

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

159C0269

HOUSE ENGROSSED NO. **HB1015** - 2/5/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain election procedures for the formation of
2 certain special districts and the election of directors, managers, or trustees.

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

4 Section 1. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A landowner for the purposes of chapter 6-16 means any person who owns property, as
7 defined pursuant to § 10-4-2 or 10-9-1, within the special district and is listed as an owner of the
8 property by the register of deeds. A partnership, association, cooperative, trust, limited liability
9 company, or corporation may by resolution appoint one person to vote in a special district
10 election on behalf of the partnership, association, cooperative, trust, limited liability company,
11 or corporation. A person who has purchased property under a contract for deed which is of
12 record in the office of the register of deeds in the county where the real property is situated is
13 entitled to vote in the special district election and the seller of the property under a recorded
14 contract for deed may not vote. No person, partnership, association, cooperative, trust, limited
15 liability company, or corporation may vote more than once in any special district election.

16 Section 2. That § 6-16-2 be amended to read as follows:

1 6-16-2. The application for organization shall be a petition verified by one or more
2 circulators by affidavit stating that each affiant personally witnessed the signatures on the petition
3 and believe the signatures to be genuine. The petition shall be signed by at least twenty-five
4 percent of the landowners within the proposed district who are also registered voters within the
5 district. If the proposed district is in two or more counties, a petition shall be filed in each county
6 and each petition shall be signed by at least ~~twenty~~ twenty-five percent of the landowners within
7 the proposed district who are also registered voters within the proposed district in that county.
8 The petition shall be accompanied by a deposit covering the estimated costs as determined by
9 the county auditor of the public notices and the conduct of the election for the formation of the
10 district.

11 Section 3. That § 6-16-4 be amended to read as follows:

12 6-16-4. The county auditor shall publish the notice of the voter registration deadline at least
13 once each week for two consecutive weeks, the last publication to be not less than twenty- five
14 nor more than thirty days prior to the election. The auditor shall publish notices of election at
15 least once each week for two consecutive weeks, the last publication to be not less than four nor
16 more than ten days before the election in a legal newspaper or newspapers of general circulation
17 in the proposed district.

18 Section 4. That § 34-11A-28 be amended to read as follows:

19 34-11A-28. The boundaries of any ambulance district organized under the provisions of this
20 chapter may be changed in the manner prescribed by §§ 34-11A-4 to ~~34-11A-10~~ 34-11A-8,
21 inclusive, ~~but.~~ However, the ~~changes~~ change of boundaries of ~~any such a~~ any such a district may not impair
22 or affect ~~its~~ the district's organization or ~~its~~ right in or to property; nor may ~~it~~ the change of
23 boundaries impair, affect, or discharge any contract, obligation, lien, or change for or upon which
24 ~~it might~~ the district may be liable had ~~such~~ the change of boundaries not been made.

25 Section 5. That § 34A-5-18 be amended to read as follows:

1 34A-5-18. The board of trustees shall give notice of the election provided for in § 34A-5-17
 2 pursuant to ~~§ 34A-5-8~~ § 6-16-4, and the question shall be submitted to the voters on a separate
 3 ballot and be so stated as to enable each voter to vote for or against the proposed question.

4 Section 6. That § 46A-14-8 be amended to read as follows:

5 46A-14-8. The initiating petition shall contain the following:

- 6 (1) The name of the proposed district;
- 7 (2) That there is need in the interest of the public health, safety, and welfare for creation
 8 of a district to accomplish improvements in the watershed;
- 9 (3) A statement in general terms setting forth the purposes of the contemplated
 10 improvements, the territory to be included in the district; and all proposed
 11 subdivisions thereof, if any, of the district;
- 12 (4) The number ~~and names~~ of managers, ~~which~~ shall be three or five members, ~~to be~~
 13 ~~appointed as first managers of the proposed district, and who shall act for a period of~~
 14 ~~one year or until the first annual meeting. They.~~ Each manager shall be owners of own
 15 land located in the proposed district but ~~none shall~~ may not be a public officer of the
 16 state or federal government;
- 17 (5) A list of landowners and the total acreage of land owned by each within the proposed
 18 district;
- 19 (6) A map of the proposed district and the ownership of all land in the proposed district,
 20 except the outline only of the jurisdiction of the authorized officials of municipalities
 21 included need be shown; and
- 22 (7) The location of the official place of business of the proposed district;
- 23 ~~(8) A request for the organization of the district as proposed and appointment of the first~~
 24 ~~managers.~~

25 Section 7. That § 46A-18-4 be amended to read as follows:

1 46A-18-4. The petition established pursuant to § 46A-18-2 shall contain:

2 (1) The name of the proposed district;

3 (2) The object and purpose of the water project and works proposed to be constructed
4 or acquired, together with a general description of the nature, location, and method
5 of operation of the proposed works or program of activities;

6 (3) A legal description of the lands constituting the proposed district and the ~~names~~ name
7 of any ~~municipalities~~ municipality included partly or wholly within the boundaries of
8 the proposed district;

9 (4) The location of the principal place of business of the proposed district; and

10 (5) The number of members of the board of directors of the proposed district, which
11 number may not be less than three nor more than seven, and a statement as to ~~whether~~
12 if the directors shall be elected at large or shall be elected by director divisions, ~~the~~
13 ~~names and addresses of the members who shall serve as directors until their~~
14 ~~successors are elected and qualified as provided in this chapter, and, if director~~
15 ~~divisions are provided for, the respective divisions that the directors are to represent.~~
16 The persons named in the petition as directors. Each director shall be a qualified
17 ~~voters~~ voter of the district and, if director divisions are provided for, shall be a
18 qualified voters voter of the respective ~~divisions~~ division ~~the directors are~~ director is
19 to represent.

20 Section 8. That § 46A-18-21 be amended to read as follows:

21 46A-18-21. The initial district directors ~~named in the petition for formation, upon~~
22 ~~establishment of the district by the Board of Water and Natural Resources,~~ shall assume the
23 duties of ~~their offices~~ office and serve until ~~their~~ successors are duly elected and qualified.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Local Government. H.J. 34

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

4 1/19/99 Local Government Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 80

5 1/21/99 House of Representatives Deferred to another day. H.J. 116

6 1/28/99 Intent to reconsider. H.J. 250

7 1/29/99 House of Representatives Deferred to another day. H.J. 265

8 1/29/99 House of Representatives Reconsidered, AYES 62, NAYS 3. H.J. 264

9 2/3/99 Motion to Amend, Passed. H.J. 350

10 2/3/99 House of Representatives Deferred to another day. H.J. 351

11 2/4/99 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 4. H.J. 373

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0255

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1042** - 1/26/99

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

1 FOR AN ACT ENTITLED, An Act to authorize the secretary of commerce and regulation to
2 issue restricted driver licenses to persons whose driving privileges have been withdrawn and
3 to promulgate certain administrative rules.

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

5 Section 1. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The secretary of commerce and regulation may issue a restricted license to a person whose
8 license has been suspended, revoked, disqualified, or canceled pursuant to § 32-12-49 to allow
9 the person to drive to and from the person's place of employment, for purposes of the person's
10 employment, or for attendance at school. The secretary of commerce and regulation may
11 promulgate rules pursuant to chapter 1-26 for restricted licenses with regard to eligibility,
12 application, determination, limitations, duration, and grounds for revocation.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Commerce. H.J. 39

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

4 1/26/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 187

5 1/26/99 Commerce Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0406

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1053** - 2/10/99

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

1 FOR AN ACT ENTITLED, An Act to revise the open container law.

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

3 Section 1. That § 35-1-9.1 be amended to read as follows:

4 35-1-9.1. It is a Class 2 misdemeanor for any person to consume any alcoholic beverage, or
5 have a package or any receptacle containing an alcoholic beverage in ~~his~~ the person's possession
6 in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic
7 beverage is so removed from the passenger area of the motor vehicle that no occupant of the
8 motor vehicle ~~shall have~~ has access to it while the vehicle is ~~in motion~~ located on a public
9 highway or the right-of-way of a public highway.

10 Section 2. Terms used in § 35-1-9.1 mean:

11 (1) "Alcoholic beverage," any distilled spirits, wine, and malt beverage as defined in this
12 section;

13 (2) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum,
14 brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for
15 nonindustrial use containing any amount of alcohol;

16 (3) "Malt beverage," beer, ale, porter, stout, and other similar beverages of any name or

1 description made by the alcoholic fermentation of an infusion or decoction, or
2 combination of both, in potable brewing water, of malted barley with hops, or their
3 parts, or their products, or from any substitute therefor, and with or without other
4 malted cereals, and with or without the addition of unmalted or prepared cereals,
5 other carbohydrates or products prepared therefrom, and with or without the addition
6 of carbon dioxide, and with or without other wholesome products suitable for human
7 consumption containing not less than one-half of one percent of alcohol by volume;
8 and

9 (4) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage
10 purposes, and obtained by the fermentation of the natural sugar content of fruits or
11 other agricultural products containing sugar and containing not less than one-half of
12 one percent of alcohol by weight but not more than twenty-four percent of alcohol by
13 volume.

14 Section 3. It is not a violation of section 1 of this Act if an alcoholic beverage is located in
15 a locked glove compartment of the motor vehicle.

16 Section 4. It is not a violation of section 1 of this Act if an open alcoholic beverage is behind
17 the last upright seat of a motor vehicle that is not equipped with a trunk or in an area not
18 normally occupied by the driver or passengers.

19 Section 5. It is not a violation of section 1 of this Act if a carrier defined in subdivision 35-1-
20 1(3) is licensed pursuant to subdivision 35-4-2(9).

21 Section 6. It is not a violation of section 1 of this Act if any passenger possesses or consumes
22 an alcoholic beverage in the living quarters of a motor home, house coach, or house trailer while
23 the vehicle is not in motion.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Transportation. H.J. 42

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

4 1/16/99 Transportation Deferred to another day, AYES 8, NAYS 5.

5 1/25/99 Scheduled for Committee hearing on this date.

6 1/25/99 Transportation Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 169

7 1/27/99 Motion to Amend, Passed. H.J. 219

8 1/27/99 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 12. H.J. 220

9 1/28/99 First read in Senate and referred to Transportation. S.J. 243

10 2/9/99 Scheduled for Committee hearing on this date.

11 2/9/99 Transportation Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 398

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0220

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1056** - 2/3/99

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for coordination of benefits
2 of group health plans.

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

4 Section 1. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 For the purposes of this chapter, the term, allowable expense, means a health care service or
7 expense including deductibles, coinsurance, or copayments, that is covered in full or in part by
8 any of the plans covering the person, except as provided in this section. If a plan provides
9 benefits in the form of services, the reasonable cash value of each service is considered an
10 allowable expense and a benefit paid. An expense or service or a portion of an expense or service
11 that is not covered by any of the plans is not an allowable expense. Expenses that are not
12 allowable include the following:

13 (1) If a covered person is confined in a private hospital room, the difference between the
14 cost of a semi-private room in the hospital and the private room, (unless the patient's
15 stay in the private hospital room is medically necessary in terms of generally accepted
16 medical practice, or one of the plans routinely provides coverage for private hospital

1 rooms) is not an allowable expense;

2 (2) If a person is covered by two or more plans that compute the benefit payments on the
3 basis of usual and customary fees, any amount in excess of the highest of the usual
4 and customary fee for a specified benefit is not an allowable expense;

5 (3) If a person is covered by two or more plans that provide benefits or services on the
6 basis of negotiated fees, any amount in excess of the highest of the negotiated fees is
7 not an allowable expense; or

8 (4) If a person is covered by one plan that calculates its benefits or services on the basis
9 of usual and customary fees and another plan that provides its benefits or services on
10 the basis of negotiated fees, the primary plan's payment arrangement shall be the
11 allowable expense for all plans.

12 Section 2. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 For the purposes of this chapter, the term, claim, means a request that benefits of a plan be
15 provided or paid. The benefits claimed may be in the form of:

- 16 (1) Services (including supplies);
- 17 (2) Payment for all or a portion of the expenses incurred;
- 18 (3) A combination of subdivisions (1) and (2) of this section; or
- 19 (4) An indemnification.

20 Section 3. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 For the purposes of this chapter, the term, closed panel plan, means a health maintenance
23 organization (HMO), preferred provider organization (PPO), exclusive provider organization
24 (EPO), or other plan that provides health benefits to covered persons primarily in the form of
25 services through a panel of providers that have contracted with or are employed by the plan, and

1 that excludes benefits for services provided by other providers, except in cases of emergency or
2 referral by a panel provider.

3 Section 4. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 For the purposes of this chapter, the term, coordination of benefits or COB, means a
6 provision establishing an order in which plans pay their claims, and permitting secondary plans
7 to reduce their benefits so that the combined benefits of all plans do not exceed total allowable
8 expenses.

9 Section 5. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 For the purposes of this chapter, the term, custodial parent, means the parent awarded
12 custody of a child by a court decree. In the absence of a court decree, the parent with whom the
13 child resides more than one-half of the calendar year without regard to any temporary visitation
14 is the custodial parent.

15 Section 6. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 For the purposes of this chapter, the term, hospital indemnity benefits, means benefits not
18 related to expenses incurred. The term does not include reimbursement-type benefits even if
19 designed or administered to give the insured the right to elect indemnity-type benefits at the time
20 of claim.

21 Section 7. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 For the purposes of this chapter, the term, plan, means a form of coverage with which
24 coordination is allowed. The definition of plan in the group contract shall state the types of
25 coverage that will be considered in applying the COB provision of that contract. The right to

1 include a type of coverage is limited by the rest of this definition. Separate parts of a plan for
2 members of a group that are provided through alternative contracts that are intended to be part
3 of a coordinated package of benefits are considered one plan and there is no COB among the
4 separate parts of the plan.

5 Section 8. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A plan may include:

- 8 (1) Group insurance contracts and group subscriber contracts;
- 9 (2) Uninsured arrangements of group or group-type coverage;
- 10 (3) Group or group-type coverage through closed panel plans;
- 11 (4) Group-type contracts. Group-type contracts are contracts which are not available to
12 the general public and can be obtained and maintained only because of membership
13 in or connection with a particular organization or group, including franchise or
14 blanket coverage. Individually underwritten and issued guaranteed renewable policies
15 are not group-type even if purchased through payroll deduction at a premium savings
16 to the insured since the insured would have the right to maintain or renew the policy
17 independently of continued employment with the employer;
- 18 (5) The amount by which group or group-type hospital indemnity benefits exceed two
19 hundred dollars per day;
- 20 (6) The medical care components of group long-term care contracts, such as skilled
21 nursing care;
- 22 (7) The medical benefits coverage in group, group-type and individual automobile, no
23 fault, and traditional automobile fault-type contracts; and
- 24 (8) Medicare or other governmental benefits, as permitted by law, except as provided in
25 section 10 of this Act. That part of the definition of plan may be limited to the

1 hospital, medical and surgical benefits of the governmental program.

2 Section 9. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 No plan may include:

- 5 (1) Individual or family insurance contracts;
- 6 (2) Individual or family subscriber contracts;
- 7 (3) Individual or family coverage through closed panel plans;
- 8 (4) Individual or family coverage under other prepayment, group practice and individual
9 practice plans;
- 10 (5) Group or group-type hospital indemnity benefits of two hundred dollars per day or
11 less;
- 12 (6) School accident-type coverages. These contracts cover students for accidents only,
13 including athletic injuries, either on a twenty-four-hour basis or on a to-and-from
14 school basis;
- 15 (7) Benefits provided in group long-term care insurance policies for nonmedical services,
16 for example, personal care, adult day care, homemaker services, assistance with
17 activities of daily living, respite care, and custodial care or for contracts that pay a
18 fixed daily benefit without regard to expenses incurred or the receipt of services;
- 19 (8) Medicare supplement policies;
- 20 (9) A state plan under medicaid; or
- 21 (10) A governmental plan which, by law, provides benefits that are in excess of those of
22 any private insurance plan or other nongovernmental plan.

23 Section 10. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
24 as follows:

25 For the purposes of this chapter, the term, primary plan, means a plan whose benefits for a

1 person's health care coverage shall be determined without taking the existence of any other plan
2 into consideration. A plan is a primary plan if either of the following is true:

3 (1) The plan either has no order of benefit determination rules, or its rules differ from
4 those permitted by this chapter; or

5 (2) All plans that cover the person use the order of benefit determination rules required
6 by this chapter, and under those rules the plan determines its benefits first.

7 Section 11. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 For the purposes of this chapter, the term, secondary plan, means a plan that is not a primary
10 plan. If a person is covered by more than one secondary plan, the order of benefit determination
11 rules of this chapter decide the order in which secondary plans benefits are determined in relation
12 to each other. Each secondary plan shall take into consideration the benefits of the primary plan
13 or plans and the benefits of any other plan which, under the rules of this chapter, has its benefits
14 determined before those of that secondary plan.

15 Section 12. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 For the purposes of this chapter, the term, this plan, means, in a COB provision, the part of
18 the group contract providing the health care benefits to which the COB provision applies and
19 which may be reduced because of the benefits of other plans. Any other part of the group
20 contract providing health care benefits is separate from this plan. A group contract may apply
21 one COB provision to certain of its benefits (such as dental benefits), coordinating only with
22 similar benefits, and may apply another COB provision to coordinate with other benefits.

23 Section 13. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
24 as follows:

25 The plan definition of allowable expense may exclude certain types of coverage or benefits

1 such as dental care, vision care, prescription drug, or hearing aids. A plan that limits the
2 application of COB to certain coverages or benefits may limit the definition of allowable
3 expenses in its contract to services or expenses that are similar to the services or expenses that
4 it provides. If COB is restricted to specific coverages or benefits in a contract, the definition of
5 allowable expense shall include similar services or expenses to which COB applies.

6 Section 14. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The amount of the reduction may be excluded from allowable expense if a covered person's
9 benefits are reduced under a primary plan:

- 10 (1) Because the covered person does not comply with the plan provisions concerning
11 second surgical opinions or precertification of admissions or services; or
- 12 (2) Because the covered person has a lower benefit because the person did not use a
13 panel provider.

14 Section 15. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan,
17 the secondary plan shall pay or provide benefits as if it were primary when a covered person uses
18 a nonpanel provider, except for emergency services or authorized referrals that are paid or
19 provided by the primary plan.

20 Section 16. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The director shall, by rules promulgated pursuant to chapter 1-26, prescribe the format for
23 the COB provision and a plain language explanation of the COB process for use in group
24 contracts.

25 Section 17. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

- 3 (1) Another plan exists and the covered person did not enroll in that plan;
- 4 (2) A person could have been covered under another plan, except with respect to Part B
5 of medicare;
- 6 (3) A person is covered under another plan, except as allowed in this Act; or
- 7 (4) A person has elected an option under another plan providing a lower level of benefits
8 than another option that could have been elected.

9 Nothing in this Act prohibits a plan from coordinating as a secondary payor with medicare
10 to the extent allowed by federal law.

11 Section 18. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 No plan may contain a provision that its benefits are always excess or always secondary
14 unless that provision is in accord with the rules permitted by this chapter.

15 Section 19. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Under the terms of a closed panel plan, benefits are not payable if the covered person does
18 not use the services of a closed panel provider. In most instances, COB does not occur if a
19 covered person is enrolled in two or more closed panel plans and obtains services from a
20 provider in one of the closed panel plans because the other closed panel plan (the one whose
21 providers were not used) has no liability. However, COB may occur during the claim
22 determination period if the covered person receives emergency services that would have been
23 covered by both plans. Then the secondary plan shall use the benefit reserve to pay any unpaid
24 allowable expense.

25 Section 20. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 If a person is covered by two or more plans, the rules for determining the order of benefit
3 payments are as contained in sections 23 to 26, inclusive, of this Act.

4 Section 21. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The primary plan shall pay or provide its benefits as if the secondary plan or plans did not
7 exist.

8 Section 22. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A plan that does not contain a coordination of benefits provision that is consistent with this
11 chapter is always primary. However, coverage that is obtained by virtue of membership in a
12 group and designed to supplement a part of a basic package of benefits may provide that the
13 supplementary coverage shall be excess to any other parts of the plan provided by the contract
14 holder. Examples of these types of situations are major medical coverages that are superimposed
15 over base plan hospital and surgical benefits, and insurance type coverages that are written in
16 connection with a closed panel plan to provide out-of-network benefits.

17 Section 23. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A plan may consider the benefits paid or provided by another plan only if it is secondary to
20 that other plan.

21 Section 24. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The first of the following rules that describes which plan pays its benefits before another plan
24 is the governing rule:

25 (1) The plan that covers the person other than as a dependent, for example as an

1 employee, member, subscriber, or retiree, is primary and the plan that covers the
2 person as a dependent is secondary. However, if the person is a medicare beneficiary,
3 and, as a result of the provisions of Title XVIII of the Social Security Act and
4 implementing regulations, medicare is:

- 5 (a) Secondary to the plan covering the person as a dependent; and
- 6 (b) Primary to the plan covering the person as other than a dependent (e.g. a
7 retired employee),

8 then the order of benefits is reversed so that the plan covering the person as an
9 employee, member, subscriber or retiree is secondary and the other plan is primary;

10 (2) The primary plan is the plan of the parent whose birthday is earlier in the year if:

- 11 (a) The parents are married;
- 12 (b) The parents are not separated (whether or not they ever have been married);
13 or
- 14 (c) A court decree awards joint custody without specifying that one parent has the
15 responsibility to provide health care coverage;

16 (3) If both parents have the same birthday, the plan that has covered either of the parents
17 longer is primary;

18 (4) If the specific terms of a court decree state that one of the parents is responsible for
19 the child's health care expenses or health care coverage, that plan is primary. If the
20 parent with financial responsibility has no coverage for the child's health care services
21 or expenses, but that parent's spouse does, the spouse's plan is primary;

22 (5) If the parents are not married or are separated (whether or not they ever were
23 married) or are divorced, and there is no court decree allocating responsibility for the
24 child's health care services or expenses, the order of benefit determination among the
25 plans of the parents and the parents' spouses is:

- 1 (a) The plan of the custodial parent; then
- 2 (b) The plan of the spouse of the custodial parent; then
- 3 (c) The plan of the noncustodial parent; and then
- 4 (d) The plan of the spouse of the noncustodial parent;
- 5 (6) The plan that covers a person as an employee who is neither laid off nor retired (or
- 6 as that employee's dependent) is primary. If the other plan does not have this rule; and
- 7 if, as a result, the plans do not agree on the order of benefits, this rule does not apply.
- 8 Coverage provided an individual as a retired worker and as a dependent of that
- 9 individual's spouse as an active worker will be determined under section 35 of this
- 10 Act;
- 11 (7) If a person whose coverage is provided under a right of continuation pursuant to
- 12 federal or state law also is covered under another plan, the plan covering the person
- 13 as an employee, member, subscriber or retiree (or as that person's dependent) is
- 14 primary and the continuation coverage is secondary. If the other plan does not have
- 15 this rule, and if, as a result, the plans do not agree on the order of benefits, this rule
- 16 does not apply.

17 Section 25. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 If the provisions of sections 23 to 26, inclusive, of this Act do not determine the order of
20 benefits, the plan that covered the person for the longer period of time is the primary plan.

21 Section 26. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 To determine the length of time a person has been covered under a plan, two plans shall be
24 treated as one if the covered person was eligible under the second within twenty-four hours after
25 the first ended.

1 Section 27. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The start of a new plan does not include:

- 4 (1) A change in the amount or scope of a plan's benefits;
- 5 (2) A change in the entity that pays, provides or administers the plan's benefits; or
- 6 (3) A change from one type of plan to another (such as, from a single employer plan to
7 that of a multiple employer plan).

8 Section 28. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The person's length of time covered under a plan is measured from the person's first date of
11 coverage under that plan. If that date is not readily available for a group plan, the date the person
12 first became a member of the group shall be used as the date from which to determine the length
13 of time the person's coverage under the present plan has been in force.

14 Section 29. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 If none of the provisions of sections 22 to 30, inclusive, of this Act determine the primary
17 plan, the allowable expenses shall be shared equally between the plans.

18 Section 30. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If a plan is secondary, it shall reduce its benefits so that the total benefits paid or provided
21 by all plans for any claim or claims are not more than one hundred percent of total allowable
22 expenses. In determining the amount of a claim to be paid by the secondary plan should the plan
23 wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid in
24 the absence of other insurance and apply that calculated amount to any allowable expense under
25 its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by any

1 amount that, when combined with the amount paid by the primary plan, exceeds the total
2 allowable expense for that claim.

3 Section 31. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 A plan shall, in its explanation of benefits provided to covered persons, include the following
6 language: If you are covered by more than one health benefit plan, you should file all your claims
7 with each plan.

8 Section 32. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A secondary plan that provides benefits in the form of services may recover the reasonable
11 cash value of the services from the primary plan, to the extent that benefits for the services are
12 covered by the primary plan and have not already been paid or provided by the primary plan.
13 Nothing in this section may be interpreted to require a plan to reimburse a covered person in cash
14 for the value of services provided by a plan that provides benefits in the form of services.

15 Section 33. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 A plan with order of benefit determination rules that comply with this chapter (complying
18 plan) may coordinate its benefits with a plan that is excess or always secondary or that uses order
19 of benefit determination rules that are inconsistent with those contained in this chapter
20 (noncomplying plan) on the following basis:

- 21 (1) If the complying plan is the primary plan, it shall pay or provide its benefits first;
- 22 (2) If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its
23 benefits first, but the amount of the benefits payable shall be determined as if the
24 complying plan were the secondary plan. In such a situation, the payment shall be the
25 limit of the complying plan's liability; and

1 (3) If the noncomplying plan does not provide the information needed by the complying
2 plan to determine its benefits within a reasonable time after it is requested to do so,
3 the complying plan shall assume that the benefits of the noncomplying plan are
4 identical to its own, and shall pay its benefits accordingly. If, within two years of
5 payment, the complying plan receives information as to the actual benefits of the
6 noncomplying plan, it shall adjust payments accordingly.

7 Section 34. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 If the noncomplying plan reduces its benefits so that the covered person receives less in
10 benefits than the person would have received had the complying plan paid or provided its benefits
11 as the secondary plan and the noncomplying plan paid or provided its benefits as the primary
12 plan, and governing state law allows the right of subrogation set forth below, then the complying
13 plan shall advance to or on behalf of the covered person an amount equal to the difference.

14 Section 35. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 In no event may the complying plan advance more than the complying plan would have paid
17 had it been the primary plan less any amount it previously paid for the same expense or service.
18 In consideration of the advance, the complying plan shall be subrogated to all rights of the
19 covered person against the noncomplying plan. The advance by the complying plan shall also be
20 without prejudice to any claim it may have against a noncomplying plan in the absence of
21 subrogation.

22 Section 36. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 COB differs from subrogation. Provisions for one may be included in health care benefits
25 contracts without compelling the inclusion or exclusion of the other.

1 Section 37. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 If the plans cannot agree on the order of benefits within thirty calendar days after the plans
4 have received all of the information needed to pay the claim, the plans shall immediately pay the
5 claim in equal shares and determine their relative liabilities following payment, except that no
6 plan may be required to pay more than it would have paid had it been the primary plan.

7 Section 38. That § 58-18A-1 be repealed.

8 ~~58-18A-1. Terms used in this chapter mean:~~

9 ~~(1) "Allowable expense," the necessary, reasonable, and customary item of expense for~~
10 ~~health care when the item of expense is covered, in full or in part, under one or more~~
11 ~~plans covering the person for whom the claim is made. Allowable expense is restricted~~
12 ~~by the following:~~

13 ~~(a) When a plan provides benefits in the form of services, the reasonable cash~~
14 ~~value of each service will be considered as both an allowable expense and a~~
15 ~~benefit paid;~~

16 ~~(b) When COB is restricted in its use to a specific coverage in a contract, the~~
17 ~~definition of allowable expense must include the corresponding expenses or~~
18 ~~services to which COB applies;~~

19 ~~(c) The difference between the cost of a private hospital room and the cost of the~~
20 ~~semiprivate hospital room is not considered an allowable expense under the~~
21 ~~above definition, unless the patient's stay in a private hospital room is medically~~
22 ~~necessary in terms of generally accepted medical practice;~~

23 ~~(2) "Claim determination period," a period of time, not less than twelve consecutive~~
24 ~~months over which allowable expenses are compared with total benefits payable in the~~
25 ~~absence of COB to determine:~~

- 1 ~~————— (a) Whether overinsurance exists; and~~
- 2 ~~————— (b) How much each plan will pay or provide;~~
- 3 ~~————— (3) "Coordination of benefits" or "COB," a provision in a group health and accident~~
4 ~~policy intended to avoid claims payment delays and duplication of benefits when a~~
5 ~~person is covered by two or more plans of coverage providing benefits or service for~~
6 ~~medical, dental or other care or treatment;~~
- 7 ~~————— (4) "Plan," a contract providing health care benefits to which a COB provision applies and~~
8 ~~which may be reduced on account of benefits of other plans. A plan may include:~~
- 9 ~~————— (a) Any group contract as defined in § 58-18-1 issued by any insurance company,~~
10 ~~fraternal benefit society, health maintenance organization, nonprofit hospital~~
11 ~~service plan, or medical service corporation;~~
- 12 ~~————— (b) Medical benefits coverage in automobile insurance contracts;~~
- 13 ~~————— (c) Medicare or other government benefits, limited to hospital, medical and~~
14 ~~surgical benefits of the governmental program;~~
- 15 ~~————— (d) Employee welfare benefit plans within the meaning of the Employee~~
16 ~~Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as of~~
17 ~~January 1, 1987.~~
- 18 ~~————— A plan does not include an individual health and accident insurance~~
19 ~~policy or individual subscriber contract; a blanket health insurance~~
20 ~~policy as defined in § 58-18-12; a state plan under medicaid or any other~~
21 ~~plan whose benefits, by law, are excess to those of any private insurance~~
22 ~~plan or other nongovernmental plan; or group hospital indemnity~~
23 ~~benefits of one hundred dollars per day or less;~~
- 24 ~~————— (5) "Primary plan," a plan whose benefits are required to be determined before those of~~
25 ~~another plan and without considering the existence of another plan if:~~

1 ~~———— (a) The plan either has no order of benefit determination rules or it has rules that~~
2 ~~differ from those permitted by this chapter; or~~

3 ~~———— (b) All plans covering a person use the order of benefit determination provision~~
4 ~~required by this chapter, and under these provisions, the plan determines its~~
5 ~~benefits first;~~

6 ~~—— (6) "Secondary plan," a plan whose benefits are determined after those of another plan~~
7 ~~and which may be reduced on account of benefits provided under any primary plan;~~

8 ~~—— (7) "This plan," a term in a COB provision which refers to the part of the group contract~~
9 ~~providing the health care benefits to which the COB provision applies and which may~~
10 ~~be reduced on account of the benefits of other plans.~~

11 Section 39. That § 58-18A-2 be repealed.

12 ~~—— 58-18A-2. This chapter permits, but does not require, plans to include coordination of~~
13 ~~benefits provisions.~~

14 Section 40. That § 58-18A-3 be repealed.

15 ~~—— 58-18A-3. A group contract that includes a COB provision shall be consistent with this~~
16 ~~chapter. A plan that does not include a COB provision may not take the benefits of another plan~~
17 ~~as defined in § 58-18A-1 into account when it determines its benefits. However, coverage that~~
18 ~~is designed to supplement a part of a basic package of benefits may provide that the~~
19 ~~supplementary coverage shall be excess to any other parts of plan coverage provided an insured.~~

20 Section 41. That § 58-18A-4 be repealed.

21 ~~—— 58-18A-4. A plan may apply one COB provision to certain of its benefits, coordinating only~~
22 ~~with like benefits, and may apply other separate COB provisions to coordinate other benefits.~~

23 ~~Each contract or arrangement for coverage under subdivision 58-18A-1(4) is a separate plan.~~

24 Section 42. That § 58-18A-5 be repealed.

25 ~~—— 58-18A-5. If there is a basis for a claim under two or more plans, a plan which includes a~~

1 ~~COB provision that complies with this chapter is secondary to a plan which does not include~~
2 ~~such a provision. If both plans contain COB provisions that comply with this chapter, the plan~~
3 ~~which is determined to be primary according to the rules in § 58-18A-6 shall determine its~~
4 ~~benefits before those of the other plan.~~

5 Section 43. That § 58-18A-6 be repealed.

6 ~~58-18A-6. The order of benefits shall be determined using the first of the following rules~~
7 ~~which applies:~~

8 ~~(1) The benefits of the plan which covers the person as an employee, member or~~
9 ~~subscriber are determined before those of the plan which covers the person as a~~
10 ~~dependent;~~

11 ~~(2) Except as stated in subdivision (3) of this section, if two or more plans cover the same~~
12 ~~child as a dependent of different persons:~~

13 ~~(a) The benefits of the plan of the parent whose birthday falls earlier in a year are~~
14 ~~determined before those of the plan of the parent whose birthday falls later in~~
15 ~~that year;~~

16 ~~(b) If both parents have the same birthday, the benefits of the plan which covered~~
17 ~~the parent longer are determined before those of the plan which covered the~~
18 ~~other parent for a shorter period of time;~~

19 ~~(c) If the other plan does not have the rule described in subdivision (2)(a) of this~~
20 ~~section but has a rule based upon the gender of the parent and, as a result, the~~
21 ~~plans do not agree on the order of benefits, the rule in the other plan will~~
22 ~~determine the order of benefits;~~

23 ~~The term "birthday," as used in this section, means the month and day, rather than the~~
24 ~~year, in which the person was born;~~

25 ~~(3) If two or more plans cover a person as a dependent child of divorced or separated~~

1 ~~parents, benefits for the child are determined in the following order:~~

2 ~~———— (a) First, the plan of the parent with custody of the child;~~

3 ~~———— (b) Second, the plan of the spouse of the parent with custody of the child; and~~

4 ~~———— (c) Third, the plan of the parent not having custody of the child.~~

5 ~~———— However, if the specific terms of a court decree state that one of the parents is~~
6 ~~responsible for the health care expenses of the child, and the entity obligated to pay~~
7 ~~or provide the benefits of the plan of that parent has actual knowledge of those terms,~~
8 ~~the benefits of that plan are determined first. This paragraph does not apply with~~
9 ~~respect to any claim determination period or plan year during which any benefits are~~
10 ~~actually paid or provided before the entity has that actual knowledge.~~

11 ~~———— (4) The benefits of a plan which covers a person as an employee who is neither laid off~~
12 ~~nor retired or as that employee's dependent are determined before those of a plan~~
13 ~~which covers that person as a laid-off or retired employee or as that employee's~~
14 ~~dependent. If the other plan does not have this rule, and if, as a result, the plans do~~
15 ~~not agree on the order of benefits, this order of determination is ignored;~~

16 ~~———— (5) If subdivisions (1) to (4), inclusive, of this section do not determine the order of~~
17 ~~benefits, the benefits of the plan which covered an employee, member or subscriber~~
18 ~~for the longer period are determined before those of the plan which covered that~~
19 ~~person for the shorter time. To determine the length of time a person has been~~
20 ~~covered under a plan, two plans shall be treated as one if the claimant was eligible~~
21 ~~under the second within twenty-four hours after the first ended.~~

22 Section 44. That § 58-18A-7 be repealed.

23 ~~———— 58-18A-7. If, according to the order of benefit determination provisions of this chapter, a~~
24 ~~plan is secondary to one or more other plans, the secondary plan may reduce its benefits so that~~
25 ~~they and the benefits payable under the other plans do not total more than one hundred percent~~

1 ~~of allowable expenses. If the benefits of the secondary plan are reduced, each benefit is reduced~~
2 ~~in proportion.~~

3 Section 45. That § 58-18A-9 be repealed.

4 ~~— 58-18A-9. A payment made under another plan may include an amount which should have~~
5 ~~been paid under this plan. In that event, the entity which should have made the payment may pay~~
6 ~~that amount to the organization which made the payment. That amount shall then be treated as~~
7 ~~though it were a benefit paid under this plan. The entity does not have to pay that amount again.~~
8 ~~The term "payment made" includes providing benefits in the form of services, in which case~~
9 ~~"payment made" means reasonable cash value of the benefits provided in the form of services.~~

10 Section 46. That § 58-18A-10 be repealed.

11 ~~— 58-18A-10. If the amount of the payments made by an entity is more than it should have paid~~
12 ~~under this COB provision, it may recover the excess from one or more of the following:~~

13 ~~— (1) — Any person it has paid or for whom it has paid;~~

14 ~~— (2) — Any insurance company, fraternal benefit society, nonprofit hospital service plan,~~
15 ~~medical service corporation or health maintenance organization; or~~

16 ~~— (3) — Any other organization.~~

17 ~~— The "amount of the payments made" includes the reasonable cash value of any benefits~~
18 ~~provided in the form of services.~~

19 Section 47. That § 58-18A-11 be repealed.

20 ~~— 58-18A-11. A group contract may not reduce benefits on the basis that:~~

21 ~~— (1) — Another plan exists;~~

22 ~~— (2) — A person is or could have been covered under another plan, except with respect to~~
23 ~~part B of medicare; or~~

24 ~~— (3) — A person has elected an option under another plan providing a lower level of benefits~~
25 ~~than another which could have been elected.~~

1 Section 48. That § 58-18A-12 be repealed.

2 ~~— 58-18A-12. Any plan with order of benefit determination rules which comply with this~~
3 ~~chapter, herein referred to as a complying plan, may coordinate its benefits with a plan which is~~
4 ~~"excess" or "always secondary" or which uses order of benefit determination rules which are~~
5 ~~inconsistent with those contained in this chapter, herein referred to as a noncomplying plan, on~~
6 ~~the following basis:~~

7 ~~— (1) If the complying plan is the primary plan, it shall pay or provide its benefits on a~~
8 ~~primary basis;~~

9 ~~— (2) If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its~~
10 ~~benefits first. However, the amount of the benefits payable shall be determined as if~~
11 ~~the complying plan were the secondary plan. In such situation, the payment is the limit~~
12 ~~of the complying plan's liability;~~

13 ~~— (3) If the noncomplying plan does not provide the information needed by the complying~~
14 ~~plan to determine its benefits within a reasonable time after it is requested to do so,~~
15 ~~the complying plan shall assume that the benefits of the noncomplying plan are~~
16 ~~identical to its own, and shall pay its benefits accordingly. However, the complying~~
17 ~~plan shall adjust any payments it makes based on such assumption whenever~~
18 ~~information becomes available as to the actual benefits of the noncomplying plan;~~

19 ~~— (4) If the noncomplying plan reduces its benefits so that the employee, subscriber or~~
20 ~~member receives less in benefits than he or she would have received had the~~
21 ~~complying plan paid or provided its benefits as the secondary plan and the~~
22 ~~noncomplying plan paid or provided its benefits as the primary plan, and governing~~
23 ~~state law allows the right of subrogation set forth in § 58-18A-13, the complying plan~~
24 ~~shall advance to or on behalf of the employee, subscriber or member an amount equal~~
25 ~~to such difference. However, in no event may the complying plan advance more than~~

1 ~~the complying plan would have paid had it been the primary plan less any amount it~~
2 ~~previously paid. In consideration of such advance, the complying plan shall be~~
3 ~~subrogated to all rights of the employee, subscriber or member against the~~
4 ~~noncomplying plan. Such advance by the complying plan shall also be without~~
5 ~~prejudice to any claim it may have against the noncomplying plan in the absence of~~
6 ~~such subrogation.~~

7 Section 49. That § 58-18A-13 be repealed.

8 ~~58-18A-13. The COB concept differs from the concept of subrogation and provisions~~
9 ~~relating to one may be included in health care benefits contracts without requiring the inclusion~~
10 ~~or exclusion of the other.~~

11 Section 50. That § 58-18A-14 be repealed.

12 ~~58-18A-14. A group contract which provides health care benefits and was issued before~~
13 ~~July 1, 1987, shall be brought into compliance with this chapter by the later of:~~

14 ~~(1) The next anniversary date or renewal date of the group contract; or~~

15 ~~(2) The expiration of any applicable collectively bargained contract pursuant to which the~~
16 ~~group contract was written.~~

17 Section 51. The provisions of this Act apply to group health plans that are issued or renewed
18 on or after July 1, 2000.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Commerce. H.J. 42

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

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

5 2/2/99 Commerce Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 312

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

930C0127

SENATE LOCAL GOVERNMENT
COMMITTEE ENGROSSED NO. **HB1070** -
2/11/99

Introduced by: Representatives Brooks, Crisp, Hunt, and Kooistra and Senators Madden, Albers, and Munson (David)

1 FOR AN ACT ENTITLED, An Act to authorize county road districts to establish certain vehicle
2 speed and weight restrictions and to revise certain county road district formation
3 requirements.

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

5 Section 1. That § 31-12A-1 be amended to read as follows:

6 31-12A-1. ~~A populated~~ Any area outside the boundary of a municipality, which is situated
7 so that the construction or maintenance of roads becomes desirable, may be incorporated by its
8 landowners as a road district pursuant to this chapter.

9 Section 2. That § 31-12A-21 be amended to read as follows:

10 31-12A-21. The board of trustees may:

- 11 (1) Appoint a treasurer and a clerk, an engineer, attorney, and other employees for the
12 road district and fix their compensation. These officers shall hold their respective
13 offices at the pleasure of the board, and be bonded for the faithful performance of
14 their duties as may be required by the board;
- 15 (2) Sue and be sued and contract in the name of the district;

1 (3) Adopt a corporate seal;

2 (4) Construct roadways and maintain them;

3 (5) Borrow money, levy taxes, and special assessments, and issue bonds pursuant to
4 § 31-12A-23;

5 (6) Establish speed and weight limits and other restrictions on roads under the road
6 district's jurisdiction in accordance with the provisions of sections 5 to 9, inclusive,
7 of this Act.

8 Section 3. That chapter 31-12A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Any road constructed or maintained pursuant to this chapter is a public highway, and any
11 speed limits, vehicle weight limits, and any other vehicle or traffic regulations on such roads may
12 be enforced by any law enforcement officer.

13 Section 4. That subdivision (14) of § 32-14-1 be amended to read as follows:

14 (14) "Local authorities," every county, municipal, township, road district, and other local
15 board or body having authority to adopt local police regulations under the
16 Constitution and laws of this state;

17 Section 5. That § 32-14-3 be amended to read as follows:

18 32-14-3. Local authorities, except as expressly authorized by §§ ~~32-25-16 and 32-29-2~~ shall
19 ~~have no power or authority to~~ chapter 32-25 and § 32-29-2, may not alter any speed limitations
20 declared in chapter 32-25 or to enact or enforce any ordinance, charter provision, or bylaw
21 duplicating the provisions of chapter 32-23 or to enact or enforce any rule or regulation contrary
22 to the provisions of chapters 32-14 to 32-19, inclusive, or 32-22 and 32-24 to 32-34, inclusive,
23 except as provided by §§ 32-14-4 and 32-14-5.

24 Section 6. That § 32-14-6 be amended to read as follows:

25 32-14-6. Local authorities, including road districts, may by ordinance or resolution prohibit

1 the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles
2 for a total period not to exceed ninety days in any one calendar year, ~~when. Such prohibitions~~
3 or restrictions apply only to vehicles to be operated upon any highway under the jurisdiction of
4 and for the maintenance of which such local authorities are responsible ~~whenever any said~~ and
5 only if the highway by reason of deterioration, rain, snow, or other climatic conditions will be
6 seriously damaged or destroyed unless the use of vehicles ~~thereon~~ on the highway is prohibited
7 or the permissible weights ~~thereof~~ of the vehicles are reduced. ~~Such local authorities~~ Any local
8 authority enacting any such ordinance or resolution shall erect and maintain or cause to be
9 erected and maintained signs designating the provisions of the ordinance or resolution at each
10 end of that portion of any highway affected ~~thereby and the~~ by the ordinance or resolution. The
11 ordinance or resolution ~~shall not be effective until or is not valid~~ unless such signs are erected
12 and maintained.

13 Section 7. That § 32-14-7 be amended to read as follows:

14 32-14-7. Local authorities, including road districts, may ~~also~~ by ordinance or resolution
15 prohibit the operation of trucks or other commercial vehicles or impose limitations as to the
16 weights ~~thereof~~ of such vehicles on designated highways, ~~which. The~~ prohibitions and limitations
17 shall be designated by appropriate signs placed on such highways.

18 Section 8. That § 32-22-47 be amended to read as follows:

19 32-22-47. The board of county commissioners of any county, the board of supervisors of any
20 township, the board of trustees of any road district, or the transportation commission of the
21 South Dakota Department of Transportation, their officers or agents, shall erect and maintain
22 at a point on the right-of-way and within one hundred feet of both entrances to any bridge and
23 may, where they deem necessary, erect and maintain at the nearest road intersection in each
24 direction from any bridge, upon any public highway which it is the duty of the boards to maintain
25 and repair, a conspicuous sign specifying in large numerals, the maximum weight of any vehicle,

1 laden or unladen, which may enter upon or cross over such bridge. No bridge signing is
2 necessary for bridges which can accommodate motor vehicles operating under the legal weight
3 maximums provided in § 32-22-16.

4 Section 9. That § 32-25-9.1 be amended to read as follows:

5 32-25-9.1. Any board of county commissioners may determine and establish speed zones
6 upon all or any part of the highways under its jurisdiction and upon streets and highways on the
7 request of and after any other local authority, including any road district, having charge of the
8 maintenance ~~thereof~~ of the highway has declared its intention to post speed zones. Such speed
9 zones shall be conspicuously posted at the beginning and ending of the zones.

10 Section 10. That § 6-16-2 be amended to read as follows:

11 6-16-2. The application for organization shall be a petition verified by one or more
12 circulators by affidavit stating that each affiant personally witnessed the signatures on the petition
13 and believe the signatures to be genuine. The petition shall be signed by at least twenty-five
14 percent of the landowners within the proposed district who are also registered voters within the
15 district. If the proposed district is in two or more counties, a petition shall be filed in each county
16 and each petition shall be signed by at least twenty percent of the landowners within the
17 proposed district who are also registered voters within the proposed district in that county. The
18 petition shall be accompanied by a deposit covering the estimated costs as determined by the
19 county auditor of the public notices and the conduct of the election for the formation of the
20 district. If the district to be formed is a road district that contains no registered voters, the
21 petition requirements are based solely on landowners.

22 Section 11. That § 6-16-6 be amended to read as follows:

23 6-16-6. A person who is a landowner in the proposed district and is registered to vote in the
24 proposed district may vote in the elections provided for in § 6-16-5. However, the qualifications
25 of a voter for irrigation district elections are provided in chapter 46A-4. Absentee voting is

1 allowed pursuant to chapter 12-19 for the election on the question of formation of the special
2 district. If the district to be formed is a road district that contains no registered voters, voter
3 eligibility is based solely on landowners.

1 **BILL HISTORY**

2 1/16/99 First read in House and referred to Local Government. H.J. 73

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

4 1/21/99 Local Government Deferred to another day.

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

6 1/28/99 Local Government Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 235

7 2/1/99 House of Representatives Do Pass Amended, Passed, AYES 46, NAYS 20. H.J. 296

8 2/2/99 First read in Senate and referred to Local Government. S.J. 307

9 2/8/99 Scheduled for Committee hearing on this date.

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

11 2/10/99 Local Government Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 416

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

447C0744

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1217** - 2/3/99

Introduced by: Representatives Hennies, Apa, Broderick, Koehn, Kooistra, Lintz, and McIntyre and Senators Ham, Albers, Bogue, Drake, Dunn (Rebecca), Kleven, Lawler, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise the procedure for determining the period of time
2 that has elapsed for a person who was previously convicted of driving under the influence.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4 Section 1. That § 32-23-4.1 be amended to read as follows:
5 32-23-4.1. No previous conviction for, or plea of guilty to, a violation of § 32-23-1 occurring
6 more than five years prior to the date of the violation being charged may be used to determine
7 that the violation being charged is a second, third, or subsequent offense. However, any period
8 of time during which the defendant was incarcerated for a previous violation may not be included
9 when calculating if the time period provided in this section has elapsed.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 215

3 1/28/99 Referred to Judiciary. H.J. 240

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

5 2/1/99 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 311

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0222

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB50** - 2/10/99

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

1 FOR AN ACT ENTITLED, An Act to establish standards for the advertisement, solicitation, and
2 sale of life and health insurance.

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

4 Section 1. This Act applies to all individual and group health policies which are solicited or
5 sold in this state that are subject to chapters 58-15, 58-16, 58-17, 58-18, 58-18B, 58-37A, 58-
6 38, 58-39, 58-40, and 58-41. However, this Act does not apply to insurance policies and
7 subscriber contracts subject to the medicare supplement requirements. Except for the exemptions
8 specified in this section, this Act applies to any solicitation, negotiation, or effectuation of life
9 insurance occurring within this state. This Act applies to any issuer of life insurance contracts
10 including fraternal benefit societies. This Act does not apply to:

- 11 (1) Group annuities;
- 12 (2) Credit life insurance;
- 13 (3) Group life insurance (except for disclosures relating to preneed funeral contracts or
14 prearrangements as provided by this Act. These disclosure requirements extend to the
15 issuance or delivery of certificates as well as to the master policy);
- 16 (4) Life insurance policies issued in connection with pension and welfare plans as defined

1 by and which are subject to the federal Employee Retirement Income Security Act of
2 1974 (ERISA), 29 U.S.C. Section 1001 *et seq.* as amended to January 1, 1999;

3 (5) Variable life insurance under which the amount or duration of the life insurance varies
4 according to the investment experience of a separate account; or

5 (6) Variable annuities under which the amount varies according to the investment
6 experience.

7 Section 2. The purpose of this Act is to establish guidelines and permissible and
8 impermissible standards of conduct in the solicitation of and advertising of life and health
9 insurance in a manner which:

10 (1) Prevents unfair, deceptive, and misleading advertising;

11 (2) Is conducive to accurate presentation and description to the insurance-buying public
12 through the advertising media and material used by insurance agents and companies;

13 (3) Provides for the full disclosure of the benefits, limitations, and exclusions of policies
14 sold;

15 (4) Sets forth minimum standards and guidelines to assure a full and truthful disclosure
16 to the public of all material and relevant information in the advertising of life insurance
17 policies and annuity contracts;

18 (5) Requires insurers to deliver to purchasers of life insurance information which will
19 improve the buyer's ability to select the most appropriate plan of life insurance for the
20 buyer's needs;

21 (6) Improves the buyer's understanding of the basic features of the policy which has been
22 purchased or which is under consideration;

23 (7) Improves the ability of the buyer to evaluate the relative costs of similar plans of life
24 insurance;

25 (8) Provides reasonable standardization and simplification of terms and coverages of

1 health insurance policies and subscriber contracts of nonprofit hospital, medical, and
2 dental service associations to facilitate public understanding and comparison;

3 (9) Eliminates provisions contained in health insurance policies and subscriber contracts
4 of nonprofit hospital, medical, and dental service associations which may be
5 misleading or unreasonably confusing in connection either with the purchase of such
6 coverages or with the settlement of claims; and

7 (10) Provides for full disclosure in the sale of life or health coverages.

8 Section 3. For the purposes of this Act, the term, advertisement, includes:

9 (1) Any printed and published material, audio visual material, and descriptive literature
10 of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts,
11 billboards, and similar displays;

12 (2) Any descriptive literature and sales aids of all kinds issued by an insurer, agent,
13 producer, broker or solicitor for presentation to members of the insurance-buying
14 public, including circulars, leaflets, booklets, depictions, illustrations, Internet
15 communications, form letters, and lead-generating devices of all kinds;

16 (3) Any prepared sales talks, presentations, and material for use by agents, brokers,
17 producers, and solicitors whether prepared by the insurer or the agent, broker,
18 producer, or solicitor; and

19 (4) Any advertising material included with a policy if the policy is delivered and material
20 is used in the solicitation of renewals and reinstatements.

21 Section 4. For the purposes of this Act, the term, advertisement, does not include:

22 (1) Any material to be used solely for the training and education of an insurer's
23 employees, agents, or brokers;

24 (2) Any material used in-house by insurers;

25 (3) Any communications within an insurer's own organization not intended for

1 dissemination to the public;

2 (4) Any individual communications of a personal nature with current policyholders other
3 than material urging such policyholders to increase or expand coverages;

4 (5) Any correspondence between a prospective group or blanket policyholder and an
5 insurer in the course of negotiating a group or blanket contract;

6 (6) Any court-approved material ordered by a court to be disseminated to policyholders;
7 or

8 (7) Any general announcement from a group or blanket policyholder to eligible
9 individuals on an employment or membership list that a contract or program has been
10 written or arranged if the announcement clearly indicates that it is preliminary to the
11 issuance of a booklet and the announcement does not describe the benefits under the
12 contract or program or describe advantages as to the purchase of the contract or
13 program.

14 Section 5. In order to provide for full and fair disclosure in the sale of health insurance
15 policies or subscriber contracts of a nonprofit hospital, medical, or dental service association, no
16 such policy or contract may be delivered or issued for delivery in this state unless the outline of
17 coverage described in section 6 of this Act either accompanies the policy or is delivered to the
18 applicant at the time application is made and an acknowledgment of receipt or certificate of
19 delivery of such outline is provided the insurer. If the policy has been sold through an agent, the
20 outline of coverage shall be delivered at the time of application. If the policy is issued on a basis
21 other than that applied for, the outline of coverage properly describing the policy or contract
22 shall accompany the policy or contract.

23 Section 6. The director shall prescribe the general format and content of the outline of
24 coverage required by section 5 of this Act. The term, format, means style, arrangement, and
25 overall appearance, including such items as the size, color, prominence of type, and the

1 arrangement of text and captions. The term, outline of coverage, includes:

- 2 (1) A statement identifying the applicable category or categories of coverage provided
3 by the policy or contract as prescribed by the director;
- 4 (2) A description of the principal benefits and coverage provided in the policy or contract;
- 5 (3) A statement of the exceptions, reductions, and limitations contained in the policy or
6 contract;
- 7 (4) A statement of the renewal provisions including any reservation by the insurer of
8 nonprofit hospital, medical, or dental service association of a right to change
9 premiums; and
- 10 (5) A statement that the outline is a summary of the policy or contract issued or applied
11 for and that the policy or contract should be consulted to determine governing
12 contractual provisions.

13 Nothing in this section prohibits an insurer from incorporating an outline of coverage into
14 other solicitation and policy information documents if the required information is contained in
15 the documents.

16 Section 7. The director may promulgate rules pursuant to chapter 1-26 to establish specific
17 standards consistent with section 2 this Act. The rules may include standards of full and fair
18 disclosure, that set forth the manner, content and required disclosure. Except for conversion
19 policies issued pursuant to a contractual conversion privilege under a group, the rules may apply
20 to the sale of individual and group health insurance subject to this Act and shall be in addition
21 to and in accordance with applicable laws of this state. The rules may include:

- 22 (1) Terms of renewability;
- 23 (2) Initial and subsequent conditions of eligibility;
- 24 (3) Nonduplication of coverage provisions;
- 25 (4) Coverage of dependents;

- 1 (5) Preexisting conditions;
- 2 (6) Termination of insurance;
- 3 (7) Probationary periods;
- 4 (8) Limitations, exceptions, and reductions;
- 5 (9) Elimination periods;
- 6 (10) Requirements for replacement;
- 7 (11) Recurrent conditions;
- 8 (12) Prohibitions on the use of terms, information, phrases, or implied affiliations in
- 9 advertising;
- 10 (13) Prominence, form, and style of any advertisement;
- 11 (14) Information to be disclosed on advertising or solicitation materials;
- 12 (15) Use of testimonials;
- 13 (16) Special offers or enrollment periods;
- 14 (17) Coverage comparisons;
- 15 (18) Identification of insurers and agents;
- 16 (19) Prearrangements or preneed funeral contracts; and
- 17 (20) The definition of terms including the following: hospital, accident, sickness, injury,
- 18 physician, accidental means, total disability, partial disability, nervous disorder,
- 19 guaranteed renewable and noncancellable.

20 Section 8. Any information required to be disclosed by rules promulgated pursuant to this
21 Act shall be set out conspicuously and in close conjunction with the statements to which the
22 information relates or under appropriate captions of such prominence that it does not minimize,
23 render obscure, present in an ambiguous fashion, or intermingle with the context of the
24 advertisement so as to be confusing or misleading.

25 Section 9. Prior to accepting the applicant's initial premium or premium deposit, the insurer

1 shall provide, to all prospective life insurance purchasers, a buyer's guide, and a policy summary.
2 However, in lieu of a policy summary, an insurer may provide an illustration which complies with
3 applicable rules concerning life insurance illustrations. Insurers may deliver the buyer's guide and
4 policy summary or illustration at other times as specified by the director by rule. The director
5 may also promulgate rules pursuant to chapter 1-26 specifying the type of policy summary
6 required, the form and content of policy summaries, the specific buyer's guide to be used, and
7 if the buyer's guide must be provided.

8 Section 10. Any advertisements shall be truthful and not materially misleading in fact or by
9 implication. The form and content of an advertisement of a policy shall be sufficiently complete
10 and clear so as to avoid deception. No advertisement may have the capacity and tendency to
11 materially mislead or deceive. In determining whether an advertisement has the capacity and
12 tendency to materially mislead or deceive, the director shall make the determination from the
13 overall impression that the advertisement may be reasonably expected to create upon a person
14 of average education or intelligence within the segment of the public to which it is directed.

15 Section 11. Each insurer shall maintain at its home or principal office a complete file
16 containing a specimen copy of every printed, published, or prepared advertisement of its policies
17 and specimen copies of typical printed, published, or prepared advertisements of its blanket,
18 franchise, and group policies where the content of advertisements vary dependent upon coverage
19 options, hereafter disseminated in this state, with a notation indicating the manner and extent of
20 distribution and the form number of any policy advertised. The file may be kept electronically.
21 The division may inspect the file. All advertisements shall be maintained in the file for a period
22 of either five years or until the filing of the next regular report on the examination of the insurer
23 pursuant to chapter 58-3, whichever is the longer period of time.

24 Section 12. If the director has reason to believe that an advertisement has the capacity and
25 tendency to mislead or deceive the public or otherwise does not comply with this Act or the rules

1 promulgated pursuant to this Act, the director may require an insurer or insurance producer to
2 submit all or any part of the advertising material for review or approval prior to use, in addition
3 to any other remedies allowed by law.

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

6 1/21/99 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 140

7 1/25/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 1. S.J. 183

8 1/26/99 First read in House and referred to Commerce. H.J. 201

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

10 2/9/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 429

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0264

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB60** - 2/12/99

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

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

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

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

5 31-4-1. The state trunk highway system shall be as designated ~~and adopted~~ by the Legislature
6 ~~from time to time is hereby perpetuated in statute. In designating the state trunk highway system,~~
7 the Legislature shall consider the following primary factors:

- 8 (1) Highways which are functionally classified as arterials as approved by the Federal
9 Highway Administration;
- 10 (2) Highways providing service to a state or federal recreational access area;
- 11 (3) The proximity of other state trunk highways and highways providing duplicating or
12 similar service;
- 13 (4) The cost of construction, maintenance, right-of-way, and the extent of needs on the
14 state system;
- 15 (5) The traffic volumes and other traffic survey data; and
- 16 (6) The desirability of providing an integrated system to serve interstate travel, county

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

2 Section 2. The Transportation commission may designate, by rules promulgated pursuant to
3 chapter 1-26, a segment of the state trunk highway system as a minimum maintenance road if the
4 commission determines that the segment is used only occasionally or intermittently for passenger
5 or commercial travel. The commission shall identify the beginning and end points of the segment
6 designated as minimum maintenance. A minimum maintenance segment may be maintained at a
7 level less than the minimum standards for full maintenance roads, but shall be maintained at the
8 level required to serve the occasional or intermittent traffic.

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

943C0596

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB93** - 2/8/99

Introduced by: Senators Staggers, Frederick, Hutmacher, Lange, Madden, Moore, and Vitter
and Representatives Kooistra, Lockner, Lucas, and McIntyre

1 FOR AN ACT ENTITLED, An Act to revise certain exemptions relating to the hauling of
2 agricultural products or livestock from farms.

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

4 Section 1. That § 32-22-16.3 be amended to read as follows:

5 32-22-16.3. No vehicle hauling agricultural products from farm storage or livestock from a
6 farm is subject to enforcement action for violations not exceeding the legal limits imposed
7 pursuant to § 32-22-16 or 32-22-21 by more than five percent. However, such vehicle may not
8 exceed the speed of ~~forty~~ fifty miles per hour and is only exempt pursuant to this section within
9 a range of fifty miles of the farm. Such vehicle may not exceed the posted weight of any bridge
10 or road. The weight tolerance authorized in this section is not applicable during spring load
11 restrictions as set forth in § 32-22-24. If enforcement action is taken pursuant to this section, the
12 fine or penalty shall apply to that portion of the load that is above the legal limit. The weight
13 tolerance authorized in this section is not permitted on the interstate highway system. A violation
14 of this section is a Class 2 misdemeanor.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 159

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

4 1/26/99 Agriculture and Natural Resources Do Pass, Passed, AYES 8, NAYS 1. S.J. 188

5 1/27/99 Senate Deferred to another day. S.J. 222

6 1/28/99 Motion to Amend, Passed. S.J. 239

7 1/28/99 Senate Do Pass Amended, Passed, AYES 30, NAYS 4. S.J. 240

8 1/29/99 First read in House and referred to Transportation. H.J. 272

9 2/8/99 Scheduled for Committee hearing on this date.

10 2/8/99 Transportation Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 410

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

753C0749

SENATE TAXATION COMMITTEE
ENGROSSED NO. **SB177** - 2/11/99

Introduced by: Senator Munson (David) and Representative Broderick

1 FOR AN ACT ENTITLED, An Act to require the Department of Revenue to conduct a pilot
2 program granting limited access to certain secured parties concerning liens and to provide
3 rule-making authority to implement the pilot program.

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

5 Section 1. The secretary of revenue shall conduct a pilot program granting a secured party
6 access to the state's computer system which allows the secured party to directly note and cancel
7 the secured party's liens as defined in chapters 32-3 and 32-3A on the state's computer system.
8 The secretary shall determine the procedure and the parameters on how the pilot program shall
9 be implemented and select the banks to participate in the pilot program. The secretary may
10 promulgate rules pursuant to chapter 1-26 concerning the procedure for providing a secured
11 party access to, adequate security for, and confidentiality of any public records related to the
12 secured party's liens listed on the state's computer system.

13 Section 2. The provisions of section 1 of this Act shall expire on July 1, 2002.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to Taxation. S.J. 216

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

4 2/10/99 Scheduled for Committee hearing on this date.

5 2/10/99 Taxation Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 417

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

607C0723

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB194** - 2/5/99

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 or construction equipment from a
6 manufacturer under a dealership contract and who offers and sells the agricultural or
7 construction equipment to the general public. The term, dealer, does not include a
8 single-line dealer primarily engaged in the retail sale and service of off-road
9 construction and earthmoving equipment;
- 10 (2) "Dealership contract," a written agreement or contract between a manufacturer and
11 dealer which fixes the legal rights and liabilities of the parties to such agreement or
12 contract;
- 13 (3) "Manufacturer," any person engaged in the manufacturing or distribution of
14 agricultural or construction equipment including any person who acts for the
15 manufacturer;
- 16 (4) "Single-line dealer," any person that has purchased seventy-five percent or more of

1 the dealer's total new product inventory from a single manufacturer under agreements
2 with that manufacturer and has a total annual average sales volume for the three
3 previous years with that single manufacturer in excess of fifty million dollars for the
4 territory for which that dealer is responsible.

5 Section 2. The following circumstances are not cause for the termination or discontinuance
6 of a dealership contract, nor for entering into a dealership contract for the establishment of an
7 additional dealership in a community for the same line-make:

- 8 (1) The change of executive management or ownership of the dealer, unless the
9 manufacturer can show that the change would be detrimental to the representation or
10 reputation of the manufacturer's product;
- 11 (2) Refusal by the dealer to purchase or accept delivery of any agricultural or
12 construction equipment, parts, accessories, or any other commodity or service not
13 ordered by the dealer;
- 14 (3) The sole fact that the manufacturer desires further penetration of the market;
- 15 (4) The fact that the dealer owns, has an investment in, participates in the management
16 of, or holds a dealership contract for the sale of another line-make of agricultural or
17 construction equipment, or that the dealer has established another line-make of
18 agricultural or construction equipment in the same dealership facilities as those of the
19 manufacturer, if the dealer maintains a reasonable line of credit for each line-make of
20 agricultural or construction equipment; or
- 21 (5) Refusal by the dealer to participate in any advertising campaign or contest or purchase
22 any promotional materials, display devices, or display decoration or materials which
23 are at the expense of the dealer.

24 It is unlawful for any manufacturer to terminate or discontinue a dealership contract, or enter
25 into additional contracts under the circumstances described in subdivisions (1) to (5), inclusive.

1 Section 3. No manufacturer may require a dealer to agree to the inclusion of a term or
2 condition in a dealership contract, or in any lease or agreement ancillary or collateral to a
3 dealership contract, as a condition to the offer, grant, or renewal of such dealership contract,
4 lease, or agreement, that:

- 5 (1) Requires the dealer to waive trial by jury in cases involving the manufacturer;
- 6 (2) Specifies the jurisdictions, venues, or tribunals in which disputes arising with respect
7 to the dealership contract, lease, or agreement shall or may not be submitted for
8 resolution or otherwise prevents a dealer from bringing an action in a particular forum
9 otherwise available under the law;
- 10 (3) Requires that disputes between the manufacturer and dealer be submitted to
11 arbitration or to any other binding alternate dispute resolution procedure. However,
12 any dealership contract, lease, or agreement may authorize the submission of a dispute
13 to arbitration or to binding alternate dispute resolution if the manufacturer and dealer
14 voluntarily agree to submit the dispute to arbitration or binding alternate dispute
15 resolution at the time the dispute arises; or
- 16 (4) Requires a dealer to pay the attorney fees of a manufacturer.

17 This section does not apply to any agreement that has as its main objective the lease or sale
18 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

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

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB211** - 2/12/99

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 § 62-7-41 be amended to read as follows:

24 62-7-41. If an employee ~~is not totally disabled but~~ is unable to return to the employee's usual
25 and customary employment, the employer may, in lieu of ~~rehabilitation~~ other disability

1 compensation, require the employee to accept, in addition to an earned income, a supplemental
2 wage benefit to be paid by the employer which, in total with the earned income, equals the
3 workers' compensation benefit rate applicable to the employee at the time of the employee's
4 injury, plus a weekly return to work incentive of twenty percent of the weekly rate otherwise
5 payable to the employee under § 62-4-3, provided the employee is actually offered employment
6 or is employed.

7 Section 12. That § 62-7-35.1 be amended to read as follows:

8 62-7-35.1. In any case in which any benefits have been tendered pursuant to this title on
9 account of an injury, any claim for additional compensation shall be barred, unless a claim is filed
10 within three years from the date of the last payment of benefits. ~~However, the time limitation of~~
11 ~~this section does not apply to claims for medical care or the replacement of medicine, crutches,~~
12 ~~ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus,~~
13 ~~which medical care or apparatus are permanently or indefinitely required as the result of a~~
14 ~~compensable injury. The provision of such medical care or replacement of such items does not~~
15 ~~constitute payment of compensation so as to toll the running of the statute of limitations.~~

16 The provisions this section do not apply to review and revision of payments or other benefits
17 under § 62-7-33.

18 Section 13. That chapter 62-7 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The right to compensation under this title is forever barred if no medical treatment has been
21 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

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

750C0861

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB243** - 2/12/99

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

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

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

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

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

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

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

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

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

16 At the time of application, the organization shall furnish the department with the following:

- 17 (1) A copy of its articles of incorporation;
- 18 (2) A copy of its charter or by-laws;
- 19 (3) Any Internal Revenue Service rulings of its nonprofit tax exemptions status;
- 20 (4) A completed decal design with the organizational logo and the organizational name;
21 and
- 22 (5) A completed application for organization decals on a form provided by the
23 department.

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

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

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

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

1 **BILL HISTORY**

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

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

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

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