

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0246

SENATE STATE AFFAIRS COMMITTEE
ENGROSSED NO. **HB1035** - 1/30/99

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

1 FOR AN ACT ENTITLED, An Act to permit the State of South Dakota to waive performance
2 and payment bonds for public improvements under certain circumstances.

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

4 Section 1. That chapter 5-21 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The State of South Dakota, acting through the Bureau of Administration, shall waive the
7 requirement of a performance and payment bond, before the bid letting, on state projects if the
8 awarded contract does not exceed fifty thousand dollars.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to State Affairs. H.J. 38

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/15/99 State Affairs Do Pass, Passed, AYES 12, NAYS 0. H.J. 64

5 1/16/99 House of Representatives Do Pass, Passed, AYES 57, NAYS 9. H.J. 74

6 1/19/99 First read in Senate and referred to State Affairs. S.J. 122

7 1/22/99 Scheduled for Committee hearing on this date.

8 1/22/99 State Affairs Do Pass Amended, Failed, AYES 4, NAYS 4.

9 1/22/99 State Affairs Deferred to another day.

10 1/27/99 Scheduled for Committee hearing on this date.

11 1/29/99 Scheduled for Committee hearing on this date.

12 1/29/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 248

13 1/29/99 State Affairs Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0245

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1036** - 1/30/99

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

1 FOR AN ACT ENTITLED, An Act to permit the State of South Dakota to waive bid security
2 on bids for public improvements under certain circumstances.

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

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The State of South Dakota, acting through the Bureau of Administration, shall waive the
7 requirement of a bid bond or other bid security on state projects if the bid submitted or the
8 awarded contract does not exceed fifty thousand dollars.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to State Affairs. H.J. 38

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/15/99 State Affairs Deferred to another day.

5 1/16/99 Scheduled for Committee hearing on this date.

6 1/16/99 State Affairs Do Pass, Passed, AYES 13, NAYS 0. H.J. 70

7 1/19/99 House of Representatives Do Pass, Passed, AYES 60, NAYS 7. H.J. 87

8 1/20/99 First read in Senate and referred to State Affairs. S.J. 136

9 1/27/99 Scheduled for Committee hearing on this date.

10 1/29/99 Scheduled for Committee hearing on this date.

11 1/29/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 248

12 1/29/99 State Affairs Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

555C0048

SENATE TAXATION COMMITTEE

ENGROSSED NO. **SB2** - 1/30/99

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

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

1 FOR AN ACT ENTITLED, An Act to provide for the recovery of certain expenses in an action
2 brought by an appellant relative to the assessment, allocation, or distribution of centrally
3 assessed property.

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

5 Section 1. The sixth judicial circuit court may award reasonable disbursements, including
6 attorneys' fees, in an action brought to court pursuant to chapter 10-38 against any appellant
7 relative to the assessment, allocation, equalization, or distribution of property if the appellant
8 does not prevail in its appeal of the property assessment, allocation, equalization, or distribution.

9 Section 2. On motion, the Supreme Court may award reasonable attorneys' fees in an action
10 brought to the Supreme Court pursuant to chapter 10-38 against any appellant relative to the
11 assessment, allocation, equalization, or distribution of property if the appellant does not prevail
12 in its appeal of the property assessment, allocation, equalization, or distribution. The motion shall
13 be accompanied by counsel's verified itemized statement of costs incurred and legal services
14 rendered. No award for attorney's fees may be made for or against the State of South Dakota
15 in the Supreme Court.

1 **BILL HISTORY**

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

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/15/99 Taxation Do Pass Amended, Failed, AYES 4, NAYS 2.

5 1/15/99 Taxation Deferred to another day.

6 1/20/99 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 126

7 1/20/99 Scheduled for Committee hearing on this date.

8 1/21/99 Taxation Hog Housed.

9 1/22/99 Referred to Taxation. S.J. 164

10 1/29/99 Scheduled for Committee hearing on this date.

11 1/29/99 Taxation Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 250

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0223

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB49** - 1/30/99

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Section 13. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as
4 follows:

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0535

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB75** - 1/30/99

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

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

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

4 Section 1. Terms used in this Act mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

178C0494

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB79** - 1/30/99

Introduced by: Senators Albers, Ham, and Vitter and Representatives Weber and Engbrecht

1 FOR AN ACT ENTITLED, An Act to revise the liability for misdemeanor violations of certain
2 provisions concerning the illegal sale or distribution of tobacco products.

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

4 Section 1. That § 34-46-5 be amended to read as follows:

5 34-46-5. A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more
6 than one violation of § ~~34-46-2~~ subdivision 34-46-2(4) on a single day. Reasonable reliance upon
7 proof of age of the purchaser or the recipient of a tobacco product is a complete defense to any
8 action brought against a person for the sale or distribution of a tobacco product to a person
9 under the age of eighteen.

10 Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No person may be charged with more than one violation in any twenty-four hour period
13 which results from sales to persons purchasing during unannounced random inspections.

1 **BILL HISTORY**

2 1/21/99 First read in Senate and referred to Judiciary. S.J. 144

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

4 1/25/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 174

5 1/27/99 Referred to Judiciary. S.J. 221

6 1/29/99 Scheduled for Committee hearing on this date.

7 1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

851C0518

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB106** - 1/30/99

Introduced by: Senators Hainje, Albers, Ham, Kleven, and Vitter and Representatives Michels, Duniphan, Fitzgerald, Koetzle, and McNenny

1 FOR AN ACT ENTITLED, An Act to increase the penalty for failure to stop for an emergency
2 vehicle.

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

4 Section 1. That § 32-31-6.1 be amended to read as follows:

5 32-31-6.1. Upon approaching from any direction any stopped authorized emergency vehicle
6 making use of visual signals meeting the requirements of this chapter, the driver of ~~every~~ any
7 other vehicle shall come to a complete stop before ~~he~~ the driver reaches the stopped emergency
8 vehicle ~~and~~. The driver may, unless otherwise directed, proceed with caution only after ~~he~~ the
9 driver has ascertained that it is safe to do so. A violation of this section is a Class 2 misdemeanor.
10 However, a violation of this section is a Class 1 misdemeanor if the emergency vehicle referred
11 to in this section is an ambulance, fire department vehicle, or a rescue vehicle which is at the
12 scene of an accident or a fire and the failure to stop results in an injury to an emergency worker
13 or damage to any such authorized emergency vehicle.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Judiciary. S.J. 161

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

4 1/29/99 Scheduled for Committee hearing on this date.

5 1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

562C0484

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB107** - 1/30/99

Introduced by: Senators Whiting, Dunn (Jim), Everist, Flowers, Ham, Lawler, and Moore and
Representatives Haley, Brown (Jarvis), Duniphan, Jaspers, Pummel, and
Volesky

1 FOR AN ACT ENTITLED, An Act to require the Corrections Commission to review any
2 proposal to establish or increase mandatory minimum sentences.

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

4 Section 1. Any person before proposing to the Legislature the establishment of, or an
5 increase to, any mandatory minimum sentence shall submit the proposal to the Corrections
6 Commissions not later than December thirty-first. The Corrections Commission shall review and
7 assess the merits of the proposal and determine the impact the proposal would have on the
8 corrections system. If the proposal is subsequently introduced in the Legislature, the Corrections
9 Commission shall submit to the Legislature its recommendation with regard to the proposal. The
10 Corrections Commission shall base any recommendation on evidence gathered by the
11 commission in public hearings from testimony submitted orally or in writing by interested parties
12 and on evidence compiled by the commission in its study.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Judiciary. S.J. 161

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

4 1/29/99 Scheduled for Committee hearing on this date.

5 1/29/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 251

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

870C0282

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

SB115 - 1/29/99

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

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

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

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

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

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

14 If agricultural land has been inundated by floods and was not farmable during the past three
15 growing seasons, a person may request the director of equalization to specially assess the land

- 1 for the purpose of taxation by submitting an application before November first. The owner shall
- 2 describe on the application the portion of the agricultural land that has been inundated by floods
- 3 and was not farmable during the past three growing seasons.

1 **BILL HISTORY**

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

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

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

5 S.J. 230

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