

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

552C0141

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

HB1014 - 1/26/99

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
State Brand Board

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the regulation,
2 inspection, and transportation of livestock.

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

4 Section 1. That chapter 40-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The brand board shall provide for the registration of livestock brands, for the inspection of
7 livestock for ownership identification purposes, and for the enforcement of laws pertaining to
8 the inspection, sale, branding, ownership, transportation, and theft of livestock within the
9 ownership inspection area and the state.

10 Section 2. That § 40-19-4 be amended to read as follows:

11 40-19-4. Any person desiring to use or adopt any recordable brand for livestock ownership
12 identification purposes shall make and sign an application setting forth a facsimile ~~and description~~
13 of the brand desired and file the application for registration in the office of the board.

14 Section 3. That § 40-19-5 be amended to read as follows:

15 40-19-5. ~~Priority of any person's application shall give preference right for the registration~~

1 of any certain brand. Each brand registered shall be given an official number which shall be
2 consecutive. An application for a registered brand shall be submitted on a form provided by the
3 board. Applications shall be processed in the order of their receipt and the applicant shall be
4 notified if the brand is recordable and of the fees due for registration.

5 Section 4. That § 40-19-6 be amended to read as follows:

6 40-19-6. ~~The board shall file all applications for registry or rerecording in the order of their~~
7 ~~receipt and, if the brand is recordable, issue a certificate therefor. Ownership shall date from the~~
8 ~~date of registration. If the brand is recordable, the board shall register the brand upon payment~~
9 ~~of the required fees and shall issue a certificate of registration. Ownership of a brand begins on~~
10 ~~the date of registration.~~

11 Section 5. That § 40-20-13 be repealed.

12 ~~—40-20-13. Any person who transports by commercial motor carrier, truck or tractor,~~
13 ~~livestock that have not had an ownership inspection as provided by the board from any point~~
14 ~~within the livestock ownership inspection area to any other point within the livestock ownership~~
15 ~~inspection area shall have in his possession a bill of lading at all times while transporting the~~
16 ~~livestock. The authorized bill of lading shall be approved by the board. The bill of lading shall~~
17 ~~contain the name of the driver and operator of the motor vehicle, the name of the owner of the~~
18 ~~livestock, the number of head, kind of livestock, sex, brands or marks, if any, the date of~~
19 ~~transportation, the name of the owner of the motor vehicle and its license number, the place of~~
20 ~~origin of the shipment with the county and address of loading point, and the destination of the~~
21 ~~shipment and the person, firm or corporation to whom consigned.~~

22 Section 6. That § 40-20-15 be repealed.

23 ~~—40-20-15. It is a Class 2 misdemeanor for a person to have his livestock transported, or for~~
24 ~~any carrier to transport livestock, as provided in § 40-20-13, without first having prepared and~~
25 ~~completed the bill of lading provided for in § 40-20-13, and both the consignor and carrier shall~~

1 ~~have signed such bill of lading, if such bill of lading is required.~~

2 Section 7. That § 40-20-18 be amended to read as follows:

3 40-20-18. Any person in charge or control of any motor vehicle transporting ~~any~~ livestock
4 from any point within the livestock ownership inspection area shall, upon demand of any state
5 law enforcement officer, exhibit to such the officer ~~his bill of lading to transport such livestock~~
6 ~~or his authorization, whichever may be required as provided in §§ 40-20-7 and 40-20-13 or~~
7 ~~pursuant to rule. However, the possession of a local ownership inspection certificate or a~~
8 ~~livestock market clearance shall be accepted in lieu of a bill of lading or authorization as required~~
9 ~~pursuant to § 40-20-4. It is a Class 2 misdemeanor for any person not to be in possession of a~~
10 ~~bill of lading or authorization if such possession is required pursuant to such authorization if~~
11 ~~required by~~ the provisions of this section.

12 Section 8. That § 40-20-24 be amended to read as follows:

13 40-20-24. Any law enforcement officer may require any person transporting livestock to stop
14 any vehicle transporting such livestock for the purpose of examination and inspection of the ~~bill~~
15 ~~of lading, authorization, shipper's agreement~~ shipper's permit, local ownership inspection
16 certificates, livestock market clearances, bills of sale, brands, marks, or other means of
17 identification. The law enforcement officer may demand any such person to unload such
18 livestock at the nearest suitable location for further inspection and examination.

19 Section 9. That § 40-21-12 be amended to read as follows:

20 40-21-12. If the seller described in § 40-21-10 or 40-21-11 fails to establish ownership of any
21 livestock, the livestock shall be held or sold. If the livestock are held, disposition by the board
22 shall be made. If sold, the selling agent ~~who sells such livestock shall hold the proceeds of the~~
23 ~~sale, and selling agent is financially responsible for the proceeds, of such livestock until such time~~
24 ~~as the board orders the money with account of sale, released to the owner or to the South~~
25 ~~Dakota livestock ownership inspection and theft prevention fund~~ is financially responsible for the

1 proceeds of the sale and shall hold the proceeds until the board orders the money, along with
2 account of sale, released to the livestock owner or to the South Dakota livestock ownership
3 inspection fund. Such financial responsibility may be enforced by civil suit brought by the board.
4 If the inspector finds livestock carrying a recorded brand which is not the property of the
5 consignor and is not accompanied by a proper bill of sale, affidavit of ownership, or livestock
6 market clearance, ~~he shall mark his tally~~ the inspector shall designate the livestock as, Hold. The
7 ~~inspector has the discretion to~~ may sell or hold the livestock; and if sold, the selling agency shall
8 hold the proceeds from the sale for sixty days or until the consignor ~~can establish~~ establishes
9 evidence of ownership to the inspector, whichever comes first. All livestock holds after sixty
10 days shall be forwarded by the inspector to the board for review and final disposition, which may
11 include clarification, settlement, or payment related to proper ownership ~~by the inspector to the~~
12 ~~board for review and final disposition.~~ If a hold has been placed on the proceeds, it is a Class 1
13 misdemeanor for the selling agent or selling agency to disburse the proceeds to the seller or
14 consignor before the board has cleared the hold for release.

15 Section 10. That § 32-2-8.1 be amended to read as follows:

16 32-2-8.1. Arrest powers for motor carrier inspectors employed by the Division of Highway
17 Patrol are limited to violations of chapters 10-47A, 32-5, 32-9, 32-10, 32-12, 32-22, 40-19, 40-
18 20, 40-21, 49-28, and 49-28A and §§ 50-4-13 to 50-4-17, inclusive, and the rules governing
19 operation of motor carriers. Motor carrier inspectors who have been given such limited arrest
20 powers are not considered law enforcement officers for the purposes of § 23-3-27.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Agriculture and Natural Resources. H.J. 34

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

4 1/26/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 0.

5 H.J. 184

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~~ the district's 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

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

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

454C0508

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB1103** - 2/16/99

Introduced by: Representatives Wilson, Brown (Jarvis), Hunt, and Michels and Senators Moore, Everist, and Munson (David)

1 FOR AN ACT ENTITLED, An Act to increase the per diem paid to jurors.

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

3 Section 1. That § 16-13-46 be amended to read as follows:

4 16-13-46. Each juror for each day's attendance upon the circuit court or the magistrate court
5 shall receive ~~forty~~ fifty dollars, and mileage at such rate as may be established pursuant to § 3-9-1
6 for each mile actually and necessarily traveled, to be paid by the county. However, any juror
7 called but not impaneled shall receive an appearance fee of ten dollars and, in addition, mileage
8 at such rate as may be established pursuant to § 3-9-1 for each mile actually and necessarily
9 traveled. Such juror's fees, except as provided in § 16-13-47, shall be paid by the county
10 treasurer upon the presentation of warrants ~~which~~. The warrants shall be issued by the county
11 auditor forthwith upon filing of each juror's certificate of attendance, ~~which~~. Each certificate shall
12 bear the endorsement or certificate of the clerk of the court in which such fees accrued to the
13 effect that ~~said~~ the certificate is accurate as to the time expended and the amount of fees claimed.

1 **BILL HISTORY**

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

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

4 1/27/99 Judiciary Do Pass, Passed, AYES 11, NAYS 0. H.J. 206

5 1/28/99 Motion to Amend, Passed, AYES 58, NAYS 11. H.J. 253

6 1/28/99 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 8. H.J. 254

7 1/29/99 First read in Senate and referred to Judiciary. S.J. 266

8 2/12/99 Scheduled for Committee hearing on this date.

9 2/12/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 475

10 2/12/99 Judiciary Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

445C0463

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1128** - 2/5/99

Introduced by: Representatives Solum and Broderick and Senators Everist, Duxbury, Madden,
and Munson (David)

1 FOR AN ACT ENTITLED, An Act to authorize the Banking Commission to establish rules
2 regulating bank borrowings.

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

4 Section 1. That § 51A-4-13 be amended to read as follows:

5 51A-4-13. A bank may borrow money ~~for temporary purposes~~ and ~~may~~ pledge assets as
6 security for terms, and upon conditions, established by the Banking Commission in rules
7 promulgated pursuant to chapter 1-26.

1 **BILL HISTORY**

2 1/22/99 First read in House and referred to Commerce. H.J. 129

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

4 2/4/99 Commerce Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 362

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

526C0462

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1142** - 2/5/99

Introduced by: Representatives Broderick, Pummel, and Solum and Senators Munson (David) and Duxbury

1 FOR AN ACT ENTITLED, An Act to permit an increased proportion of a bank's stock and
2 surplus to be invested in the value of the premises.

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

4 Section 1. That § 51A-4-9 be amended to read as follows:

5 51A-4-9. Except as provided in §§ 51A-4-10 and 51A-4-31 to 51A-4-41, inclusive, a bank
6 may lease, purchase, hold, and convey in its own name, or through investment in a corporation
7 organized solely to lease such property to it, only the following real property:

8 (1) That which it occupies or intends to occupy for the transaction of its business or
9 which it partly so occupies and partly rents or leases to others;

10 (2) That which is used for accommodation in the transaction of the bank's business,
11 including ~~but not limited to~~, parking, storage and preservation of records, and data
12 processing facilities;

13 (3) That which is used for housing or recreation accommodations for attracting and
14 retaining employees.

15 All such accommodations shall be of a reasonable nature.

16 The book value of a bank's ~~real property, furniture, equipment and fixtures~~ premises may not

1 exceed in the aggregate one hundred fifty percent of the bank's capital stock and surplus;
2 ~~provided that upon formal application and investigation by him.~~ However, the director may
3 authorize a larger investment, upon formal application and after an investigation, if the sound
4 conduct of banking will not ~~thereby~~ be adversely affected by the larger investment. For the
5 purposes of this section, book value includes those amounts which are to be reported as premises
6 and fixed assets according to the instructions for consolidated reports of condition filed with the
7 division.

1 **BILL HISTORY**

2 1/25/99 First read in House and referred to Commerce. H.J. 173

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

4 2/4/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 363

5 2/4/99 Commerce Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

167C0761

HOUSE ENGROSSED NO. **HB1199** . 2/10/99

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

Introduced by: Representatives Hunt and Fitzgerald and Senators Halverson and Brown
(Arnold)

1 FOR AN ACT ENTITLED, An Act to restrict the distribution of alcoholic beverages to persons

2 under eighteen years of age by parents, guardians, or spouses over twenty-one years of age.

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

4 Section 1. That § 35-9-1 be amended to read as follows:

5 35-9-1. It is a Class 1 misdemeanor to sell or give for use as a beverage any alcoholic

6 beverage to any person under the age of eighteen years ~~unless it is done in the immediate~~

7 ~~presence of a parent or guardian or spouse over twenty-one years of age or by prescription or~~

8 ~~direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes;~~

9 (1) It is done in the immediate presence of a parent or guardian or spouse, who is at least

10 twenty-one years of age, while not on the premises of an establishment licensed for

11 the retail sale of alcoholic beverages pursuant to § 35-4-2 or at a special event for

12 which an alcoholic beverage license has been issued pursuant to § 35-4-11.4; or

13 (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the

14 healing arts for medicinal purposes.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 212

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, Failed, AYES 6, NAYS 6.

6 2/1/99 Judiciary Deferred to another day.

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

8 2/3/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 341

9 2/4/99 Judiciary Hog Housed.

10 2/5/99 House of Representatives Deferred to another day. H.J. 405

11 2/8/99 Motion to Amend, Passed. H.J. 417

12 2/8/99 House of Representatives Do Pass Amended, Failed, AYES 29, NAYS 37. H.J. 417

13 2/8/99 Intent to reconsider. H.J. 418

14 2/9/99 House of Representatives Reconsidered, AYES 52, NAYS 16. H.J. 435

15 2/9/99 Motion to Amend, Passed. H.J. 436

16 2/9/99 House of Representatives Do Pass Amended, Passed, AYES 43, NAYS 25. H.J. 436

17 2/9/99 House of Representatives Title Amended Passed. H.J. 437

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0244

SENATE APPROPRIATIONS COMMITTEE

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

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

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

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

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

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

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

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

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

448C0769

SENATE JUDICIARY COMMITTEE
ENGROSSED NO. **SB203** - 2/16/99

Introduced by: Senator Everist and Representatives Michels and Wilson

1 FOR AN ACT ENTITLED, An Act to enact the Uniform Prudent Investor Act.

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

3 Section 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and
4 manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent
5 investor rule set forth in this Act.

6 (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or
7 otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent
8 that the trustee acted in reasonable reliance on the provisions of the trust.

9 Section 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by
10 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
11 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

12 (b) A trustee's investment and management decisions respecting individual assets must be
13 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an
14 overall investment strategy having risk and return objectives reasonably suited to the trust.

15 (c) Among circumstances that a trustee shall consider in investing and managing trust assets
16 are such of the following as are relevant to the trust or its beneficiaries:

- 1 (1) General economic conditions;
- 2 (2) The possible effect of inflation or deflation;
- 3 (3) The expected tax consequences of investment decisions or strategies;
- 4 (4) The role that each investment or course of action plays within the overall trust
- 5 portfolio, which may include financial assets, interests in closely held enterprises,
- 6 tangible and intangible personal property, and real property;
- 7 (5) The expected total return from income and the appreciation of capital;
- 8 (6) Other resources of the beneficiaries;
- 9 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 10 and
- 11 (8) An asset's special relationship or special value, if any, to the purposes of the trust or
- 12 to one or more of the beneficiaries.

13 (d) A trustee shall make a reasonable effort to verify facts relevant to the investment and
14 management of trust assets.

15 (e) A trustee may invest in any kind of property or type of investment consistent with the
16 standards of this Act.

17 (f) A trustee who has special skills or expertise, or is named trustee in reliance upon the
18 trustee's representation that the trustee has special skills or expertise, has a duty to use those
19 special skills or expertise.

20 Section 3. A trustee shall diversify the investments of the trust unless the trustee reasonably
21 determines that, because of special circumstances, the purposes of the trust are better served
22 without diversifying.

23 Section 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
24 trustee shall review the trust assets and make and implement decisions concerning the retention
25 and disposition of assets, in order to bring the trust portfolio into compliance with the purposes,

1 terms, distribution requirements, and other circumstances of the trust, and with the requirements
2 of this Act.

3 Section 5. A trustee shall invest and manage the trust assets solely in the interest of the
4 beneficiaries.

5 Section 6. If a trust has two or more beneficiaries, the trustee shall act impartially in investing
6 and managing the trust assets, taking into account any differing interests of the beneficiaries.

7 Section 7. In investing and managing trust assets, a trustee may only incur costs that are
8 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of
9 the trustee.

10 Section 8. Compliance with the prudent investor rule is determined in light of the facts and
11 circumstances existing at the time of a trustee's decision or action and not by hindsight.

12 Section 9. (a) A trustee may delegate investment and management functions that a prudent
13 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
14 exercise reasonable care, skill, and caution in:

- 15 (1) Selecting an agent;
- 16 (2) Establishing the scope and terms of the delegation, consistent with the purposes and
17 terms of the trust; and
- 18 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
19 and compliance with the terms of the delegation.

20 If the trustee obtains the written approval of a majority of the known beneficiaries or is
21 directed by the court, the trustee is not liable for the acts of the person to whom the authority
22 is delegated except in the cases of gross misconduct or gross negligence by the delegating trustee
23 in the selection, establishing the scope and terms of the delegation or reviewing the agent's
24 actions.

25 (b) In performing a delegated function, an agent owes a duty to the trust to exercise

1 reasonable care to comply with the terms of the delegation.

2 (c) A trustee who complies with the requirements of subsection (a) is not liable to the
3 beneficiaries or to the trust for the decisions or actions of the agent to whom the function was
4 delegated.

5 (d) By accepting the delegation of a trust function from the trustee of a trust that is subject
6 to the law of this state, an agent submits to the jurisdiction of the courts of this state.

7 Section 10. The following terms or comparable language in the provisions of a trust, unless
8 otherwise limited or modified, authorizes any investment or strategy permitted under this Act:
9 investments permissible by law for investment of trust funds; legal investments; authorized
10 investments; using the judgment and care under the circumstances then prevailing that persons
11 of prudence, discretion, and intelligence exercise in the management of their own affairs, not in
12 regard to speculation but in regard to the permanent disposition of their funds, considering the
13 probable income as well as the probable safety of their capital; prudent man rule; prudent trustee
14 rule; prudent person rule; and prudent investor rule.

15 Section 11. This Act applies to trusts existing on and created after its effective date. As
16 applied to trusts existing on its effective date, this Act governs only decisions or actions
17 occurring after that date.

18 Section 12. This Act shall be applied and construed to effectuate its general purpose to make
19 uniform the law with respect to the subject of this Act among the states enacting it.

20 Section 13. This Act may be cited as the South Dakota Uniform Prudent Investor Act.

21 Section 14. That § 55-5-6 be repealed.

22 ~~55-5-6. The trustee shall invest and manage trust assets as a prudent investor would~~
23 ~~considering the purposes, terms, distribution requirements, and other circumstances of the trust.~~
24 ~~This standard requires the exercise of reasonable care, skill, and caution and shall be applied to~~
25 ~~investments not in isolation, but in the context of the trust portfolio as a whole and as a part of~~

1 ~~an overall investment strategy that should incorporate risk and return objectives reasonably~~
2 ~~suitable to the trust.~~

3 Section 15. That §§ 55-5-7 to 55-5-16, inclusive, be repealed.

1 **BILL HISTORY**

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

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

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

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

6 2/12/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 474

7 2/12/99 Judiciary Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0867

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB238** - 2/16/99

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

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

1 FOR AN ACT ENTITLED, An Act to authorize the Public Utilities Commission to regulate
2 certain telecommunications services.

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

4 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The telecommunications company of any subscriber may not be changed without the
7 telecommunications service subscriber's authorization. The telecommunications service
8 subscriber's authorization shall be evidenced either by a written authorization signed by the
9 subscriber or by the use of an independent third-party verification company which complies with
10 the provisions of sections 2 and 3 of this Act, or by any other means authorized by the
11 commission. Products or services may not be listed on a subscriber's bill unless authorized by the
12 subscriber. The commission may promulgate rules pursuant to chapter 1-26 concerning
13 procedures, requirements, and standards for changing a subscriber's telecommunications
14 company and for listing products and services on a subscriber's bill.

15 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

1 If an independent third-party verification company obtains a subscriber's oral confirmation
2 regarding a change of a designated telecommunications company for interexchange or local
3 exchange telecommunications service, the third-party verification shall include:

4 (1) A statement that the purpose of the call is to verify the subscriber's intent to change
5 to the newly requested telecommunications company. The newly requested
6 interexchange or local telecommunications company shall be clearly identified to the
7 subscriber. Reference to use of another telecommunications company's network or
8 facilities, if stated, shall be secondary in nature to the prominent identification of the
9 telecommunications company which will be providing service and setting the rates for
10 the subscriber's service;

11 (2) Confirmation that the person whose authorization for a telecommunications company
12 change is being verified is the subscriber on the account or a person authorized by the
13 subscriber to make decisions regarding the telecommunications account on behalf of
14 the subscriber, whether that subscriber is an individual person or a business;

15 (3) Verification data unique to the subscriber such as the subscriber's date of birth; and

16 (4) The name and toll-free telephone number of the newly requested telecommunications
17 company.

18 The third-party verification company shall electronically record the telephone call that
19 confirms the subscriber's change of a designated telecommunications company. The electronic
20 recording shall include the complete statement of the service being changed and the subscriber's
21 complete response. The electronic recording shall be retained by the third-party verification
22 company for two years.

23 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 The third-party verification company shall meet each of the following criteria:

- 1 (1) Be independent of the telecommunications company that seeks to provide the
2 subscriber's new service;
- 3 (2) Not be managed, controlled, or directed or owned wholly or in part, by the
4 telecommunications company that seeks to provide the subscriber's new service;
- 5 (3) Operate from facilities physically separate from those of the telecommunications
6 company that seeks to provide the subscriber's new service; and
- 7 (4) Not derive commissions or compensation based upon the number of sales confirmed.

8 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A telecommunications company selling more than one type of telecommunications service
11 must obtain separate authorization to change a telecommunications company from the subscriber
12 for each service sold, although the authorizations may be made within the same solicitation. Each
13 authorization must be verified separately from any other authorizations obtained in the same
14 solicitation.

15 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A subscriber is not liable for any charges imposed by a telecommunications company that
18 initiates a telecommunications carrier change without authorization from the subscriber or for
19 the billing of unauthorized products or services. In addition, the telecommunications company
20 that initiates the unauthorized change or the billing of unauthorized products or services shall pay
21 to the subscriber one thousand dollars.

22 Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
25 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The

1 commission may impose a civil fine of not more than twenty thousand dollars for each offense.
2 In determining the amount of the penalty upon finding a violation, or the amount of the
3 compromise settlement, the commission shall consider the appropriateness of the penalty to the
4 size of the business of the person charged, prior offenses and compliance history, the good faith
5 of the person charged in attempting to achieve compliance, and such other matters as justice may
6 require. All penalties collected pursuant to this section shall be deposited in the state treasury.
7 In addition to assessing a civil penalty for a violation of this Act, the commission may revoke or
8 suspend a telecommunications company's certificate of authority for repeated offenses.

9 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 If the commission receives more than two complaints within thirty days regarding violations
12 of section 1 of this Act, the commission may require the telecommunications company
13 responsible for the violations to provide the commission with a complete list of its current
14 subscribers, including the subscribers' billing addresses. The commission may contact each
15 subscriber to determine whether any subscriber has been subject to an unauthorized change in
16 a telecommunications company or billed for unauthorized products or services. If the commission
17 finds, after notice and opportunity for hearing, that a telecommunications company has
18 committed two separate violations of section 1 of this Act within one year, the commission may
19 assess the costs of contacting subscribers to the telecommunications company.

20 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 If an alleged violation of this Act results in a contested case proceeding or if allowed by
23 section 7 of this Act, the commission may assess the actual costs of the contested case
24 proceeding or contacting subscribers to the telecommunications company. The assessment shall
25 be limited to actual amounts expended by the commission for commission employee time, expert

1 witnesses, court reporter fees, document and exhibit preparation, and other necessary and related
2 expenses incurred by the commission. The telecommunications company may, within thirty days
3 after the assessment is mailed, file written objections with the commission stating the grounds
4 upon which it claims that the assessment is not reasonable. The commission shall within thirty
5 days of receiving such objections hold a hearing and issue an order in accordance with its
6 findings as to the proper amount to be assessed to the telecommunications company. The order
7 may be appealed pursuant to chapter 1-26.

8 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 For the purpose of this Act, the term, subscriber, means any person who contracts with a
11 telecommunications company for telecommunications services.

12 Section 10. That § 37-30A-9 be repealed.

13 ~~37-30A-9. Notwithstanding the provisions of § 37-30A-8, no person may change the~~
14 ~~designated telecommunications company as defined in § 49-31-1(9) which is providing service~~
15 ~~to a consumer without the written confirmation in the form of a letter of agency from that~~
16 ~~consumer or confirmation by a third-party verification company. The third-party verification~~
17 ~~company shall meet each of the following criteria:~~

18 ~~(1) Be independent of the telecommunications company that seeks to provide the~~
19 ~~consumer's new service;~~

20 ~~(2) Not be directly managed, controlled, or directed, or owned wholly or in part, by the~~
21 ~~telecommunications company that seeks to provide the consumer's new service;~~

22 ~~(3) Operate from facilities physically separate from those of the telecommunications~~
23 ~~company that seeks to provide the consumer's new service; and~~

24 ~~(4) Not derive commissions or compensation based upon the number of sales confirmed.~~

25 ~~The telecommunications company that seeks to provide the consumer's new service shall~~

1 connect the consumer by telephone to the third-party verification company or shall arrange for
2 the third-party verification company to call the consumer to confirm the change. The third-party
3 verification company shall obtain the consumer's oral confirmation regarding the change and shall
4 record that confirmation. The record shall include the information requested by the third-party
5 verification company and the consumer's responses. The third-party verification company shall
6 retain that record for twelve months. The record shall be available to the Public Utilities
7 Commission and to the consumer at no cost. No information obtained from the consumer may
8 be used for marketing purposes. If the telecommunications company or a third-party verification
9 company acting on its behalf fails to comply with these third-party verification provisions, the
10 Public Utilities Commission may revoke the telecommunication company's certificate of authority
11 and may impose a civil fine of not less than two hundred dollars nor more than one thousand
12 dollars for each offense. It is a violation of §§ 37-30A-1 to 37-30A-17 for any person to make
13 such an unauthorized change.

1 **BILL HISTORY**

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

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

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

5 2/12/99 State Affairs Hog Housed.

6 2/12/99 Scheduled for Committee hearing on this date.

7 2/12/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 469

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