provided for. The board may issue subpoenas and
15 compel obedience thereto, and do any act of a court necessary and proper for the purpose of
16 discharging the duties required of it.

17 Section 150. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Any interested person may file with the chairperson of the county review board a verified
20 petition which asserts that a person meets the criteria for board-ordered commitment as specified
21 in section 160 of this Act. If any person is alleged to have a developmental disability and to be
22 in such condition that immediate intervention is necessary for the protection from the physical
23 harm of self or others, any person, eighteen years of age or older, may petition the chairperson
24 of the county review board where such person with an alleged developmental disability is found,
25 stating the factual basis for concluding that such person is developmentally disabled and in

1 immediate need of intervention. The petition shall be upon a form and be verified by affidavit.

2 The petition shall include the following:

3 (1) A statement by the petitioner that the petitioner believes, on the basis of personal
4 knowledge, that such person is a danger to self or others;

5 (2) The specific nature of the danger;

6 (3) A summary of the information upon which the statement of danger is based;

7 (4) A statement of facts which caused the person to come to the petitioner's attention;

8 (5) The address and signature of the petitioner and a statement of the petitioner's interest
9 in the case; and

10 (6) The name of the person to be evaluated, the address, age, marital status, and
11 occupation of the person, and the name and address of the person's nearest relative.

12 Section 151. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 If a petition filed pursuant to section 150 of this Act appears on its face to be sufficient, the
15 chairperson of the county review board shall order that a psychiatric or psychological evaluation
16 be performed and a report of the findings and recommendations be completed. The board shall
17 appoint a licensed psychologist or psychiatrist to make the examination and to prepare a report
18 within five working days from the date the petition is filed, containing the information required
19 in section 154 of this Act. If it appears, based upon the foregoing evaluation, the criteria for
20 commitment is met, a copy of the report shall be provided to Department of Human Services.
21 If the person desires an independent psychiatric or psychological evaluation, the person may
22 obtain one at that person's own expense.

23 Section 152. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
24 as follows:

25 The chairperson of the county review board shall give written notice of the petition to the

1 Department of Human Services which shall prepare a report containing a review of the person's
2 supports and service needs and a recommendation as to appropriate service locations. The
3 reports shall be filed with the county review board within forty-five calendar days from receipt
4 of the written notice from the board ordering the examination and report.

5 Section 153. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 If requested, information shall be disclosed:

- 8 (1) Pursuant to orders or subpoenas of a court of record or subpoenas of the Legislature
9 or chairperson of the county review board;
- 10 (2) To a prosecuting or defense attorney or to a qualified mental retardation professional
11 as necessary for participation in a proceeding governed by this title;
- 12 (3) To an attorney representing a person who is presently subject to the authority of this
13 title or who has been discharged when that person has given consent;
- 14 (4) If necessary in order to comply with another provision of law;
- 15 (5) To the Department of Human Services if the information is necessary to enable the
16 Department of Human Services to discharge a responsibility placed upon it by law;
17 or
- 18 (6) To a states attorney or the attorney general for purpose of investigation of an alleged
19 criminal act either committed by or upon a person with a developmental disability.

20 Section 154. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The report required by section 151 of this Act shall contain:

- 23 (1) Evaluations of the person's mental, physical, and emotional status, and review of
24 social and educational history; and
- 25 (2) A statement as to whether the person meets the criteria for board-ordered

1 commitment specified in section 160 of this Act.

2 Section 155. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
3 as follows:

4 If the county review board finds that a person meets the criteria in section 160 of this Act,
5 the board shall enter a finding, based on the criteria in § 28-13-3, of the county of residence of
6 the person or a finding that the person is a nonresident of this state.

7 Section 156. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Upon receipt of a petition and reports as provided for in sections 150, 151, and 154 of this
10 Act, the chairperson of the county review board shall:

- 11 (1) Fix a date, time, and place for a hearing within five days, excluding Saturdays,
12 Sundays, and holidays, of the board's receipt of the reports;
- 13 (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the
14 time, date, and place of the hearing to the petitioner, to the person alleged to meet the
15 criteria for board-ordered commitment, to the psychologist or psychiatrist completing
16 the report, to the person's attorney, or other attorney as specified in section 158 of
17 this Act, to the director of any facility in which the person is being served, and to the
18 secretary of the Department of Human Services; and
- 19 (3) Following the hearing, provide copies of all orders to the persons identified in
20 subdivision (2).

21 Section 157. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Hearings convened to determine whether a person meets the criteria for board-ordered
24 commitment shall be governed by sections 150 to 166, inclusive, of this Act.

25 Section 158. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The state's attorney of the county in which a county review board is meeting shall participate,
3 either in person or by assistant, in hearings convened by the board under this chapter.

4 Section 159. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The petition shall be dismissed by the chairperson of the county review board unless the
7 evaluating psychiatrist or psychologist concludes, in writing, that the person meets the criteria
8 for board-ordered commitment. If the county review board finds that a person does not meet the
9 criteria for board-ordered commitment, the board shall enter a finding to that effect, shall dismiss
10 the petition, and shall direct that the person be immediately discharged if the person has been
11 detained prior to the hearing.

12 Section 160. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A county review board may order the involuntary commitment of a person if the review
15 board finds by clear and convincing evidence that the person cannot exercise informed consent
16 to treatment by reason of that person's developmental disability, and that the person poses a
17 danger of physical injury to self or others making it necessary or advisable to receive appropriate
18 supports and services. If the person is found to meet the criteria for involuntary commitment, the
19 county review board may order the person to be placed under the control and care of the
20 Department of Human Services for placement in appropriate programs. If the person refuses to
21 comply with this order, the board may direct a peace officer to take the person into protective
22 custody.

23 Section 161. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
24 as follows:

25 The county review board may issue a detention order and direct a peace officer to

1 immediately take the person to a community service provider or facility recommended by the
2 Department of Human Services, with the approval of the provider, to be detained for purposes
3 of an examination if the county review board finds from the petition, from other statements under
4 oath, or from reports of physicians, psychiatrists, psychologists, or other qualified mental
5 retardation professionals that there is reasonable basis to believe that the person to be committed
6 poses an immediate danger of physical injury to self or others.

7 If the county review board issues a detention order based on a petition that did not include
8 a recommendation for detention by a psychiatrist or psychologist, the person shall be examined
9 by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order,
10 excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county
11 review board. If the report is not received by the county review board within forty-eight hours,
12 excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement
13 with the community service provider. The report shall include:

- 14 (1) Whether the person may be diagnosed as having a developmental disability;
- 15 (2) Whether the person is capable of giving informed consent and whether the person has
16 agreed to voluntary admission;
- 17 (3) Whether supports and services are available and appropriate in lieu of county review
18 board proceedings; and
- 19 (4) Whether the person continues to pose an immediate danger of physical injury to self
20 or others.

21 Upon receipt of the report by the county review board, if it is determined that the person
22 continues to pose an immediate danger of physical injury to self or others, placement with a
23 community service provider shall continue while the commitment process is pending. If the
24 person does not continue to pose an immediate danger of physical injury to self or others, the
25 person shall be released from placement with the community service provider pending further

1 proceedings. No record of arrest may be charged against the person.

2 Section 162. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The county review board shall review the commitment order and accompanying information
5 on at least an annual basis to make a determination of the continued need and supporting
6 justification for commitment. Prior to the annual review, the developmental disability community
7 service provider shall provide information to the county review board that issued the original
8 commitment order regarding the person's supports, services, and progress. Following ten days
9 notice to the person, the person's attorney, and the Department of Human Services, the county
10 review board shall hold a review hearing. The review hearing shall include participation by the
11 state's attorney, Department of Human Services, the community service provider, and the
12 person's attorney. The rights and procedures applicable during an initial commitment hearing are
13 applicable to review hearings. A petition pursuant to section 58 of this Act need not be filed. At
14 the conclusion of the review hearing, the county review board may issue an order of continued
15 commitment or immediately discharge the person from involuntary commitment if the conditions
16 in section 160 of this Act justifying commitment no longer exist.

17 Section 163. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The Department of Human Services shall notify the chairperson of the county review board
20 of the death of any person with a developmental disability committed by the review board.

21 Section 164. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The person alleged to meet the criteria for board-ordered commitment shall be represented
24 by counsel, such representation not being subject to waiver, and is entitled:

25 (1) To be present at the hearing;

- 1 (2) To obtain a continuance in order to adequately prepare a case;
- 2 (3) To present documents and witnesses;
- 3 (4) To cross-examine witnesses; and
- 4 (5) To require testimony in person from the psychiatrist or psychologist who performed
- 5 the evaluation required in section 151 of this Act.

6 Section 165. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Counsel appointed for a person pursuant to this title shall be reasonably compensated for
9 such services and for necessary expenses and costs incident to the proceedings in an amount to
10 be fixed by the circuit judge. The costs described shall be allowed and paid out of county funds
11 and may not be assessed against the person with a developmental disability.

12 Section 166. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Costs of proceedings pursuant to this title, including costs for transportation and any
15 incidental costs of the person with a developmental disability, shall be reasonably compensated
16 in an amount to be determined by the county auditor. The costs described shall be allowed and
17 paid for out of county funds and may not be assessed against the person with a developmental
18 disability.

19 Section 167. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 No person is incompetent to manage his or her affairs, to contract, to hold professional or
22 occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote,
23 or to make a will solely by reason of a diagnosis of a developmental disability, or by reason of
24 a commitment by a county review board.

25 Section 168. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A person may within thirty days appeal a final order of a county review board pursuant to
3 any hearing or review conducted under this title. In the case of a minor, or a person for whom
4 a guardian has been appointed, such right to appeal may be exercised on behalf of the person.
5 The person shall be advised both verbally and in writing of this right at the conclusion of any
6 proceedings. The appeal shall be conducted in accordance with the provisions of chapter 1-26.

7 Section 169. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Upon exhaustion of all administrative remedies, a person has the right to file an appeal in the
10 appropriate circuit court pursuant to chapter 1-26.

11 Section 170. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Any person involuntarily committed by a county review board and any person confined or
14 in any manner detained or restrained is entitled to the benefit of a writ of habeas corpus. If the
15 court finds that the criteria in section 160 of this Act are met, the court may authorize continued
16 involuntary commitment. Such authorization is not a bar to the issuing of the writ the second
17 time if it is alleged that the criteria in section 160 of this Act are no longer met.

18 Section 171. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The secretary of the Department of Human Services may, pursuant to chapter 1-26, adopt
21 reasonable and necessary rules to carry out the duties of the department as assigned by law.

22 Section 172. That § 27B-8-1 be repealed.

23 ~~— 27B-8-1. The individual privacy and dignity of each person affected by this title shall be~~
24 ~~respected at all times and upon all occasions, including any occasion when the person is taken~~
25 ~~into custody, detained or transported in accordance with the provisions of this title.~~

1 Section 173. That § 27B-8-2 be repealed.

2 ~~—27B-8-2. Any person in a facility, if otherwise qualified, shall have the right to:~~

3 ~~—(1) Refuse drugs, electric shock, insulin shock, psychosurgery, to participate in any~~
4 ~~research projects, work for the institution, or be photographed or fingerprinted;~~

5 ~~—(2) Remain silent and fully clothed;~~

6 ~~—(3) Be allowed access to toilet facilities upon request, to have limited access to his own~~
7 ~~money unless a conservator has been appointed and keep as much money in his~~
8 ~~personal possession as he deems necessary, to purchase personal articles such as~~
9 ~~variety store items, and at least two hours of physical exercise each day;~~

10 ~~—(4) Receive any visitors during regular visiting hours, send and receive uncensored and~~
11 ~~unopened mail and be given adequate writing paper, pencils, envelopes and stamps,~~
12 ~~and have access to a telephone between the hours of 9:00 a.m. and 8:00 p.m. Local~~
13 ~~calls shall be allowed without charge and the person shall be allowed long distance~~
14 ~~calls if he is able to pay the institution for them or can charge them to another number;~~

15 ~~—(5) Be given a copy of the statutes under which he is being held upon request; and apply~~
16 ~~for habeas corpus and be given detailed written instructions on how to apply therefor;~~

17 ~~—(6) Wear his own clothes and keep his own toilet articles, and have adequate storage~~
18 ~~space for his personal effects; and~~

19 ~~—(7) Vote, and hold a driver's license.~~

20 ~~—Reasonable limitations may be placed on these rights if each limitation is essential in order~~
21 ~~to prevent the resident from violating a law or to prevent substantial and serious physical or~~
22 ~~mental harm to the resident or other residents, and if each limitation is documented in the~~
23 ~~patient's record and approved by the administrator or his designee.~~

24 Section 174. That § 27B-8-3 be repealed.

25 ~~—27B-8-3. A written copy of the rights contained in § 27B-8-1 shall be distributed to every~~

1 ~~person admitted to a facility and shall also be prominently displayed on every ward.~~

2 Section 175. That § 27B-8-4 be repealed.

3 ~~—27B-8-4. Nothing in this title shall prevent the filing of or deprive any individual of the~~
4 ~~benefits of a writ of habeas corpus. All persons confined or in any manner detained as mentally~~
5 ~~retarded shall be entitled to the writ, and the question of mental retardation shall be decided at~~
6 ~~the hearing.~~

7 Section 176. That § 27B-8-5.1 be repealed.

8 ~~—27B-8-5.1. Except for behavior modification programs provided for in § 27B-8-5.5, the use~~
9 ~~of physical restraints on residents in state institutions for the mentally retarded is governed by~~
10 ~~the following:~~

11 ~~—(1) The facility may allow the use of physical restraint on a resident only if absolutely~~
12 ~~necessary to protect the resident from injuring himself or others or as part of an~~
13 ~~approved behavioral program;~~

14 ~~—(2) The facility may not use physical restraint as punishment, for the convenience of the~~
15 ~~staff, or as a substitute for activities or treatment;~~

16 ~~—(3) The facility must have a written policy that specifies how and when physical restraint~~
17 ~~may be used, the staff members who must authorize its use and the method for~~
18 ~~monitoring and controlling its use;~~

19 ~~—(4) An order for physical restraint may not be in effect longer than twelve hours;~~

20 ~~—(5) Appropriately trained staff must check a resident placed in physical restraint at least~~
21 ~~every thirty minutes and must keep a record of these checks; and~~

22 ~~—(6) A resident who is in a physical restraint must be given an opportunity for exercise and~~
23 ~~motion for a period of not less than ten minutes during each two hours of restraint.~~

24 Section 177. That § 27B-8-5.2 be repealed.

25 ~~—27B-8-5.2. Mechanical devices used for physical restraint shall be designed and used in a way~~

1 ~~that causes the resident no physical injury and the least possible physical discomfort. For~~
2 ~~purposes of this section, a totally enclosed crib or barred enclosure is physical restraint, while~~
3 ~~mechanical supports used to achieve proper body positions and balance are not physical~~
4 ~~restraints.~~

5 Section 178. That § 27B-8-5.3 be repealed.

6 ~~—27B-8-5.3. The facility may not use chemical restraint excessively, as punishment, for the~~
7 ~~convenience of staff or as a substitute for activities or treatment.~~

8 Section 179. That § 27B-8-5.4 be repealed.

9 ~~—27B-8-5.4. Terms used in §§ 27B-8-5.5 to 27B-8-5.7, inclusive, mean:~~

10 ~~—(1)—"Aversive stimuli," things or events that the resident finds unpleasant or painful that~~
11 ~~are used to immediately discourage undesired behavior;~~

12 ~~—(2)—"Time out," a procedure designed to improve a resident's behavior by removing~~
13 ~~positive reinforcement when his behavior is undesirable.~~

14 Section 180. That § 27B-8-5.5 be repealed.

15 ~~—27B-8-5.5. Behavior modification programs involving the use of aversive stimuli or time out~~
16 ~~devices shall be:~~

17 ~~—(1)—Reviewed and approved by the Human Rights Committee;~~

18 ~~—(2)—Conducted only with the consent of the affected resident's parents or guardian; and~~

19 ~~—(3)—Described in written plans that are kept on file.~~

20 Section 181. That § 27B-8-5.6 be repealed.

21 ~~—27B-8-5.6. A physical restraint used as a time out device may be applied only during~~
22 ~~behavior modification exercises and only in the presence of the programmer.~~

23 Section 182. That § 27B-8-5.7 be repealed.

24 ~~—27B-8-5.7. For time out purposes, time out devices and aversive stimuli may not be used for~~
25 ~~longer than one hour, and then only during the behavior modification program and only under~~

1 ~~the supervision of the programmer.~~

2 Section 183. That § 27B-8-6 be repealed.

3 ~~—27B-8-6. Subject to reasonable rules of the facility, each resident in a facility shall have the~~
4 ~~right to communicate freely and privately with persons residing outside the facility by mail,~~
5 ~~telephone and in person unless such communication is limited, in writing, with the approval of~~
6 ~~the administrator because such limitation is essential to prevent substantial and serious physical~~
7 ~~or mental harm to the resident.~~

8 Section 184. That § 27B-8-7 be repealed.

9 ~~—27B-8-7. A resident shall be able to communicate with his attorney or private physician~~
10 ~~without limitations subject to the facilities' normal access restrictions.~~

11 Section 185. That § 27B-8-8 be repealed.

12 ~~—27B-8-8. Religious services shall be made available to residents on a voluntary basis in~~
13 ~~accordance with their needs, desires and capabilities and also in accordance with their basic right~~
14 ~~of freedom of religion.~~

15 Section 186. That § 27B-8-9 be repealed.

16 ~~—27B-8-9. A medical examination by a licensed physician shall be made within forty-eight~~
17 ~~hours, excluding Saturdays, Sundays and holidays, of a resident's admission to a facility. A~~
18 ~~psychological and intellectual evaluation shall be made within seventy-two hours after admission,~~
19 ~~if such examination has not previously been made.~~

20 Section 187. That § 27B-8-10 be repealed.

21 ~~—27B-8-10. Within one month after a resident's admission to a facility, a qualified~~
22 ~~developmental disabilities professional shall:~~

23 ~~—(1)— Review and update the preadmission evaluation;~~

24 ~~—(2)— Make a prognosis that can be used for programming and placement;~~

25 ~~—(3)— Give a comprehensive evaluation; and~~

1 ~~(4) Formulate an individual habilitation plan as provided in § 27B-8-11.~~

2 Section 188. That § 27B-8-11 be repealed.

3 ~~27B-8-11. Each resident shall have the right to the implementation of an individualized~~
4 ~~habilitation program which includes establishment, maintenance, and implementation of those~~
5 ~~programs that will ensure the optimal development or restoration of him physically,~~
6 ~~psychologically, socially, and vocationally. Specific habilitation services shall focus on the~~
7 ~~maximum achievement of self-help skills, social confidence including communication skills,~~
8 ~~vocational confidence and independent living. A habilitation program shall not consist solely of~~
9 ~~chemical or drug therapy.~~

10 Section 189. That § 27B-8-12 be repealed.

11 ~~27B-8-12. Each resident shall have the right to a comprehensive individualized program for~~
12 ~~education and training. Educational services shall be available to all residents regardless of~~
13 ~~chronological age, degree of handicapping condition, or accompanying disabilities or handicaps.~~

14 Section 190. That § 27B-8-13 be repealed.

15 ~~27B-8-13. Each resident shall have the right to physical and occupational therapy services~~
16 ~~in order to facilitate his optimal development and enable him to be a contributing and~~
17 ~~participating member of society.~~

18 Section 191. That § 27B-8-14 be repealed.

19 ~~27B-8-14. Each resident shall have the right to the least restrictive setting for his treatment.~~

20 Section 192. That § 27B-8-15 be repealed.

21 ~~27B-8-15. Every resident admitted by board of mental retardation order shall have an annual,~~
22 ~~adequate review of his current status as a person meeting the criteria for board-ordered~~
23 ~~admission. The review shall be conducted by all relevant personnel including the staff working~~
24 ~~within his living unit. This review shall include a review of:~~

25 ~~(1) The resident's need for remaining in the facility;~~

- 1 ~~—(2)—~~ Consideration of the advisability of a less restrictive setting for treatment;
- 2 ~~—(3)—~~ The need for guardianship of the resident; and
- 3 ~~—(4)—~~ Restrictions imposed on the resident's legal rights.

4 Section 193. That § 27B-8-16 be repealed.

5 ~~—27B-8-16. The results of each periodic review pursuant to § 27B-8-15 shall be made part of~~
6 ~~the resident's record, and shall be filed within five days of the review in the form of a written~~
7 ~~report with the board of mental retardation which ordered the resident's admission, and within~~
8 ~~said five days, notice of the results of the review shall be given by the facility to the resident, his~~
9 ~~attorney, if any, and his nearest relative or guardian.~~

10 Section 194. That § 27B-8-17 be repealed.

11 ~~—27B-8-17. If the report prepared pursuant to § 27B-8-16 concludes that the resident~~
12 ~~continues to meet the criteria for board-ordered admission, and the resident or someone on his~~
13 ~~behalf objects to that conclusion, he shall have the right to a hearing and all other rights~~
14 ~~expressed or implied in §§ 27B-7-12 to 27B-7-23, inclusive, and § 27B-8-24, and may petition~~
15 ~~the board of mental retardation for discharge. The petition for discharge shall be presented to the~~
16 ~~chairman of the board or a representative of the facility within seven days, excluding Sundays~~
17 ~~and holidays, after the report is received. If the petition is presented to a representative of the~~
18 ~~facility, he shall transmit it to the board forthwith.~~

19 Section 195. That § 27B-8-18 be repealed.

20 ~~—27B-8-18. Each patient shall have the right to be protected from physical injury and shall~~
21 ~~receive prompt, adequate medical treatment for any physical illness or injury he may incur.~~

22 Section 196. That § 27B-8-19 be repealed.

23 ~~—27B-8-19. Surgery and any other medical procedures may be preformed without consent or~~
24 ~~court order only if the life of the resident is threatened and there is not time to obtain consent or~~
25 ~~a court order. Documentation of the necessity for the surgery shall be entered into the record of~~

1 ~~the resident as soon as practicable.~~

2 Section 197. That § 27B-8-20 be repealed.

3 ~~—27B-8-20. Patients shall not be the subject of experimental research, any hazardous~~
4 ~~procedure, surgery, or electroconvulsive therapy unless informed consent is obtained from:~~

5 ~~—(1) The resident, if he is eighteen years of age or over and competent to consent;~~

6 ~~—(2) The guardian of the resident, if the guardian is legally empowered to execute such~~
7 ~~consent; or~~

8 ~~—(3) The parent of the resident, if the resident is less than eighteen years of age.~~

9 ~~—If psychosurgery or electroconvulsive therapy or any other procedure intended to produce~~
10 ~~convulsions or coma is deemed advisable for the resident and no one eligible to consent can be~~
11 ~~found after diligent effort, the circuit court may upon petition and after hearing consent to the~~
12 ~~performance of the procedure.~~

13 Section 198. That § 27B-8-21 be repealed.

14 ~~—27B-8-21. No resident may be the subject of any experimental research or hazardous~~
15 ~~procedure unless such research or procedure shall be approved and conducted in the manner~~
16 ~~prescribed by the secretary of human services.~~

17 Section 199. That § 27B-8-22 be repealed.

18 ~~—27B-8-22. Nothing in this Title or in any rule or regulation adopted pursuant thereto shall~~
19 ~~be construed to deny treatment by spiritual means through prayer for any person detained for~~
20 ~~evaluation or treatment who desires such treatment, or to a minor if his parent or guardian~~
21 ~~desires such treatment but not in conflict with § 27A-12-3.1.~~

22 Section 200. That § 27B-8-23 be repealed.

23 ~~—27B-8-23. A resident may perform labor which contributes to the operation and the~~
24 ~~maintenance of the facility for which the facility would otherwise employ someone only if the~~
25 ~~resident voluntarily agrees to perform the labor and he is compensated appropriately and in~~

1 ~~accordance with all applicable state and federal labor laws, or if such labor is required as an~~
2 ~~integral part of therapy in an individualized treatment plan.~~

3 ~~— In no event shall discharge or privileges be conditioned upon the performance of any such~~
4 ~~labor.~~

5 Section 201. That § 27B-8-24 be repealed.

6 ~~—27B-8-24. All leaves or absences from a facility other than release or discharge shall be~~
7 ~~governed by rules or procedures established by the facility, except that a resident who has been~~
8 ~~admitted by a board of mental retardation order and who has been on an authorized leave or~~
9 ~~absence from the facility for a continuous period of one year shall be discharged. Upon such~~
10 ~~discharge, the board shall be notified by the facility.~~

11 Section 202. That § 27B-8-25 be repealed.

12 ~~—27B-8-25. An individual is subject to being returned to a facility if he was admitted to a~~
13 ~~facility on an application executed by someone other than himself or by board of mental~~
14 ~~retardation order, and he has left the facility without authorization or has refused a lawful request~~
15 ~~to return to the facility while on an authorized leave or other authorized absence from the facility.~~

16 Section 203. That § 27B-8-26 be repealed.

17 ~~—27B-8-26. The facility may notify any law enforcement officers that an individual is subject~~
18 ~~to being returned to the facility. Upon such notification, a law enforcement officer who~~
19 ~~encounters the individual shall take him into protective custody and return him to the facility~~
20 ~~unless contrary directions have been given by the facility.~~

21 Section 204. That § 27B-8-27 be repealed.

22 ~~—27B-8-27. A complete statistical and medical record shall be kept current for each resident~~
23 ~~of a facility. The record shall, at least, include information pertinent to the services provided to~~
24 ~~the resident, pertinent to the legal status of the resident, required by this chapter or other~~
25 ~~provision of law, and required by rules or policies.~~

1 Section 205. That § 27B-8-28 be repealed.

2 ~~—27B-8-28. Information in the record of a resident, and other information acquired in the~~
3 ~~course of providing services to a resident, shall be kept confidential and shall not be open to~~
4 ~~public inspection. The information may be disclosed outside the facility or licensed private~~
5 ~~treatment center only in the circumstances and under the conditions set forth in §§ 27B-8-29 to~~
6 ~~27B-8-34, inclusive.~~

7 Section 206. That § 27B-8-29 be repealed.

8 ~~—27B-8-29. If requested, information shall be disclosed:~~

9 ~~—(1)—Pursuant to orders or subpoenas of a court of record, or subpoenas of the Legislature;~~

10 ~~—(2)—To a prosecuting attorney as necessary for him to participate in a proceeding~~
11 ~~governed by this Title;~~

12 ~~—(3)—To an attorney for the resident, if the resident, or his guardian, has given consent;~~

13 ~~—(4)—If necessary in order to comply with another provision of law; or~~

14 ~~—(5)—To the departments of social services or human services when the information is~~
15 ~~necessary to enable either department to discharge a responsibility placed upon it by~~
16 ~~law.~~

17 Section 207. That § 27B-8-30 be repealed.

18 ~~—27B-8-30. If the holder of the record and the recipient and his parents if he is a minor, or his~~
19 ~~guardian consent, information may be disclosed to providers of mental retardation services to~~
20 ~~the resident; or the resident or any other person or agency, provided, that in the judgment of the~~
21 ~~holder, the disclosure would not be detrimental to the recipient or others.~~

22 Section 208. That § 27B-8-31 be repealed.

23 ~~—27B-8-31. Information may be disclosed in the discretion of the holder of the record when~~
24 ~~necessary for the resident to apply for or receive benefits, or necessary for the purposes of~~
25 ~~evaluation and accreditations.~~

1 Section 209. That § 27B-8-32 be repealed.

2 ~~—27B-8-32. Any release of information by the holder of the record shall be approved by the~~
3 ~~administrator of the facility holding the records. The holder of the record shall be responsible for~~
4 ~~keeping a record of what information was released, to whom, the dates of release and the~~
5 ~~purpose for such release.~~

6 Section 210. That § 27B-8-33 be repealed.

7 ~~—27B-8-33. When information is disclosed, the identity of the individual to whom it pertains~~
8 ~~shall be protected and shall not be disclosed unless it is germane to the authorized purpose for~~
9 ~~which disclosure was sought; and, when practicable, no other information shall be disclosed~~
10 ~~unless it is germane to the authorized purpose for which disclosure was made.~~

11 Section 211. That § 27B-8-34 be repealed.

12 ~~—27B-8-34. Any person receiving information made confidential by § 27B-8-28 shall disclose~~
13 ~~the information to others only to the extent consistent with the authorized purpose for which the~~
14 ~~information was released.~~

15 Section 212. That § 27B-8-35 be repealed.

16 ~~—27B-8-35. The rights enumerated in this title for the benefit of residents shall not be~~
17 ~~construed as replacing or limiting any other rights, benefits or privileges afforded any person~~
18 ~~pursuant to other provisions of law, the Constitution of South Dakota and the Constitution of~~
19 ~~the United States.~~

20 Section 213. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Unless modified by court order, a person with a developmental disability has the same legal
23 rights and responsibilities guaranteed to all other persons under the federal and state
24 constitutions and federal and state laws.

25 Section 214. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No person with a developmental disability may be required to perform any act or be subject
3 to any procedure which is contrary to the person's religious beliefs, and each person has the right
4 to practice personal religious beliefs and be accorded the opportunity for religious worship. No
5 person may be coerced into engaging in or refraining from any religious activity, practice, or
6 belief.

7 Section 215. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Every person with a developmental disability has the right to receive publicly supported
10 educational services in accordance with federal and state education laws.

11 Section 216. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Every person with a developmental disability has the right to access to appropriate dental and
14 medical care and treatment for any physical ailments and for the prevention of illness or
15 disability.

16 Section 217. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Surgery and any other medical procedures may be performed without consent or court order
19 only if the life of the person with a developmental disability is threatened and there is not time
20 to obtain consent or a court order. Documentation of the necessity for the surgery shall be
21 entered into the record of the person as soon as practicable.

22 Section 218. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 No person with a developmental disability is subject to any experimental research or
25 hazardous treatment procedures without the consent of:

- 1 (1) The person with a developmental disability, if eighteen years of age or over and
2 capable of giving informed consent;
- 3 (2) The guardian of the person with a developmental disability, if the guardian is legally
4 empowered to execute such consent; or
- 5 (3) The parent or guardian of the person with a developmental disability, if the person
6 with a developmental disability is less than eighteen years of age.

7 No person with a developmental disability who is subject to an order of guardianship may
8 be subjected to experimental research or hazardous treatment procedures without prior
9 authorization of the circuit court.

10 Section 219. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 No person with a developmental disability may be subjected to any nonemergency medical
13 procedure or treatment designed to render a person permanently unable to produce children
14 without the person's informed consent or court order as set out in this chapter. For the purposes
15 of this section, the person's ability to give informed consent is subject to the person being
16 eighteen years of age or older and the following:

- 17 (1) Prior to the procedure, capacity to give informed consent and assurance that such
18 consent is voluntarily and freely given shall be evaluated by:
 - 19 (a) A psychiatrist, psychologist, or physician who does not provide services or
20 supports to the person with a developmental disability and who has consulted
21 with and personally interviewed the person with a developmental disability; and
 - 22 (b) A qualified mental retardation professional who does not provide services or
23 supports in which the person participates and who has consulted with and
24 interviewed the person with a developmental disability;
- 25 (2) The professionals who conducted the evaluation pursuant to subdivision (1) shall

1 consult with the physician who is to perform the procedure concerning each
2 professional's opinion in regard to the capacity of the person with a developmental
3 disability to give informed consent regarding the procedure or treatment.

4 If any person's capacity to give informed consent is challenged, the person, a qualified mental
5 retardation professional, or a physician may file a petition with the court to determine
6 competency to give consent.

7 Section 220. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 A person with a developmental disability who has been determined to be incompetent to give
10 informed consent or the person's legal guardian may petition the court for a hearing to determine
11 whether consent for the procedure set forth in section 219 of this Act should be authorized. The
12 petition shall set forth the following:

- 13 (1) The name, age, and residence of the person with a developmental disability;
- 14 (2) The name, address, and relationship of the petitioner to the person with a
15 developmental disability;
- 16 (3) The name and address of any parent, spouse, legal guardian, or custodian of the
17 person with a developmental disability;
- 18 (4) The mental condition of the person with a developmental disability;
- 19 (5) A statement by a physician and a psychologist or psychiatrist that the procedure is
20 medically necessary to preserve the life or physical or mental health of the person with
21 a developmental disability, including a short and plain description of the reasons
22 behind the determination of medical necessity; and
- 23 (6) A statement by a physician and a psychologist or psychiatrist that other less intrusive
24 measures were considered and the reasons behind the determination that less intrusive
25 means would not protect the interests of the person with a developmental disability.

1 Section 221. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Prior to authorizing the procedure set forth in section 219 of this Act, the court shall find by
4 clear and convincing evidence:

5 (1) That the person with a developmental disability lacks the capacity to effectively
6 participate in the decision-making process;

7 (2) That the court has heard from the person with a developmental disability regarding
8 that person's desires, if possible, and that the court has considered the desires of the
9 person with a developmental disability;

10 (3) That the person with a developmental disability lacks the capacity to make an
11 informed decision regarding the procedure and that the person's capacity to make
12 such a decision is unlikely to improve in the future;

13 (4) The person with a developmental disability is capable of reproduction and is likely to
14 engage in activities at the present or in the near future which could result in
15 pregnancy;

16 (5) That a recommendation regarding the appropriateness and medical necessity of the
17 procedure has been obtained from a physician and a psychologist or psychiatrist
18 neither of whom provide services to the person with a developmental disability, and
19 that these professionals have consulted with and interviewed the person with a
20 developmental disability;

21 (6) That the procedure is medically necessary to preserve the life or physical or mental
22 health of the person with a developmental disability, including a short and plain
23 description of the reasons behind the determination of medical necessity; and

24 (7) That other less intrusive measures were considered and the reasons behind the
25 determination that less intrusive means would not protect the interests of the person

1 with a developmental disability.

2 Section 222. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The person with a developmental disability shall be represented by counsel throughout the
5 proceedings. Upon filing of the petition the court shall notify the person with a developmental
6 disability of the right to counsel.

7 Section 223. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The cost of the proceedings, including the cost of counsel for the person with a
10 developmental disability, is the responsibility of the petitioner.

11 Section 224. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The receipt of services and supports pursuant to this chapter does not operate to deprive any
14 person with a developmental disability of any other rights, benefits, or privileges, does not cause
15 the person with a developmental disability to be declared legally incompetent, and may not be
16 construed to interfere with the rights and privileges of parents or guardians regarding their minor
17 child. No agency, facility, school, or person who receives public funds and provides services to
18 persons with developmental disabilities may engage in the following practices:

19 (1) Corporal punishment - physical or verbal abuse, such as shaking, screaming, swearing,
20 name calling, or any other activity that would be damaging to a person's physical
21 well-being or self-respect;

22 (2) Seclusion - placement of a person alone in a room or other area from which egress is
23 prevented;

24 (3) Denial of food - preventing a person from having access to a nutritionally adequate
25 diet as a means of modifying behavior. Persons enrolled in residential programs or

1 living units are expected to partake in meals at a predetermined scheduled time.

2 No person with a developmental disability receiving services may discipline other persons
3 with developmental disabilities receiving services, and no community service provider may
4 mistreat, exploit, neglect, or abuse any person with a developmental disability.

5 Section 225. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 No community service provider may retaliate against any staff who reports in good faith
8 suspected abuse, neglect, or exploitation, or against any person with a developmental disability
9 with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of
10 claiming retaliation. There exists a rebuttable presumption of retaliation for any adverse actions
11 taken within ninety days of a report of abuse, neglect, or exploitation. Adverse action means only
12 those adverse actions arising solely from the filing of an abuse report. For the purposes of this
13 chapter, adverse action means any action taken by a community service provider against the
14 person making the report or against the person with a developmental disability because of the
15 report and includes:

- 16 (1) Discharge or transfer from the community service provider except for clinical reasons;
- 17 (2) Discharge from or termination of employment;
- 18 (3) Demotion or reduction in remuneration for services; or
- 19 (4) Restriction or prohibition of access to services and supports or the persons served.

20 Section 226. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any person who knowingly engages in conduct with the intent to deprive persons with
23 developmental disabilities of any right as set forth in this title is guilty of a Class 1 misdemeanor.

24 Section 227. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
25 as follows:

1 Each person with a developmental disability receiving services has the right to:

2 (1) Communicate freely and privately with others of the person's own choosing;

3 (2) Receive and send sealed, unopened correspondence. No person's incoming or
4 outgoing correspondence shall be opened, delayed, held, or censored by any person;

5 (3) Receive and send packages. No person's outgoing packages may be opened, delayed,
6 held, or censored by any person;

7 (4) Reasonable access to telephones, both to make and to receive calls in privacy, and
8 reasonable and frequent opportunities to meet with visitors; and

9 (5) Suitable opportunities for interaction with persons of their own choice.

10 Section 228. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
11 as follows:

12 All records kept pursuant to this chapter are confidential and not open to public inspection.
13 The information may be disclosed only in the circumstances and under the conditions set forth
14 in sections 229 to 231, inclusive, of this Act.

15 Section 229. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
16 as follows:

17 If the community service provider or facility and the person with a developmental disability
18 and the person's parent, if a minor, or the person's guardian consent, information may be
19 disclosed to providers of supports and services to the person with a developmental disability, or
20 to the person with a developmental disability, or to any other person or agency, if, in the
21 judgment of the community service provider or facility, the disclosure would not be detrimental
22 to the person with a developmental disability.

23 Section 230. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
24 as follows:

25 If information is disclosed, the identity of the person to whom it pertains shall be protected

1 and may not be disclosed unless it is germane to the authorized purpose for which disclosure was
2 sought. If practicable, no other information may be disclosed unless it is germane to the
3 authorized purpose for which disclosure was made.

4 Section 231. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any person receiving information made confidential by section 236 of this Act shall disclose
7 the information to others only to the extent consistent with the authorized purpose for which the
8 information was released.

9 Section 232. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The Legislature hereby finds that:

- 12 (1) Research does not support the long-term efficacy of aversive behavioral intervention;
- 13 (2) The use of aversive or abusive treatment raises disturbing legal and ethical issues and
14 may well deprive the recipient of constitutional or statutory rights and be outside the
15 ethical guidelines imposed upon the treatment professional;
- 16 (3) Any severely disabled person has the same right to be treated with dignity and respect
17 as any other citizen; and
- 18 (4) The use of aversive and abusive treatments on any person with a disability diminishes
19 the dignity and humanity of the treatment professional and the disabled person.

20 The Legislature opposes any treatment or practice which violates the right to freedom from
21 harm and promotes activities that lead to implementation and dissemination of positive
22 intervention alternatives.

23 Section 233. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
24 as follows:

25 The rights of persons with developmental disabilities receiving services may only be restricted

1 as a result of due process in accordance with statute and the rules of the Department of Human
2 Services. The rights of any person with a developmental disability as specified in this chapter may
3 be suspended to protect that person from endangering self or others. In order to provide specific
4 services or supports to the person with a developmental disability, such rights may be suspended
5 only by due process that will promote the least restriction on the person's rights.

6 Section 234. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The use of any highly restrictive procedures, including restraints and time-out, shall be
9 described in written behavior intervention programs. Behavior intervention programs may only
10 be implemented following the completion of a comprehensive functional analysis if alternative
11 nonrestrictive procedures have been proven to be ineffective, and only with the informed consent
12 of the person with a developmental disability, if eighteen years of age or over and capable of
13 giving informed consent, or the person's parent or legal guardian. Behavior intervention
14 programs shall be developed in conjunction with the interdisciplinary team and implemented in
15 accordance with section 233 of this Act, in a manner that does not violate due process in
16 accordance with section 233 of this Act.

17 Section 235. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Use of restraints shall be applied only in an emergency if alternative techniques have failed
20 and only in conjunction with a behavior intervention program. Physical restraint intended to
21 restrict the movement or normal functioning of a portion of a person's body through direct
22 contact by staff, shall be employed only if necessary to protect the person with a developmental
23 disability from immediate injury to self or others. Physical restraint may not be employed as
24 punishment, for the convenience of staff, or as a substitute for a program of services and
25 supports. Physical restraint shall be applied only after alternative techniques have failed and only

1 if such restraint is imposed in the least possible restriction consistent with its purpose.
2 Mechanical restraint using mechanical devices intended to restrict the movement or normal
3 functioning of a portion of a person's body is subject to special review and oversight, as defined
4 in department rules. Any mechanical restraint shall be designed and used so as not to cause
5 physical injury to the person with a developmental disability and so as to cause the least possible
6 discomfort. Chemical restraint and medication may not be used excessively, as punishment, for
7 the convenience of staff, as a substitute for a program, or in quantities that interfere with a
8 person's developmental program. In accordance with statute and the rules of the department, due
9 process shall be assured pursuant to section 233 of this Act for the use of physical, mechanical,
10 or chemical restraints, including their use in an emergency or on a continuing basis.

11 Section 236. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Time-out rooms used for separating a person with a developmental disability from other
14 persons receiving services and group activities may be employed only under close and direct staff
15 supervision and only as a technique in behavior intervention programs. Time-out rooms may not
16 be used in emergency situations. Behavior intervention programs utilizing a time-out procedure
17 may be implemented only if it incorporates a positive approach designed to result in the
18 acquisition of adaptive behaviors.

19 Section 237. That § 27B-9-1 be repealed.

20 ~~—27B-9-1. Notwithstanding chapter 25-7, when any person is admitted to a facility only the~~
21 ~~resident shall be liable for the cost of his care, support, maintenance, and treatment to the extent~~
22 ~~and in the manner provided by this chapter. If the cost of the resident's care, support,~~
23 ~~maintenance and treatment is a proper charge of the federal government, the costs shall be~~
24 ~~assessed against the appropriate agency of the federal government.~~

25 Section 238. That § 27B-9-2 be repealed.

1 ~~— 27B-9-2. The department of human services is responsible for the collection and processing~~
2 ~~of fees due to the state for the care of patients in the facility.~~

3 Section 239. That § 27B-9-3 be repealed.

4 ~~— 27B-9-3. The secretary of human services shall periodically determine the individual cost,~~
5 ~~exclusive of the cost of education, for the care, support, maintenance, and treatment of the~~
6 ~~patients in each facility. In making such determinations, the secretary may use averaging methods~~
7 ~~for each facility if, in the secretary's judgment, it is not practicable to compute the cost for each~~
8 ~~patient. The cost of capital expenditures and capital construction may not be included in making~~
9 ~~such determinations.~~

10 Section 240. That § 27B-9-4 be repealed.

11 ~~— 27B-9-4. Any patient who is judged by the secretary of human services, subject to the~~
12 ~~provisions for the method of investigation used by the department of human services as set down~~
13 ~~in §§ 27B-9-8 and 27B-9-9, to be financially able to pay the per diem rate on an indefinite basis,~~
14 ~~shall continue to be charged the per diem for each day of continuous patient status.~~

15 Section 241. That § 27B-9-8 be repealed.

16 ~~— 27B-9-8. Any patient may apply to the secretary of human services for permission to pay less~~
17 ~~than the applicable charge. On receipt of such application, the secretary shall request an~~
18 ~~investigation, to determine the ability of the patient to pay all or a part of the applicable charge.~~
19 ~~Consideration in such determination shall be given to the following factors, and such other~~
20 ~~factors as the secretary shall agree are reasonable: net income, net worth, number of dependents,~~
21 ~~and existing obligations. Additional investigation by the state department of human services of~~
22 ~~the ability of the patient to pay may be required by the secretary of human services.~~

23 Section 242. That § 27B-9-9 be repealed.

24 ~~— 27B-9-9. Upon receipt of all information desired by the secretary of human services, the~~
25 ~~secretary shall determine, based upon the financial ability of the patient, whether the patient shall~~

1 ~~be charged with the full amount or a lesser amount. If a patient, or county where the patient~~
2 ~~resides, disagrees with the determination of the secretary, an appeal may be filed within thirty~~
3 ~~days from the date the patient or responsible relative receives notice of such determination, for~~
4 ~~a rehearing with the secretary. However, such an appeal may not be filed more than once each~~
5 ~~six months.~~

6 Section 243. That § 27B-9-10 be repealed.

7 ~~—27B-9-10. The secretary of human services may review and change any determination for~~
8 ~~applicable charges and may, if necessary, request further investigation by the state department~~
9 ~~of human services.~~

10 Section 244. That § 27B-9-11 be repealed.

11 ~~—27B-9-11. If a patient refuses or fails to make such payments, the charges may be collected~~
12 ~~by a civil suit brought in the name of the state of South Dakota. The state may sue such patient~~
13 ~~for payments due, and any judgment obtained shall be a lien upon the real property of such~~
14 ~~patient, and shall be collected as other judgments. Any claim arising under § 27B-9-1 has the~~
15 ~~same force and effect against the real and personal property of a deceased person as other debts~~
16 ~~of a decedent, and shall be ascertained and recovered in the same manner.~~

17 Section 245. That § 27B-9-13 be repealed.

18 ~~—27B-9-13. The statute of limitations upon any claim of the state for the care of a~~
19 ~~developmentally disabled person shall not commence to run until the death of the~~
20 ~~developmentally disabled person, but an action may be begun at any time during the life of the~~
21 ~~developmentally disabled person.~~

22 Section 246. That § 27B-9-16 be repealed.

23 ~~—27B-9-16. Each county shall be assessed sixty dollars per month for each individual served~~
24 ~~by the Redfield Developmental Center unless the responsibility therefor has been placed upon~~
25 ~~the state at large. In the event of a dispute as to a patient's residence, no payments made by any~~

1 ~~county constitute an admission that the patient has residence within such county. The procedures~~
2 ~~for determination of county of residence shall be that described in §§ 27B-9-19 to 27B-9-21,~~
3 ~~inclusive. These moneys shall be used to match federal funds which may be made available under~~
4 ~~the provisions of Title XIX of the Social Security Act as amended, or its successors, at the~~
5 ~~Redfield Developmental Center.~~

6 Section 247. That § 27B-9-17 be repealed.

7 ~~—27B-9-17. If a mentally retarded person has been placed under the control of a child welfare~~
8 ~~agency as defined by § 26-6-1 for adoption, and prior to adoption is found to be mentally~~
9 ~~retarded, then the county board of mental retardation shall have the power to direct that the~~
10 ~~expenses for the care, education and maintenance of such person be borne by the state at large~~
11 ~~in which event no finding as to the county legally obligated to support such person shall be made;~~
12 ~~and then, said board shall forthwith notify the board of social services who may petition for~~
13 ~~letters of guardianship.~~

14 Section 248. That § 27B-9-19 be repealed.

15 ~~—27B-9-19. If the administrator of a facility has cared for or maintained a patient from a~~
16 ~~county and the state's attorney or county commissioners of the county claim that the patient is~~
17 ~~not a proper charge against the county, and notify the attorney general that the patient is a proper~~
18 ~~charge against another county or against the state at large because the patient is not a resident~~
19 ~~of the state, the attorney general shall notify the county auditor of the county to file any proof~~
20 ~~he may have within thirty days from the date of such notification. Thereupon the attorney general~~
21 ~~shall investigate the location of the residence of the patient, to determine if and which county~~
22 ~~should be charged. The attorney general shall notify the county auditor and the administrator of~~
23 ~~the human services center of the determination. Thereafter the administrator shall charge for~~
24 ~~treatment according to the determination of the attorney general.~~

25 Section 249. That § 27B-9-20 be repealed.

1 ~~— 27B-9-20. If the attorney general shall find that such patient is not a proper charge against~~
2 ~~any county in the state, such patient shall thereafter be regarded as a proper charge against the~~
3 ~~state at large until returned to the state of his residence.~~

4 Section 250. That § 27B-9-21 be repealed.

5 ~~— 27B-9-21. If any county shall be dissatisfied with the determination of the attorney general,~~
6 ~~such county may appeal to the circuit court, serving a notice of appeal upon the attorney general~~
7 ~~and upon one of the members of the board of county commissioners of the county adversely~~
8 ~~interested, within thirty days from the date of such finding and thereupon it shall be the duty of~~
9 ~~the circuit court to determine the residence of such patient and determine against what county~~
10 ~~he is a proper charge, and such determination shall be conclusive unless an appeal shall be taken~~
11 ~~therefrom, in the manner provided by law for appeal in civil actions.~~

12 Section 251. That § 27B-9-22 be repealed.

13 ~~— 27B-9-22. Expenses paid by one county, on behalf of persons whose residence is in another~~
14 ~~county, shall be refunded with lawful interest thereon by the county of residence. The expenses~~
15 ~~and interest shall be presented to the board of commissioners of the county of residence and shall~~
16 ~~be allowed and paid the same as other claims.~~

17 Section 252. That § 27B-9-23 be repealed.

18 ~~— 27B-9-23. When the administrator of a facility has been duly notified that a patient sent to~~
19 ~~the facility from one county has a residence in another county, he shall thereafter hold and keep~~
20 ~~the patient as if he were from the latter county. Such holding shall apply to expenses already~~
21 ~~incurred in behalf of such patient which remain unadjusted.~~

22 Section 253. That § 27B-9-25 be repealed.

23 ~~— 27B-9-25. It shall also be the duty of the administrator of the facility to furnish at once to the~~
24 ~~chairman of the county board of mental retardation, the county auditor of each county wherein~~
25 ~~the residence is found to be, and the guardian, if a child welfare agency, the name of each patient~~

1 ~~discharged, whether recovered, paroled, or on visit, and also in the case of escape or death.~~

2 Section 254. That § 27B-9-26 be repealed.

3 ~~—27B-9-26. All charges to a county under § 27B-9-16 shall be certified each month by the~~
4 ~~secretary of human services to the county auditor. The certification shall include a listing of~~
5 ~~charges by patient name. The certification shall be sent to county auditors no later than the fifth~~
6 ~~day of the month. Upon receiving the certification, the county shall pay the amount due to the~~
7 ~~state remittance center within the time period established by chapter 4-3.~~

8 Section 255. That § 27B-9-27 be repealed.

9 ~~—27B-9-27. All payments made for the treatment and maintenance of residents in accordance~~
10 ~~with this chapter, shall be deposited in the general fund.~~

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 27

3 1/20/99 Scheduled for Committee hearing on this date.

4 1/27/99 Scheduled for Committee hearing on this date.

5 1/27/99 Health and Human Services Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 205

6 1/29/99 Senate Do Pass Amended, Passed, AYES 31, NAYS 2. S.J. 262

7 2/1/99 First read in House and referred to committee assignment waived. H.J. 299

8 2/2/99 Referred to Health and Human Services. H.J. 332

9 2/24/99 Scheduled for Committee hearing on this date.

10 2/26/99 Scheduled for Committee hearing on this date.

11 2/26/99 Health and Human Services Do Pass Amended, Passed, AYES 7, NAYS 4. H.J. 793

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

364C0465

HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB101** - 3/1/99

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

Introduced by: Senators Munson (David), Moore, and Stagers and Representatives Kooistra, Chicoine, and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the grant of a permit
2 to construct a railroad.

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

4 Section 1. That § 49-16A-1 be amended to read as follows:

5 49-16A-1. Terms used in this chapter mean:

- 6 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
7 in the business of transporting freight in intrastate commerce which it is accustomed
8 to and is capable of transporting from place to place in this state, for hire;
- 9 (2) "Department," the Department of Transportation created by chapter 1-44;
- 10 (3) "For hire," the condition of receiving remuneration of any kind, paid or promised,
11 either directly or indirectly, for the transportation of freight;
- 12 (4) "Freight," all property tendered for transportation by a railroad;
- 13 (5) "Railroad," a any association or corporation, or other entity, other than a state agency
14 or authority, engaged in operating a common carrier by rail regardless of motive
15 power used, excluding street railroads;

1 (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks,
2 interchanges and all other fixtures and real property owned or operated by a railroad
3 to discharge its obligations as a common carrier by rail;

4 (7) "Shipper," a consignor or consignee;

5 (8) "Commission," the Transportation Commission created by § 1-44-4;

6 (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as
7 compensation for the acquisition of property desired by the applicant for the
8 construction or reconstruction of a road, including the economic costs or diminution
9 associated with or caused by the construction or reconstruction if there is a partial
10 taking of property.

11 Section 2. That § 49-16A-75 be amended to read as follows:

12 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way
13 as provided by statute, but only upon obtaining authority from the Governor or the commission,
14 based upon a determination by the Governor or the commission that the railroad's exercise of the
15 right of eminent domain would be for a public use consistent with public necessity. The Governor
16 or the commission may, without limitation, consider the requirements of sections 3, 4, and 5 of
17 this Act when granting or denying an application for authority to use eminent domain. The
18 decision to grant or deny an application shall be made after reasonable notice and opportunity
19 to be heard, pursuant to chapter 1-26.

20 Section 3. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The commission shall promulgate rules in accordance with chapter 1-26:

23 (1) Establishing a form upon which a railroad may apply for authority to exercise the right
24 of eminent domain;

25 (2) Specifying the information to be submitted by an applicant; and

1 (3) Administering applications for authority to exercise the right of eminent domain.

2 Section 4. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The applicant has the burden of proving by clear and convincing evidence that the exercise
5 of the right of eminent domain is a public use consistent with public necessity.

6 Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A railroad's exercise of the right of eminent domain is a public use consistent with public
9 necessity only if the use of eminent domain:

10 (1) Has as a purpose providing railroad transportation to shippers in South Dakota, for
11 commodities produced, manufactured, mined, grown, used, or consumed in South
12 Dakota;

13 (2) Is proposed by an applicant with the financial resources necessary to complete the
14 proposed construction or reconstruction along with any related facilities, construction,
15 or mitigation which are necessary to protect against harm to the public safety,
16 convenience, or other adverse socioeconomic or environmental impact, as evidenced
17 by an irrevocable financing commitment from a lender with adequate capitalization to
18 fulfill its commitment;

19 (3) Is proposed by an applicant who has complied with chapter 34A-9;

20 (4) Is proposed by an applicant who has negotiated in good faith to privately acquire
21 sufficient property without the use of eminent domain;

22 (5) Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that
23 plat specifically sets forth the route of the road to be constructed or reconstructed,
24 identifies each affected landowner, and specifies the location, along with construction
25 methods and engineering specifications for all main lines, sidings, yards, bridges,

1 crossings, safety devices, switches, signals, and maintenance facilities; and
2 (6) Provides that electric utilities, public utilities, telecommunication companies, and rural
3 water systems have the right to the use of the right-of-way for the placement of
4 underground facilities, without fee, subject to reasonable regulation as to location and
5 placement.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Transportation. S.J. 160

3 2/11/99 Scheduled for Committee hearing on this date.

4 2/16/99 Scheduled for Committee hearing on this date.

5 2/18/99 Scheduled for Committee hearing on this date.

6 2/18/99 Transportation Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 536

7 2/19/99 Senate Do Pass Amended, Passed, AYES 18, NAYS 15. S.J. 598

8 2/22/99 First read in House and referred to Taxation. H.J. 691

9 2/25/99 Scheduled for Committee hearing on this date.

10 2/25/99 Taxation Deferred to 41st legislative day.

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

437C0472

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB151** - 3/1/99

Introduced by: Senators Everist, Brosz, Brown (Arnold), Dennert, Dunn (Jim), Duxbury, Flowers, and Hutmacher and Representatives Broderick, Duniphan, Kazmerzak, and Koetzle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the prices for
2 residential and business local exchange service that may be charged by certain
3 telecommunications companies.

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

5 Section 1. That § 49-31-86 be amended to read as follows:

6 49-31-86. Prices ~~as of January 1, 1998,~~ for residential and business local exchange service,
7 both recurring and nonrecurring, for a telecommunications company with more than two hundred
8 thousand retail access lines in the state may not be changed unless reduced by the company. If
9 the telecommunications company reduces its prices for residential or business local exchange
10 service pursuant to §§ 49-31-1 ~~through to~~ 49-31-89, inclusive, it ~~shall~~ may not subsequently
11 increase such prices. However, this restriction does not apply to promotions that last ninety days
12 or less. The telecommunications company shall publicly announce the beginning and ending date
13 of the promotion period. The provisions of § 49-31-4 and §§ 49-31-12 to 49-31-12.5, inclusive,
14 do not apply to prices for services regulated by this section.

15 Section 2. No telecommunications company may offer any promotion exempt from the

1 provisions of § 49-31-86 more than twice in any calendar year. No telecommunications company
2 may run any such promotions consecutively. No benefit from a promotion may be extended to
3 any customer beyond the promotion period.

4 Section 3. The exemption for promotions provided by section 1 of this Act is not effective
5 until December 31, 2000, in the local exchange area of any facilities-based competitive local
6 exchange carrier certified by the commission that provides broadband network services
7 throughout its local exchange area.

1 **BILL HISTORY**

2 1/26/99 First read in Senate and referred to State Affairs. S.J. 197

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

4 2/5/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 348

5 2/9/99 Motion to Amend, Passed. S.J. 406

6 2/9/99 Senate Do Pass Amended, Passed, AYES 32, NAYS 2. S.J. 406

7 2/10/99 First read in House and referred to State Affairs. H.J. 473

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

9 2/24/99 Scheduled for Committee hearing on this date.

10 2/26/99 Scheduled for Committee hearing on this date.

11 2/26/99 State Affairs Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 805

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

834C0468

HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB161** - 3/1/99

Introduced by: Senators Daugaard, Brosz, Duxbury, Flowers, Halverson, Hutmacher, Paisley, Shoener, and Symens and Representatives Cutler, Apa, Brown (Richard), Duenwald, Fiegen, Haley, Jaspers, Koskan, McNenny, Napoli, Peterson, Waltman, and Wilson

1 FOR AN ACT ENTITLED, An Act to establish a procedure for bringing taxes current and
2 issuing certain permits, and to establish certain penalties.

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

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

6 If a manufactured home is purchased or moved to a specific site after November first and the
7 manufactured home is moved, sold, transferred, or reassigned before November first in the
8 following year, no property taxes are due. The county treasurer shall issue an affidavit stating
9 that no taxes are due.

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

12 If a manufactured home is purchased or moved to a specific site on or before November first
13 and the property has been assessed as real property and the owner of the manufactured home
14 plans to move, sell, transfer, or reassign the manufactured home before November first in the
15 following year, the county auditor shall levy a tax by applying the tax levy used for taxes payable

1 during the current year on other property in the same taxing district. The owner shall pay such
2 tax in full for the current year, not on a pro rata basis. If the taxes are paid in full, the county
3 treasurer shall issue an affidavit stating that the current year's taxes are paid.

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

6 If a manufactured home has been assessed as real property and taxes are payable and the
7 owner of the manufactured home plans to move, sell, transfer, or reassign the manufactured
8 home before all the current taxes are paid, then the owner shall pay the current taxes in full, not
9 on a pro rata basis. If the taxes are paid in full, the county treasurer shall issue an affidavit stating
10 that the current year's taxes are paid.

11 Section 4. That § 32-5-16.3 be amended to read as follows:

12 32-5-16.3. Any person who moves a mobile home or manufactured home shall obtain a
13 permit, as prescribed by the secretary of revenue, from the county treasurer where the home is
14 located. The permit fee is valid for a single trip from the point of origin to a point of destination
15 within the state. Before the county treasurer may issue a permit, the owner of the mobile home
16 or manufactured home shall obtain an affidavit from the county treasurer stating that the current
17 year's taxes are paid as described in sections 1 to 3, inclusive, of this Act or § 10-9-3. The permit
18 fee for mobile homes and manufactured homes for use on the public highways is fifteen dollars.
19 ~~The permit is valid for a single trip from the point of origin to a point of destination within the~~
20 ~~state.~~ The fees collected shall be credited to the license plate special revenue fund. The fee and
21 permit imposed by this section does not apply to a new or used mobile home or manufactured
22 home ~~being delivered from the dealer to the purchaser~~ transported by a dealer licensed under
23 chapter 32-7A. A violation of this section is a Class 2 misdemeanor.

24 Section 5. That § 32-7A-17 be amended to read as follows:

25 32-7A-17. Any transfer or reassignment of a mobile home or manufactured home title shall

1 be accompanied by an affidavit issued by the county treasurer of the county in which the mobile
2 home or manufactured home is registered, stating that the current year's taxes are paid. The
3 county treasurer shall apply the requirements of section 1 to 3, inclusive, of this Act to determine
4 if the current year's taxes are paid. No title may be transferred until the taxes under § 10-9-3 or
5 10-21-4 are paid. No transfer of title may be completed unless the mobile home or manufactured
6 home is registered as provided in § 10-9-3 or 10-4-2.6. In any event the title or manufacturer's
7 statement of origin shall be transferred within thirty days of delivery of the manufactured home
8 or mobile home. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

9 Section 6. That § 32-7A-4.2 be amended by adding thereto a NEW SUBDIVISION to read
10 as follows:

11 Transporting a used mobile home or manufactured home without an affidavit, from the
12 county treasurer of the county in which the mobile home or manufactured home is registered,
13 stating that the current year's taxes are paid.

14 Section 7. That § 32-7A-11 be amended to read as follows:

15 32-7A-11. New and used mobile homes and manufactured homes owned by a dealer may be
16 transported upon the streets and highways to the dealer's place of business and to the purchaser
17 of such a home and between a dealer's place of business and a supplemental lot or a temporary
18 supplemental lot. Any transport of a mobile home or manufactured home by a dealer shall be
19 accompanied with a permit stating the point of origin and the point of destination. The dealer
20 shall provide a copy of the permit to the director of equalization in the county of origin and to
21 the director of equalization in the county of destination.

1 **BILL HISTORY**

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

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

4 2/2/99 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 295

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

6 2/5/99 Senate Deferred to another day. S.J. 357

7 2/9/99 Senate Deferred to another day. S.J. 403

8 2/11/99 Senate Do Pass Amended, Failed, AYES 11, NAYS 23. S.J. 450

9 2/11/99 Intent to reconsider. S.J. 450

10 2/12/99 Senate Reconsidered, AYES 27, NAYS 7. S.J. 479

11 2/12/99 Motion to Amend, Passed. S.J. 480

12 2/12/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 5. S.J. 480

13 2/12/99 Senate Title Amended Passed. S.J. 480

14 2/16/99 First read in House and referred to Taxation. H.J. 552

15 2/25/99 Scheduled for Committee hearing on this date.

16 2/25/99 Taxation Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 789

17 2/25/99 Taxation Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

802C0296

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB193** - 2/24/99

Introduced by: Senators Hainje and Paisley and Representatives Brown (Richard), Peterson,
and Richter

1 FOR AN ACT ENTITLED, An Act to revise the school term.

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

3 Section 1. That § 13-26-1 be amended to read as follows:

4 13-26-1. The school fiscal year shall begin July first and end June thirtieth. ~~A school day~~ The
5 length of days shall be ~~at least five and one-half hours, exclusive of intermissions, and at least~~
6 ~~two and three-fourths hours shall count as a half day~~ set by each local school board. A school
7 term for grades four through twelve shall consist of a minimum of nine hundred sixty-two and
8 one-half hours, exclusive of intermission. The time specified as a "school day" shall not apply
9 below grade four. An "intermission" is the time when pupils are at recess or lunch.

10 Section 2. That § 13-26-2 be amended to read as follows:

11 13-26-2. The school board or governing body shall operate grades one through twelve in its
12 schools for at least ~~a nine-month regular term~~ nine hundred sixty-two and one-half hours,
13 exclusive of intermissions, in any one school year. The regular school term may be conducted
14 on a year-round basis, ~~but for grades one through twelve shall consist of school actually in~~
15 ~~session for at least one hundred seventy-five days~~ and shall begin on a date established by the
16 school board. The State Board of Education shall promulgate rules pursuant to chapter 1-26

1 governing the operation and scheduling of year-round schools. ~~The rules may allow deviations~~
2 ~~from the one hundred seventy-five day requirement in this section and from the five and one-half~~
3 ~~hour per day requirement in § 13-26-1 if the total school term hours requirement in § 13-26-2.1~~
4 ~~is met.~~ The local school board or governing body may establish the school term for kindergarten
5 programs. Any school board or governing body may release graduating high school seniors from
6 school before the end of the regular term if the release is for no more than three days. Make up
7 days for school closing because of weather, disease or emergency need not exceed ten days.
8 Graduating seniors are excused from make up days if the make up days occur after the students
9 have graduated or after graduation exercises have been held. If classes have been convened and
10 then are dismissed because of inclement weather, that day constitutes a day in session equal to
11 the number of hours planned for that day as established in the local school district calendar for
12 the year.

13 School boards are encouraged to provide days within the regular school term for curriculum
14 and staff development which shall be in addition to the ~~one hundred seventy-five days~~ nine
15 hundred sixty-two and one-half hours required in this section. Each school board shall determine
16 the appropriate number of days for this activity and how best to use the time based on local
17 needs for program development, increased parent participation, student contact, teachers'
18 preparation, or other needs of the schools in the district. School shall be in session only when
19 classes are held and as provided in §§ 13-26-4 and 13-26-4.1. A school board may operate a
20 special term during the summer months.

21 Section 3. That § 13-26-2.1 be amended to read as follows:

22 13-26-2.1. Notwithstanding §§ 13-26-1 and 13-26-2, each local school board may establish
23 the length of a school day and the number of school days in a school week, ~~provided.~~ However,
24 the number of school hours in a school term for grades four through twelve may not be less than
25 nine hundred sixty-two and one-half hours, exclusive of intermission. ~~A plan to establish a school~~

- 1 ~~term pursuant to this section must first be approved by the South Dakota Board of Education.~~
- 2 The state board may adopt rules, pursuant to chapter 1-26, regulating the ~~approval~~ review and
- 3 revision of local district plans.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Education. S.J. 233

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 Education Do Pass, Passed, AYES 7, NAYS 0. S.J. 332

6 2/4/99 Education Place on Consent Calendar.

7 2/5/99 Senate Deferred to another day. S.J. 358

8 2/8/99 Senate Do Pass, Passed, AYES 33, NAYS 1. S.J. 378

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

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

11 2/23/99 Scheduled for Committee hearing on this date.

12 2/23/99 Education Do Pass Amended, Passed, AYES 7, NAYS 5. H.J. 698

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

607C0723

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB194** - 3/1/99

Introduced by: Senators Flowers, Dennert, Drake, Hutmacher, Kloucek, and Symens and
Representatives McNenny, Cerny, Chicoine, Fryslie, Jaspers, and Weber

1 FOR AN ACT ENTITLED, An Act to provide certain restrictions for dealership contracts for
2 agricultural construction equipment.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Dealer," any person who receives agricultural machinery from a manufacturer under
6 a dealership contract and who offers and sells the agricultural machinery to the
7 general public;

8 (2) "Dealership contract," a written agreement or contract between a manufacturer and
9 dealer which fixes the legal rights and liabilities of the parties to such agreement or
10 contract;

11 (3) "Manufacturer," any person engaged in the manufacturing or distribution of
12 agricultural machinery including any person who acts for the manufacturer.

13 Section 2. The following circumstances are not cause for the termination or discontinuance
14 of a dealership contract, nor for entering into a dealership contract for the establishment of an
15 additional dealership in a community for the same line-make:

16 (1) The change of executive management or ownership of the dealer, unless the

1 manufacturer can show that the change would be detrimental to the representation or
2 reputation of the manufacturer's product;

3 (2) Refusal by the dealer to purchase or accept delivery of any agricultural machinery,
4 parts, accessories, or any other commodity or service not ordered by the dealer unless
5 such machinery, parts, accessories, or other commodity or service is necessary for the
6 operation of machinery commonly sold in the dealer's area of responsibility;

7 (3) The sole fact that the manufacturer desires further penetration of the market;

8 (4) The fact that the dealer owns, has an investment in, participates in the management
9 of, or holds a dealership contract for the sale of another line-make of agricultural
10 machinery, or that the dealer has established another line-make of agricultural
11 machinery in the same dealership facilities as those of the manufacturer, if the dealer
12 maintains a reasonable line of credit for each line-make of agricultural machinery; or

13 (5) Refusal by the dealer to participate in any national advertising campaign or contest or
14 purchase any promotional materials, display devices, or display decoration or
15 materials which are at the expense of the dealer.

16 Section 3. No manufacturer may require a dealer to agree to the inclusion of a term or
17 condition in a dealership contract, or in any lease or agreement ancillary or collateral to a
18 dealership contract, as a condition to the offer, grant, or renewal of such dealership contract,
19 lease, or agreement, that:

20 (1) Requires the dealer to waive trial by jury in cases involving the manufacturer;

21 (2) Requires that disputes between the manufacturer and dealer be submitted to
22 arbitration or to any other binding alternate dispute resolution procedure. However,
23 any dealership contract, lease, or agreement may authorize the submission of a dispute
24 to arbitration or to binding alternate dispute resolution if the manufacturer and dealer
25 voluntarily agree to submit the dispute to arbitration or binding alternate dispute

1 resolution at the time the dispute arises; or

2 (3) Requires a dealer to pay the attorney fees of a manufacturer.

3 This section does not apply to any agreement that has as its main objective the lease or sale

4 of real property.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Commerce. S.J. 233

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 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 331

6 2/8/99 Deferred with pending amendment (Rule 5-17). S.J. 382

7 2/10/99 Senate Deferred to another day. S.J. 427

8 2/12/99 Senate Deferred to another day. S.J. 485

9 2/16/99 Motion to Amend, Passed. S.J. 502

10 2/16/99 Motion to Amend, Passed. S.J. 502

11 2/16/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 6. S.J. 503

12 2/17/99 First read in House and referred to Judiciary. H.J. 588

13 2/26/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 791

14 2/26/99 Scheduled for Committee hearing on this date.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

186C0778

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB205 - 2/11/99

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

Introduced by: Senators Duxbury and Drake and Representatives Lockner, Brown (Jarvis), Burg, and Duenwald

1 FOR AN ACT ENTITLED, An Act to revise the procedure for establishing the tax levy for a
2 school district sending students to an adjoining school district.

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

4 Section 1. That § 13-11-10 be amended by adding a NEW SUBDIVISION to read as
5 follows:

6 The sum of the levies assessed for all funds in the sending district shall be equal to or greater
7 than the sum of all levies for all funds in the receiving district.

1 **BILL HISTORY**

2 1/29/99 First read in Senate and referred to Taxation. S.J. 253

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

4 2/10/99 Taxation Hog Housed.

5 2/10/99 Scheduled for Committee hearing on this date.

6 2/10/99 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 417

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0683

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB211** - 3/1/99

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to workers'
2 compensation.

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

4 Section 1. That § 58-20-24 be amended to read as follows:

5 58-20-24. Effective January 1, 1995, every policy issued by any corporation, association or
6 organization to assure the payment of compensation under the provisions of the title, "Workers'
7 Compensation" shall contain provisions to provide medical services and health care to injured
8 workers for compensable injuries and diseases under a ~~managed care~~ case management plan that
9 meets the requirements established in rules promulgated by the Department of Labor pursuant
10 to chapter 1-26. All policies and plans shall meet the requirements of § 58-17-54. However, the
11 requirements of this section become effective January 1, 1994, for insurers issuing policies
12 pursuant to § 58-20-15.

13 Section 2. That subdivision (7) of § 62-1-1 be amended to read as follows:

14 (7) "Injury" or "personal injury," only injury arising out of and in the course of the
15 employment, and does not include a disease in any form except as it results from the
16 injury. An injury is compensable only if it is established by medical evidence, subject

1 to the following conditions:

2 (a) No injury is compensable unless the employment or employment related
3 activities are a major contributing cause of the condition complained of; or

4 (b) If the injury combines with a preexisting disease or condition to cause or
5 prolong disability, impairment or need for treatment, the condition complained
6 of is compensable if the employment or employment related injury is and
7 remains a major contributing cause of the disability, impairment or need for
8 treatment.

9 (c) If the injury combines with a preexisting work related compensable injury,
10 disability, or impairment, the subsequent injury is compensable if the
11 subsequent employment or subsequent employment related activities
12 contributed independently to the disability, impairment, or need for treatment.

13 The term does not include a mental injury arising from emotional, mental, or
14 nonphysical stress or stimuli. A mental injury is compensable only if a compensable
15 physical injury is and remains a major contributing cause of the mental injury, as
16 shown by clear and convincing evidence. A mental injury is any psychological,
17 psychiatric, or emotional condition for which compensation is sought.

18 Section 3. That § 62-2-10 be amended to read as follows:

19 62-2-10. The Governor shall appoint a State Workers' Compensation Advisory Council,
20 composed of eight members, four representing employees, two of whom shall be from
21 recommendations submitted by the South Dakota Federation of Labor. No employee
22 representative may be a member of a personnel department. Four shall represent employers. The
23 members may not be all of the same political party. Expenses of council members shall be paid
24 by the Department of Labor. The length of terms ~~shall be~~ is three years with no more than three
25 expiring each year. Members shall serve until a new appointment is made by the Governor.

1 Nonvoting members ~~shall be the lieutenant governor,~~ are the secretary of labor and the secretary
2 of commerce and regulation. Five voting members of the council are a quorum for meetings. The
3 lieutenant governor shall serve as the chair and has the right to vote. Any recommendations by
4 the advisory council shall be by ~~unanimous~~ majority vote.

5 The council shall aid the Department of Labor and the Department of Commerce and
6 Regulation in reviewing the workers' compensation program as to its content, adequacy, and
7 effectiveness and make recommendations for its improvement. The council shall meet as
8 frequently as necessary but not less than twice each year. The council shall make reports of its
9 meetings that shall include a record of its discussions, including all issues voted upon and the
10 vote count, and its recommendations. The council shall make an annual report to the Governor
11 and Legislature by December thirty-first of each year. The department shall make the reports
12 available to any interested persons or groups.

13 Section 4. That § 62-4-1 be amended to read as follows:

14 62-4-1. The employer shall provide necessary first aid, medical, surgical, and hospital
15 services, or other suitable and proper care including medical and surgical supplies, apparatus,
16 artificial members, and body aids during the disability or treatment of an employee within the
17 provisions of this title. Repair or replacement of damaged prosthetic devices is compensable and
18 is considered a medical service under this section if the devices were damaged or destroyed in
19 a work related accident. Repair or replacement of damaged hearing aids, dentures, prescription
20 eyeglasses, eyeglass frames, or contact lenses is considered a medical service under this section
21 if the hearing aids, dentures, prescription eyeglasses, eyeglass frames, or contact lenses were
22 damaged or destroyed in an accident which also causes another injury which is compensable
23 under this law. The employee shall have the initial selection to secure ~~his~~ the employee's own
24 physician, surgeon, or hospital services at the employer's expense. If the employee selects a
25 health care provider located in a community not the home or workplace of the employee, and

1 a health care provider is available to provide the services needed by the employee in the local
2 community or in a closer community, no travel expenses need be paid by the employer or the
3 employer's insurer. ~~If an injured employee has not required medical treatment for a period of~~
4 ~~three years, it is presumed that no further medical care with respect to the injury is necessary.~~
5 ~~Documentation that the injury is work related by the primary treating or rating physician after~~
6 ~~three years shall automatically rebut the presumption. However, the claimant may present other~~
7 ~~medical proof to rebut the presumption.~~

8 Section 5. That § 62-4-5 be amended to read as follows:

9 62-4-5. If, after an injury has been sustained, the employee as a result thereof becomes
10 partially incapacitated from pursuing the employee's usual and customary line of employment,
11 or if the employee has been released by the employee's physician from temporary total disability
12 and has not been given a rating to which § 62-4-6 would apply, the employee shall receive
13 compensation, subject to the limitations as to maximum amounts fixed in § 62-4-3, equal to
14 one-half of the difference between the average amount which the employee earned before the
15 accident, and the average amount which the employee is earning or is able to earn in some
16 suitable employment or business after the accident. If the employee has not received a bona fide
17 job offer that the employee is physically capable of performing, compensation shall be at the rate
18 provided by § 62-4-3. However, in no event may the total calculation be less than the amount
19 the claimant was receiving for temporary total disability, unless the claimant refuses suitable
20 employment ~~with the employer.~~

21 Section 6. That § 62-4-52 be amended to read as follows:

22 62-4-52. Terms used in § 62-4-53 mean:

- 23 (1) "Community," the area within sixty road miles of the employee's residence unless:
- 24 (a) The employee is physically limited to travel within a lesser distance;
- 25 (b) Consideration of the wages available within sixty road miles and the cost of

1 commuting to the job site makes it financially infeasible to work within such a
2 distance;

3 (c) An employee has expanded the employee's community by regularly being
4 employed at a distance greater than sixty road miles of the employee's
5 residence, in which case community shall be defined as that distance previously
6 traveled.

7 (2) "Sporadic employment resulting in an insubstantial income," employment that does
8 not offer an employee the opportunity to work either full-time or part-time and pay
9 wages equivalent to, or greater than, the workers' compensation benefit rate
10 applicable to the employee at the time of the employee's injury. Commission or
11 piece-work pay may or may not be considered sporadic employment depending upon
12 the facts of the individual situation. If a bona fide position is available that has
13 essential functions that the injured employee can perform, with or without reasonable
14 accommodations, and offers the employee the opportunity to work either full-time or
15 part-time and pays wages equivalent to, or greater than, the workers' compensation
16 benefit rate applicable to the employee at the time of the employee's injury the
17 employment is not sporadic. The department shall retain jurisdiction over disputes
18 arising under this provision to ensure that any such position is suitable when
19 compared to the employee's former job and that such employment is regularly and
20 continuously available to the employee.

21 Section 7. That § 62-4-53 be amended to read as follows:

22 62-4-53. An employee is permanently totally disabled if the employee's physical condition,
23 in combination with the employee's age, training, and experience and the type of work available
24 in the employee's community, cause the employee to be unable to secure anything more than
25 sporadic employment resulting in an insubstantial income. An employee has the burden of proof

1 to make a prima facie showing of permanent total disability. The burden then shifts to the
2 employer to show that some form of suitable work is regularly and continuously available to the
3 ~~claimant~~ employee in the community. The employer may meet this burden by showing that a
4 position is available which is not sporadic employment resulting in an insubstantial income as
5 defined in subdivision 62-4-52(2). An employee shall introduce evidence of a reasonable, good
6 faith work search effort unless the medical or vocational findings show such efforts would be
7 futile. The effort to seek employment is not reasonable if the employee places undue limitations
8 on the kind of work the employee will accept or purposefully leaves the labor market. An
9 employee shall introduce expert opinion evidence that the employee is unable to benefit from
10 vocational rehabilitation or that the same is not feasible.

11 If an employee chooses to move to an area to obtain suitable employment that is not available
12 within the employee's community, the employer shall pay moving expenses of household goods
13 not to exceed four weeks of compensation at the rate provided by § 62-4-3.

14 Section 8. That § 62-6-1 be amended to read as follows:

15 62-6-1. Every employer coming under the provisions of this title shall keep a record of all
16 injuries, fatal or otherwise, sustained by ~~his~~ the employer's employees in the course of their
17 employment. The record shall be completed within ~~ten~~ seven calendar days, not counting
18 Sundays and legal holidays, after any employer has knowledge of the occurrence of an injury.
19 The record shall be on a form approved by the Department of Labor. The employer shall
20 preserve the record for a period of at least four years from the date of injury. The record shall
21 be signed by the employer and a copy given to the injured employee. Any employer who fails to
22 complete or maintain the injury records required by this section is guilty of a Class 2
23 misdemeanor.

24 Section 9. That § 62-6-2 be amended to read as follows:

25 62-6-2. An employer covered by the provisions of this title who has knowledge of an injury

1 that requires medical treatment other than minor first aid or that incapacitates the employee for
2 seven or more calendar days shall file a written report with:

3 (1) The Department of Labor when the employer is self-insured under § 62-5-4; or

4 (2) The employer's insurer when the employer has insured the liability under § 62-5-2 or
5 62-5-3.

6 The report shall be filed within ~~ten~~ seven calendar days, not counting Sundays and legal
7 holidays, after the employer has knowledge of the injury, unless the employer had good cause
8 for failing to file the written report within the ~~ten-day~~ seven-day period. ~~If the tenth day is a~~
9 ~~Saturday, Sunday, or legal holiday, the report may be filed on the next day that is not a Saturday,~~
10 ~~Sunday, or a legal holiday.~~ The report shall be made on a form approved by the Department of
11 Labor. Any employer who fails to file a report as required by this section is guilty of a Class 2
12 misdemeanor and is subject to an administrative fine of one hundred dollars payable to the
13 Department of Labor.

14 Section 10. That § 62-7-13 be amended to read as follows:

15 62-7-13. The department may make such inquiries and investigations it deems necessary. The
16 hearings of the department shall be in ~~the municipality or place where the injury occurred.~~
17 ~~However, if the injury occurred in a remote place the hearing may be held at some other~~ a place
18 which the department determines to be ~~more~~ convenient to the parties and to the witnesses. A
19 record of the proceedings at the hearing shall be kept, the expense of the record to be borne by
20 the department. The department shall file its decision, its findings of fact, and conclusions of law
21 and shall serve the same on the parties forthwith by dispatching a copy addressed to each party
22 or ~~his~~ the party's attorney by mail, postage paid.

23 Section 11. That § 62-7-35.1 be amended to read as follows:

24 62-7-35.1. In any case in which any benefits have been tendered pursuant to this title on
25 account of an injury, any claim for additional compensation shall be barred, unless a claim is filed

1 within three years from the date of the last payment of benefits. ~~However, the time limitation of~~
2 ~~this section does not apply to claims for medical care or the replacement of medicine, crutches,~~
3 ~~ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus,~~
4 ~~which medical care or apparatus are permanently or indefinitely required as the result of a~~
5 ~~compensable injury. The provision of such medical care or replacement of such items does not~~
6 ~~constitute payment of compensation so as to toll the running of the statute of limitations.~~

7 The provisions this section do not apply to review and revision of payments or other benefits
8 under § 62-7-33.

9 Section 12. That chapter 62-7 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The right to compensation under this title is forever barred if no medical treatment has been
12 obtained within seven years after the employee files the first report of injury.

1 **BILL HISTORY**

2 1/29/99 First read in Senate and referred to State Affairs. S.J. 254

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

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

5 2/10/99 Scheduled for Committee hearing on this date.

6 2/10/99 State Affairs Do Pass Amended, Passed, AYES 6, NAYS 3. S.J. 443

7 2/16/99 Senate Do Pass Amended, Passed, AYES 21, NAYS 14. S.J. 505

8 2/17/99 First read in House and referred to State Affairs. H.J. 588

9 2/24/99 Scheduled for Committee hearing on this date.

10 2/26/99 Scheduled for Committee hearing on this date.

11 2/26/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 4. H.J. 805

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0867

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB238** - 3/1/99

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

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

1 FOR AN ACT ENTITLED, An Act to authorize the Public Utilities Commission to regulate
2 certain telecommunications services and to authorize the Bureau of Information and
3 Telecommunications to assist local governmental associations.

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

5 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The telecommunications company of any subscriber may not be changed without the
8 telecommunications service subscriber's authorization. The telecommunications service
9 subscriber's authorization shall be evidenced either by a written authorization signed by the
10 subscriber or by the use of an independent third-party verification company which complies with
11 the provisions of sections 2 and 3 of this Act, or by any other means authorized by the
12 commission. Products or services may not be listed on a subscriber's bill unless authorized by the
13 subscriber. The commission may promulgate rules pursuant to chapter 1-26 concerning
14 procedures, requirements, and standards for changing a subscriber's telecommunications
15 company and for listing products and services on a subscriber's bill.

16 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If an independent third-party verification company obtains a subscriber's oral confirmation
3 regarding a change of a designated telecommunications company for interexchange or local
4 exchange telecommunications service, the third-party verification shall include:

5 (1) A statement that the purpose of the call is to verify the subscriber's intent to change
6 to the newly requested telecommunications company. The newly requested
7 interexchange or local telecommunications company shall be clearly identified to the
8 subscriber. Reference to use of another telecommunications company's network or
9 facilities, if stated, shall be secondary in nature to the prominent identification of the
10 telecommunications company which will be providing service and setting the rates for
11 the subscriber's service;

12 (2) Confirmation that the person whose authorization for a telecommunications company
13 change is being verified is the subscriber on the account or a person authorized by the
14 subscriber to make decisions regarding the telecommunications account on behalf of
15 the subscriber, whether that subscriber is an individual person or a business;

16 (3) Verification data unique to the subscriber such as the subscriber's date of birth; and

17 (4) The name and toll-free telephone number of the newly requested telecommunications
18 company.

19 The third-party verification company shall electronically record the telephone call that
20 confirms the subscriber's change of a designated telecommunications company. The electronic
21 recording shall include the complete statement of the service being changed and the subscriber's
22 complete response. The electronic recording shall be retained by the third-party verification
23 company for two years.

24 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 The third-party verification company shall meet each of the following criteria:

- 2 (1) Be independent of the telecommunications company that seeks to provide the
3 subscriber's new service;
- 4 (2) Not be managed, controlled, or directed or owned wholly or in part, by the
5 telecommunications company that seeks to provide the subscriber's new service;
- 6 (3) Operate from facilities physically separate from those of the telecommunications
7 company that seeks to provide the subscriber's new service; and
- 8 (4) Not derive commissions or compensation based upon the number of sales confirmed.

9 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A telecommunications company selling more than one type of telecommunications service
12 must obtain separate authorization to change a telecommunications company from the subscriber
13 for each service sold, although the authorizations may be made within the same solicitation. At
14 a minimum, separate authorizations must be obtained for local exchange service, intraLATA toll
15 service, and interLATA toll service. Each authorization must be verified separately from any
16 other authorizations obtained in the same solicitation.

17 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A subscriber is not liable for any charges imposed by a telecommunications company that
20 initiates a telecommunications carrier change without authorization from the subscriber or for
21 the billing of unauthorized products or services. In addition, the telecommunications company
22 that initiates the unauthorized change or the billing of unauthorized products or services shall pay
23 to the subscriber one thousand dollars.

24 Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
2 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The
3 commission may impose a civil fine of not more than twenty thousand dollars for each offense.
4 In determining the amount of the penalty upon finding a violation, or the amount of the
5 compromise settlement, the commission shall consider the appropriateness of the penalty to the
6 size of the business of the person charged, prior offenses and compliance history, the good faith
7 of the person charged in attempting to achieve compliance, and such other matters as justice may
8 require. All penalties collected pursuant to this section shall be deposited in the state treasury.
9 In addition to assessing a civil penalty for a violation of this Act, the commission may revoke or
10 suspend a telecommunications company's certificate of authority for repeated offenses.

11 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 If the commission receives more than two complaints within thirty days regarding violations
14 of section 1 of this Act, the commission may require the telecommunications company
15 responsible for the violations to provide the commission with a complete list of its current
16 subscribers, including the subscribers' billing addresses. The list may be filed as confidential
17 consistent with the commission's rules. The commission may contact each subscriber to
18 determine whether any subscriber has been subject to an unauthorized change in a
19 telecommunications company or billed for unauthorized products or services. If the commission
20 finds, after notice and opportunity for hearing, that a telecommunications company has
21 committed two separate violations of section 1 of this Act within one year, the commission may
22 assess the costs of contacting subscribers to the telecommunications company.

23 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 If the commission finds the company has committed a violation of this Act after holding a

1 contested case proceeding or if allowed by section 7 of this Act, the commission may assess the
2 actual costs of the contested case proceeding or contacting subscribers to the
3 telecommunications company. The assessment shall be limited to actual amounts expended by
4 the commission for commission employee time, expert witnesses, court reporter fees, document
5 and exhibit preparation, and other necessary and related expenses incurred by the commission.
6 The telecommunications company may, within thirty days after the assessment is mailed, file
7 written objections with the commission stating the grounds upon which it claims that the
8 assessment is not reasonable. The commission shall within thirty days of receiving such
9 objections hold a hearing and issue an order in accordance with its findings as to the proper
10 amount to be assessed to the telecommunications company. The order may be appealed pursuant
11 to chapter 1-26.

12 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 For the purpose of this Act, the term, subscriber, means any person who contracts with a
15 telecommunications company for telecommunications services.

16 Section 10. That § 37-30A-9 be repealed.

17 ~~37-30A-9. Notwithstanding the provisions of § 37-30A-8, no person may change the~~
18 ~~designated telecommunications company as defined in § 49-31-1(9) which is providing service~~
19 ~~to a consumer without the written confirmation in the form of a letter of agency from that~~
20 ~~consumer or confirmation by a third-party verification company. The third-party verification~~
21 ~~company shall meet each of the following criteria:~~

22 ~~(1) Be independent of the telecommunications company that seeks to provide the~~
23 ~~consumer's new service;~~

24 ~~(2) Not be directly managed, controlled, or directed, or owned wholly or in part, by the~~
25 ~~telecommunications company that seeks to provide the consumer's new service;~~

1 ~~—(3)— Operate from facilities physically separate from those of the telecommunications~~
2 ~~company that seeks to provide the consumer's new service; and~~

3 ~~—(4)— Not derive commissions or compensation based upon the number of sales confirmed.~~

4 ~~—The telecommunications company that seeks to provide the consumer's new service shall~~
5 ~~connect the consumer by telephone to the third-party verification company or shall arrange for~~
6 ~~the third-party verification company to call the consumer to confirm the change. The third-party~~
7 ~~verification company shall obtain the consumer's oral confirmation regarding the change and shall~~
8 ~~record that confirmation. The record shall include the information requested by the third-party~~
9 ~~verification company and the consumer's responses. The third-party verification company shall~~
10 ~~retain that record for twelve months. The record shall be available to the Public Utilities~~
11 ~~Commission and to the consumer at no cost. No information obtained from the consumer may~~
12 ~~be used for marketing purposes. If the telecommunications company or a third-party verification~~
13 ~~company acting on its behalf fails to comply with these third-party verification provisions, the~~
14 ~~Public Utilities Commission may revoke the telecommunication company's certificate of authority~~
15 ~~and may impose a civil fine of not less than two hundred dollars nor more than one thousand~~
16 ~~dollars for each offense. It is a violation of §§ 37-30A-1 to 37-30A-17 for any person to make~~
17 ~~such an unauthorized change.~~

18 Section 11. That § 1-33-43 be amended to read as follows:

19 1-33-43. The Bureau of Information and Telecommunications shall perform functions to
20 include, but not be limited to:

21 (1) Providing technical and management assistance to state agencies and institutions as
22 to systems or methods to be used to meet information and communication
23 requirements efficiently and effectively;

24 (2) Developing and proposing operational technical standards for the state information
25 systems which will ensure the interconnection of computer networks and information

- 1 of state agencies;
- 2 (3) Purchasing from, or contracting with, suppliers and communications common carriers
- 3 for communications facilities or services;
- 4 (4) Cooperating with any federal, state, or local emergency management agency in
- 5 providing for emergency communication and information services;
- 6 (5) Providing, where deemed feasible, a means whereby local governmental agencies and
- 7 local government associations may utilize the state communication and information
- 8 systems and service; and
- 9 (6) In cooperation with the appropriate state agencies, plan, design, and conduct
- 10 experiments in information services, equipment, and technology, and to implement
- 11 enhancements in the state information system.

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 2/12/99 State Affairs Hog Housed.

6 2/12/99 Scheduled for Committee hearing on this date.

7 2/12/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 469

8 2/17/99 Senate Do Pass Amended, Passed, AYES 34, NAYS 0. S.J. 529

9 2/18/99 First read in House and referred to State Affairs. H.J. 614

10 2/24/99 Scheduled for Committee hearing on this date.

11 2/26/99 Scheduled for Committee hearing on this date.

12 2/26/99 State Affairs Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 806