



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

347C0060

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1004** - 2/26/99

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

Introduced by: Representatives Crisp, Derby, Fischer-Clemens, Konold, and Munson (Donald) and Senators Olson, Hutmacher, and Vitter at the request of the Interim Transportation Committee

1 FOR AN ACT ENTITLED, An Act to increase and revise license fees for certain noncommercial  
2 vehicles, to revise the distribution of license fees, and to increase the excise tax on certain  
3 motor fuels.

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

5 Section 1. That § 10-47B-4 be amended to read as follows:

6 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 7 (1) Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline) ~~-\$18~~  
8 \$.22 per gallon;
- 9 (2) Special fuel (except jet fuel) ~~-\$18~~ \$.22 per gallon;
- 10 (3) Ethanol blends ~~-\$16~~ \$.20 per gallon;
- 11 (4) Aviation gasoline ~~-\$06~~ per gallon;
- 12 (5) Jet fuel ~~-\$04~~ per gallon;
- 13 (6) E85 and M85 ~~-\$06~~ \$.10 per gallon;
- 14 (7) E85 and M85 used in aircraft ~~-\$04~~ per gallon;
- 15 (8) Liquid petroleum gas ~~-\$16~~ \$.20 per gallon;

1 (9) Compressed natural gas ~~-\$06~~ \$.10 per gallon.

2 Section 2. That § 32-5-6 be amended to read as follows:

3 32-5-6. License fees and compensation on a noncommercial motor vehicle which is an  
4 automobile, pickup truck, or van as provided by § 32-5-5, shall be determined by the  
5 manufacturer's shipping weight, including accessories, as follows:

6 (1) Two thousand pounds or less, inclusive, ~~twenty~~ thirty-two dollars;

7 (2) From 2,001 to 4,000 pounds, inclusive, ~~thirty~~ forty-two dollars;

8 (3) From 4,001 to 6,000 pounds, inclusive, ~~forty~~ fifty-two dollars;

9 (4) ~~to (11) Repealed by SL 1992, ch 26, § 7~~ From 6,001 to 8,000 pounds, inclusive,  
10 sixty-two dollars;

11 (5) From 8,001 to 10,000 pounds, inclusive, seventy-two dollars.

12 Section 3. That § 32-5-6.1 be amended to read as follows:

13 32-5-6.1. License fees and compensation on recreational motor buses as defined by this  
14 section shall be determined pursuant to § 32-5-6.3. However, the maximum license fee and  
15 compensation for a recreational motor bus shall be one hundred and twelve dollars. For the  
16 purposes of this section the term, recreational motor bus, means a motor bus which has been  
17 converted for recreational purposes subsequent to the initial retail sale.

18 Section 4. That § 32-5-6.3 be amended to read as follows:

19 32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile, pickup  
20 truck, or van ~~as provided by~~ licensed pursuant to § 32-5-6 shall be determined by the gross  
21 weight of the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

22 (1) Eight thousand pounds or less, inclusive, ~~forty-eight~~ sixty dollars;

23 (2) For each additional 2,000 pounds or major fraction thereof from 8,001 to 32,000  
24 pounds, inclusive, three dollars;

25 (3) For each additional 2,000 pounds or major fraction thereof from 32,001 to 54,000

1 pounds, inclusive, six dollars;

2 (4) For each additional 2,000 pounds or major fraction thereof from 54,001 to 80,000  
3 pounds, inclusive, eighteen dollars;

4 (5) For each additional 2,000 pounds or major fraction thereof in excess of 80,000  
5 pounds, twenty-four dollars.

6 It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this  
7 section at a gross weight in excess of the gross weight for which it has been licensed.

8 Section 5. That § 32-5-8 be amended to read as follows:

9 32-5-8. License fees and compensation for any recreational vehicle as defined in § 32-3-1 or  
10 for any noncommercial trailer and semitrailer, for use of the highways payable under § 32-5-5  
11 and pulled by a noncommercial motor vehicle on which the license fees were paid pursuant to  
12 § 32-5-6, shall be determined upon the basis of their actual weight as follows:

13 (1) One thousand pounds or less, inclusive, ~~five~~ seven dollars;

14 (2) From 1,001 to 2,000 pounds, inclusive, ~~fifteen~~ seventeen dollars;

15 (3) From 2,001 to 3,000 pounds, inclusive, ~~twenty-five~~ twenty-seven dollars;

16 (4) From 3,001 to 4,000 pounds, inclusive, ~~thirty-five~~ thirty-seven dollars;

17 (5) From 4,001 to 5,000 pounds, inclusive, ~~forty-five~~ forty-seven dollars;

18 (6) From 5,001 to 6,000 pounds, inclusive, ~~fifty-five~~ fifty-seven dollars;

19 (7) From 6,001 to 7,000 pounds, inclusive, ~~sixty-five~~ sixty-seven dollars;

20 (8) From 7,001 to 8,000 pounds, inclusive, ~~seventy-five~~ seventy-seven dollars;

21 (9) From 8,001 to 9,000 pounds, inclusive, ~~eighty-five~~ eighty-seven dollars;

22 (10) From 9,001 to 10,000 pounds, inclusive, ~~ninety-five~~ ninety-seven dollars;

23 (11) For each additional 1,000 pounds or major fraction thereof, in excess of 10,000  
24 pounds, ten dollars.

25 Any trailer or semitrailer licensed pursuant to this section may be pulled by a noncommercial

1 motor vehicle licensed pursuant to § 32-5-8.1 or a commercially licensed motor vehicle if the  
2 motor vehicle is registered at a gross weight to cover the weight of the trailer and its load.

3 Section 6. That § 32-5-8.1 be amended to read as follows:

4 32-5-8.1. Each trailer or semitrailer pulled by a noncommercial motor vehicle on which the  
5 license fees were paid pursuant to § 32-5-6.3 shall have an identification plate displayed in a  
6 conspicuous manner. The fee for the identification plate is ten dollars. The identification plate  
7 is valid for the useful life of the trailer or semitrailer. However, if the title to the trailer or  
8 semitrailer is transferred, the new owner shall within thirty days of the date of transfer make  
9 application to the department for a new identification plate. All revenue raised by the fees shall  
10 be placed in the license plate special revenue fund. However, no identification plate may be  
11 displayed on a recreational vehicle as defined in § 32-3-1. Such a recreational vehicle shall be  
12 licensed pursuant to § 32-5-8.

13 Section 7. That § 32-5-9 be amended to read as follows:

14 32-5-9. License fees and compensation for use of the highways payable under § 32-5-5 shall  
15 be: ~~seven~~ nine dollars and fifty cents for motorcycles with a piston displacement of less than three  
16 hundred fifty cubic centimeters and ~~ten~~ twelve dollars for motorcycles with a piston displacement  
17 of three hundred fifty cubic centimeters or more.

18 Section 8. That § 32-6B-21 be amended to read as follows:

19 32-6B-21. The department shall issue metal numerical license plates to licensed dealers upon  
20 application and payment of a ~~thirty~~ forty-two dollar yearly fee to be paid at the time of the annual  
21 review date for each set desired. Such fees shall be distributed in the manner specified in  
22 §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered  
23 consecutively and shall bear as a prefix the number "77". The plates may be issued for a multiple  
24 year period. If a dealer's license is revoked or canceled or the dealer goes out of business the  
25 "77" plates shall be returned to the department. If any person operates a motor vehicle with "77"

1 plates after the dealer license is revoked or canceled or after the dealer goes out of business, or  
2 if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

3 Section 9. That § 32-10-35 be amended to read as follows:

4 32-10-35. Fees collected by the secretary of revenue and not otherwise provided for shall be  
5 distributed as provided by this section. Fees collected under chapter 32-10 by the secretary of  
6 revenue pursuant to § 32-5B-1 shall be deposited in the state highway fund. Fees collected under  
7 chapter 32-10 by the secretary of revenue pursuant to chapter 32-9 shall be distributed with  
8 ~~fifty-four~~ fifty-seven percent to the ~~state highway~~ local government highway and bridge fund,  
9 forty-one and one-half percent to counties, ~~two~~ one-half percent to the state motor vehicle fund,  
10 and ~~two and one-half~~ one percent to the state license plate special revenue fund. The counties'  
11 portion shall be distributed among the counties, pro rata, twenty-five percent according to truck  
12 registrations, twenty-five percent according to population, and fifty percent according to total  
13 road mileage. Each county shall distribute fifty-four percent of its portion to the county general  
14 fund, thirty-four percent of its portion to the special highway fund as provided by § 32-11-4.1,  
15 and twelve percent of its portion to the municipalities of the county pursuant to § 32-11-4.1.

16 Section 10. There is hereby appropriated each fiscal year from the state highway fund the  
17 sum of one million thirty-three thousand two hundred sixty-nine dollars and ten cents to the  
18 Department of Revenue for distribution to the counties. The moneys shall be distributed to the  
19 counties in the same amounts as funds were distributed to the counties by the Department of  
20 Game, Fish and Parks for license fees in calendar year 1997, pursuant to § 41-6-70. The moneys  
21 shall be deposited in the special highway fund of each county. The secretary of revenue shall  
22 distribute the money prior to December thirty-first of each year.

23 Section 11. Whereas, section 1 of this Act is necessary for the support of the state  
24 government and its existing public institutions, an emergency is hereby declared to exist, and  
25 section 1 of this Act shall be in full force and effect from and after April 1, 1999.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Transportation. H.J. 32

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

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

5 2/10/99 Transportation Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 478

6 2/16/99 House of Representatives Deferred to another day. H.J. 552

7 2/17/99 House of Representatives Do Pass Amended, Passed, AYES 48, NAYS 21. H.J. 579

8 2/18/99 First read in Senate and referred to Transportation. S.J. 565

9 2/23/99 Scheduled for Committee hearing on this date.

10 2/25/99 Transportation Hog Housed.

11 2/25/99 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 675

12 2/25/99 Scheduled for Committee hearing on this date.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0212

## HOUSE ENGROSSED NO. **HB1038** - 2/22/99

Introduced by: The Committee on State Affairs at the request of the Department of Game,  
Fish, and Parks

1 FOR AN ACT ENTITLED, An Act to revise the system of issuing and selling certain licenses,  
2 permits, and stamps by agents of the Department of Game, Fish and Parks, to repeal the  
3 reimbursement to counties for services rendered in such sales, and to provide additional  
4 funds to the state animal damage control fund.

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

6 Section 1. That § 41-2-33 be amended to read as follows:

7 41-2-33. The Department of Game, Fish and Parks may appoint license issuing agents to  
8 issue on behalf of the department any license, permit, or stamp permitted or provided for by this  
9 title and § 32-20A-15.1. ~~The agents shall be bonded in such amounts and conditions as the~~  
10 ~~department may deem proper.~~ No conservation officer may be appointed as a license issuing  
11 agent. The licensing issuing agents, ~~however,~~ shall receive no compensation from the state for  
12 ~~any services or expenses in connection with the issuance of such licenses, and shall remit all~~  
13 license fees collected at the time and in the manner required by rules adopted pursuant to  
14 ~~§ 41-2-18~~ chapter 1-26.

15 Section 2. That § 41-6-56 be repealed.

16 ~~41-6-56. Licenses issued under §§ 41-6-11 to 41-6-48, inclusive, may be issued only as~~

1 provided by §§ 41-6-57 to 41-6-61, inclusive.

2 Section 3. That § 41-6-57 be repealed.

3 ~~41-6-57. Licenses under §§ 41-6-11 to 41-6-21, inclusive, under § 41-6-23, under~~  
4 ~~§§ 41-6-35 to 41-6-37, inclusive, under § 41-17-13, and the permit provided by § 32-20A-15.1~~  
5 ~~may be issued by the county treasurer of any county in this state or his duly authorized agents~~  
6 ~~who, for such purpose, shall be deemed acting for the game, fish and parks commission as~~  
7 ~~hereinafter provided.~~

8 Section 4. That § 41-6-59 be amended to read as follows:

9 41-6-59. ~~The county treasurer may appoint agents within the treasurer's county to sell the~~  
10 ~~licenses and the permits provided for in § 41-6-57. No conservation officer may be appointed~~  
11 ~~as an agent of the county treasurer. Any agent, who has been appointed by the county treasurer~~  
12 ~~in any previous year and has provided either a bond or other security to the county treasurer in~~  
13 ~~any previous year, is not required to furnish a bond or other security if the agent is not issued~~  
14 ~~licenses and permits with a value of more than fifty thousand dollars at any one time. An agent,~~  
15 ~~who has previously provided either a bond or other security and has licenses and permits of a~~  
16 ~~value no greater than twenty thousand dollars issued at any one time, shall pay to the Department~~  
17 ~~of Game, Fish and Parks an annual fee of twenty dollars. An agent, who has previously provided~~  
18 ~~either a bond or other security and has licenses and permits of a value greater than twenty~~  
19 ~~thousand dollars but less than fifty thousand dollars issued to them at any one time, shall pay the~~  
20 ~~department an annual fee of fifty dollars. An agent, who has more than fifty thousand dollars of~~  
21 ~~licenses and permits issued at any one time shall be bonded or shall furnish security equal to the~~  
22 ~~total value of the licenses and permits issued to the agent at any one time less fifty thousand~~  
23 ~~dollars. Any agent who has not previously been bonded or who has not previously provided~~  
24 ~~other security to sell the licenses and permits shall be bonded or shall furnish security equal to~~  
25 ~~the total value of the licenses issued to the agent at any one time. A certificate of deposit, money~~

1 order, or other negotiable instrument issued by a bank, savings and loan association, or a credit  
2 union bearing the agent's social security number or employer identification number payable to  
3 the ~~county treasurer~~ department is sufficient security. If an agent fails to timely pay the amount  
4 owed to the ~~county treasurer~~ department, the ~~county treasurer~~ department may cash the  
5 certificate and satisfy the amount owed to the ~~county treasurer~~ department and remit the balance  
6 to the agent. If the agent has paid all the fees owed to the ~~county treasurer~~ and requests a return  
7 of the certificate of deposit, money order, or other negotiable instrument, the ~~county treasurer~~  
8 department shall endorse it payable to the agent and return it to the agent. ~~Any~~ No agent who  
9 defaults on payment of the amount owed to the ~~county treasurer~~ department may ~~not~~ be  
10 appointed an agent by the ~~county treasurer~~ until the unpaid amount, plus interest at the Category  
11 B rate of interest as defined in § 54-3-16, is paid.

12 Section 5. That § 41-6-59.1 be amended to read as follows:

13 41-6-59.1. The Game, Fish and Parks Commission may promulgate rules ~~and regulations~~  
14 pursuant to chapter 1-26 for the purpose of regulating the remittance to ~~county treasurers~~ the  
15 department of fees collected by agents appointed by the ~~county treasurer~~ department for the sale  
16 of licenses ~~as provided in § 41-6-67.~~

17 Section 6. That § 41-6-62 be amended to read as follows:

18 41-6-62. ~~Applications for licenses~~ Any application for any license under this ~~chapter~~ title shall  
19 show that the applicant is legally eligible for the license for which ~~he~~ the applicant applies. Any  
20 person authorized under §§ ~~41-6-56 to 41-2-33 and 41-6-61, inclusive,~~ to issue a license may  
21 take the oath of the applicant thereto with the same force and effect as if the oath had been taken  
22 by any other officer of this state authorized by law to administer an oath.

23 Section 7. That § 41-6-65 be repealed.

24 ~~41-6-65. The secretary of game, fish and parks shall each year furnish to the treasurer of each~~  
25 ~~county a supply of hunting, fishing, and trapping licenses, for which the treasurer shall give his~~

1 receipt, to be filed in the department of game, fish and parks:

2 Section 8. That § 41-6-66 be amended to read as follows:

3 41-6-66. ~~The licenses~~ Any license permitted or provided for in §§ ~~41-6-11 to 41-6-21,~~  
4 ~~inclusive, in § 41-6-23, in §§ 41-6-35 to 41-6-37, inclusive, and in § 41-17-13, this title and~~  
5 § 32-20A-15.1 shall be in such form as the Game, Fish, and Parks Commission or department  
6 ~~directs, and shall be furnished to the various county treasurers without charge, and upon receipt~~  
7 ~~of the licenses, the county treasurer is liable under the treasurer's official bond for the license~~  
8 ~~blanks delivered and for the proceeds derived from the sale thereof, and is responsible for all~~  
9 ~~license blanks issued by the treasurer to, and license fees received by, an agent, except that the~~  
10 ~~county treasurer is not liable for any amount an agent fails to pay the county treasurer up to the~~  
11 ~~amount of licenses and permits the agent may obtain pursuant to § 41-6-59 without providing~~  
12 ~~a bond or other security. The Department of Game, Fish, and Parks may collect any amount~~  
13 ~~owed by the agent to the county treasurer for which the county treasurer is not liable.~~

14 Section 9. That § 41-6-67 be repealed.

15 ~~— 41-6-67. The treasurer of each county shall, on or before the fifteenth day of each month,~~  
16 ~~submit to the department of game, fish and parks a report of all licenses issued by the treasurer~~  
17 ~~and agents appointed by the treasurer under § 41-6-59 during the accounting period prescribed~~  
18 ~~by the game, fish and parks commission pursuant to § 41-6-59.1 on forms prescribed and~~  
19 ~~furnished by the department. The treasurer shall remit all money collected from the sale of these~~  
20 ~~licenses as required by § 4-3-12.1 to be credited to a game, fish and parks fund.~~

21 Section 10. That § 41-6-68 be amended to read as follows:

22 41-6-68. ~~The county treasurer~~ Any agent appointed by the department shall promptly  
23 transmit such reports as may be required by the Game, Fish and Parks Commission or the  
24 department, together with ~~his county warrant for all license fees received by him and his agents~~  
25 during the accounting period designated by the department to be deposited in the game, fish and

1 parks fund.

2 Section 11. That § 41-6-69 be amended to read as follows:

3 41-6-69. Not later than the last day of January of each year, ~~the treasurer of each county~~ each  
4 agent shall return to the Department of Game, Fish and Parks all unused licenses, together with  
5 the stubs or duplicate copies of all licenses issued. ~~Any county not remitting licenses and fees to~~  
6 ~~the department of game, fish and parks by the last day of January each year shall be penalized~~  
7 ~~one and one-half percent for each month or fraction thereof for the late return of fees and~~  
8 ~~licenses. The penalty may not exceed ten percent of the total reimbursement a county receives~~  
9 ~~from the department.~~ Following the expiration date of hunting, fishing, and trapping licenses,  
10 stamps and permits issued by the department, the department may destroy the licenses, stamps,  
11 and permits together with the stubs or duplicate copies upon completion of an audit thereof by  
12 the Department of Legislative Audit and filing of a satisfactory report.

13 Section 12. That § 32-20A-15.1 be amended to read as follows:

14 32-20A-15.1. A nonresident owner of an unlicensed snowmobile shall purchase a temporary  
15 permit to operate the snowmobile in this state. The fee for the permit is ten dollars. The permit  
16 is valid for five consecutive days. All fees collected shall be deposited in the snowmobiles trails  
17 fund established by § 32-5-9.2. ~~The Department of Game, Fish and Parks shall supply the county~~  
18 ~~treasurers with the necessary permits to implement this section.~~

19 Section 13. That § 41-6-70 be repealed.

20 ~~41-6-70. The game, fish and parks commission shall, at the close of each license year,~~  
21 ~~reimburse the various counties for services rendered in connection with the sale of licenses under~~  
22 ~~this chapter in the amount of ten percent of all license fees for licenses sold by the county~~  
23 ~~treasurer or his agents during such license year, and, in addition, the county treasurers shall also~~  
24 ~~be reimbursed ten percent of the fees for the east river and west river prairie firearm deer licenses~~  
25 ~~and the east river and west river firearm antelope licenses sold by the department of game, fish~~

1 ~~and parks for the respective counties. No reimbursement may be made for the sale of habitat~~  
2 ~~stamps or waterfowl restoration stamps. All money received as such reimbursement shall be~~  
3 ~~placed in the special highway fund of the county and shall be apportioned and used as provided~~  
4 ~~in §§ 32-11-5 to 32-11-7, inclusive.~~

5 Section 14. That § 40-36-11 be amended to read as follows:

6 40-36-11. Each county shall annually appropriate a sum equal to an assessment on all cattle  
7 and sheep based on the most current United States Department of Commerce census of  
8 agriculture, and the money shall be remitted to the state treasurer for deposit in the state animal  
9 damage control fund. Each county shall be assessed at a rate of twenty-five cents per head for  
10 all sheep and six cents per head for all cattle. The Department of Game, Fish and Parks shall  
11 certify, to each county auditor, the amount to be appropriated. The state animal damage control  
12 fund shall be matched ~~dollar for dollar~~ two dollars for every one dollar of county appropriation  
13 by funds of the Department of Game, Fish and Parks to carry out the provisions of this chapter.  
14 ~~—The provisions of § 10-12B-16 do not apply to this section.~~

15 Section 15. A portion of the license fees collected by the Department of Game, Fish and  
16 Parks that would previously have been paid to counties pursuant to § 41-6-70, in an amount  
17 equal to one million thirty-three thousand two hundred sixty-nine dollars and ten cents per year,  
18 shall be used only for the following purposes: administration of licensing services provided by  
19 the department; increased contribution to the animal damage control fund as provided in section  
20 14 of this Act; development of public access, other than fee-title purchase of land, for hunting  
21 and fishing; wildlife habitat improvements; management of wildlife damage; or to be credited  
22 toward a reduction of resident license fees. The Game, Fish and Parks Commission shall approve  
23 amounts allocated to the specific purposes identified in this section.

1 **BILL HISTORY**

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

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

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

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

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

7 2/5/99 Scheduled for Committee hearing on this date.

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

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

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

11 2/17/99 State Affairs Do Pass Amended, Failed, AYES 6, NAYS 6.

12 2/17/99 State Affairs Report Without Recommendation, AYES 8, NAYS 4.

13 2/18/99 House of Representatives Placed on Calendar, AYES 56, NAYS 14. H.J. 611

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

128C0623

HOUSE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB1147** - 2/11/99

Introduced by: Representatives Richter, Brown (Richard), Clark, Cutler, Engbrecht, Michels, Munson (Donald), Peterson, and Putnam and Senators Olson, Bogue, Dennert, Everist, and Reedy

1 FOR AN ACT ENTITLED, An Act to authorize the construction of a new roof on the Dakota  
2 Dome at the University of South Dakota.

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

4 Section 1. It being declared to be in the public interest, the South Dakota Building Authority  
5 may contract for the construction, completion, furnishing, equipping, and maintaining of a new  
6 roof on the Dakota Dome at the University of South Dakota, in Vermillion, Clay County,  
7 including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and  
8 engineering services, asbestos abatement, removal of existing roofing and structures, and such  
9 other services as may be required to accomplish the purposes of this Act, all at the estimated cost  
10 of eleven million five hundred five thousand dollars (\$11,505,000). The Building Authority may  
11 finance up to six million five hundred five thousand dollars (\$6,505,000) of the construction  
12 costs through the issuance of revenue bonds, in accordance with this section and chapter 5-12.

13 Section 2. No indebtedness, bond, or obligation incurred or created under the authority of  
14 this Act may be or may become a lien, charge, or liability against the state of South Dakota, nor  
15 against the property or funds of the state of South Dakota within the meaning of the Constitution

1 or statutes of the state.

2 Section 3. The Building Authority and the Board of Regents may accept, transfer, and  
3 expend any funds obtained for these purposes from federal sources, gifts, contributions, or any  
4 other source, all of which shall be deemed appropriated to the project authorized by this Act.

5 Section 4. The administration of the design and construction of this project shall be under  
6 the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.  
7 The executive director of the Board of Regents and the executive secretary of the Building  
8 Authority, or their designees, shall approve vouchers and the state auditor shall draw warrants  
9 to pay expenditures authorized by this Act.

10 Section 5. The Board of Regents may make and enter into a lease agreement with the  
11 Building Authority and make rental payments under the terms thereof, pursuant to chapter 5-12,  
12 from appropriations by the Legislature to support the construction, completion, furnishing,  
13 equipping, and payment of revenue bonds pursuant to this Act.

1 **BILL HISTORY**

2 1/25/99 First read in House and referred to Appropriations. H.J. 174

3 2/10/99 Scheduled for Committee hearing on this date.

4 2/10/99 Appropriations Do Pass Amended, Passed, AYES 8, NAYS 1. H.J. 457

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

664C0575

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1164** - 2/19/99

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

Introduced by: Representatives Wetz, Klaudt, McNenny, and Young and Senators Brown (Arnold), Benson, and Bogue

1 FOR AN ACT ENTITLED, An Act to provide certain injunctive relief against unwarranted  
2 emergency zoning ordinances, zoning maps, and other official controls.

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

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

6 Any person who is aggrieved by the adoption of an emergency temporary zoning ordinance  
7 pursuant to § 11-2-10 or any other emergency ordinance, zoning map, or other official control  
8 authorized pursuant to this chapter may seek an injunction against it in any court of appropriate  
9 jurisdiction based on the grounds that the emergency temporary zoning ordinance or other  
10 emergency ordinance, zoning map, or official control authorized pursuant to this chapter is not  
11 necessary to protect the public health, safety, and public welfare. If the court finds that the  
12 emergency temporary zoning ordinance or other emergency ordinance, zoning map, or official  
13 control authorized pursuant to this chapter is not necessary to protect the public health, safety,  
14 and general welfare, the court shall declare the ordinance or other emergency ordinance, zoning  
15 map, or official control authorized pursuant to this chapter null and void.

1 **BILL HISTORY**

2 1/26/99 First read in House and referred to Local Government. H.J. 191

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

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

5 2/9/99 Local Government Tabled, AYES 9, NAYS 3. H.J. 430

6 2/16/99 Local Government Removed from Table, AYES 9, NAYS 4.

7 2/18/99 Local Government Hog Housed.

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

9 2/18/99 Local Government Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 599

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

235C0610

HOUSE EDUCATION COMMITTEE  
ENGROSSED NO. **HB1184** - 2/10/99

Introduced by: Representatives Chicoine and Broderick and Senator Albers

1 FOR AN ACT ENTITLED, An Act to allow for the transfer of money from a school district's  
2 special education fund to its general fund under certain circumstances.

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

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

6 If a school district that contracts pursuant to § 13-15-11 transferred money out of its general  
7 fund to its special education fund in the school years ending June 30, 1993, and June 30, 1994,  
8 then the school district may at any time transfer from its special education fund to its general  
9 fund an amount of money equal to those previous transfers from its general fund to its special  
10 education fund.

11 Section 2. Section 1 of this Act is repealed on July 1, 2000.

1 **BILL HISTORY**

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

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

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

5 2/9/99 Scheduled for Committee hearing on this date.

6 2/9/99 Education Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 431

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

194C0694

SENATE EDUCATION COMMITTEE  
ENGROSSED NO. **HB1229** - 2/26/99

Introduced by: Representative Putnam and Senator Drake

1 FOR AN ACT ENTITLED, An Act to require the reporting of certain weapons violations on  
2 school premises to local law enforcement authorities.

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

4 Section 1. That § 13-32-4 be amended to read as follows:

5 13-32-4. The school board of every school district shall assist and cooperate with the  
6 administration and teachers in the government and discipline of the schools. The board may  
7 suspend or expel from school any student for violation of rules or policies or for insubordination  
8 or misconduct, and the superintendent or principal in charge of the school may temporarily  
9 suspend any student in accordance with § 13-32-4.2. The rules or policies may include  
10 prohibiting the following:

- 11 (1) The consumption or possession of beer or alcoholic beverages on the school premises  
12 or at school activities;
- 13 (2) The use or possession of a controlled substance, without a valid prescription, on the  
14 school premises or at school activities; and
- 15 (3) The use or possession of a firearm, as provided in § 13-32-7, on or in any elementary  
16 or secondary school premises, vehicle, or building or any premises, vehicle, or

1 building used or leased for elementary or secondary school functions or activities.

2 In addition to administrative and school board disciplinary action, any violation of § 13-32-7  
3 shall be reported to local law enforcement authorities.

4 The period of expulsion may extend beyond the semester in which the violation,  
5 insubordination, or misconduct occurred. Any expulsion for consumption or possession of beer  
6 or alcoholic beverages may not extend beyond ninety school days. If a student has intentionally  
7 brought a firearm onto school premises, the expulsion may not be for less than twelve months.

8 However, the superintendent or chief administering officer of each local school district or  
9 system may increase or decrease the length of a firearm-related expulsion on a case-by-case  
10 basis. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 to  
11 establish administrative due process procedures for the protection of a student's rights. The  
12 administrative due process procedures shall include a requirement that the school give notice of  
13 a student's due process rights to the parent or guardian of the student at the time of suspension  
14 or expulsion. Each school district board shall provide a procedural due process hearing, if  
15 requested, for a student in accordance with such rules if the suspension or expulsion of the  
16 student extends into the eleventh school day.

17 This section does not preclude other forms of discipline which may include suspension or  
18 expulsion from a class or activity.

19 This section does not prohibit a local school district from providing educational services to  
20 an expelled student in an alternative setting.

21 Section 2. That chapter 26-7A be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 A child alleged to have violated § 13-32-7 may be taken into temporary custody by a law  
24 enforcement officer who shall immediately notify an intake officer who shall conduct a hearing  
25 pursuant to § 26-7A-13.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to Education. H.J. 217

3 1/28/99 Referred to Education. H.J. 241

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

5 2/2/99 Education Deferred to another day.

6 2/4/99 Scheduled for Committee hearing on this date.

7 2/9/99 Scheduled for Committee hearing on this date.

8 2/11/99 Scheduled for Committee hearing on this date.

9 2/16/99 Scheduled for Committee hearing on this date.

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

11 2/18/99 Education Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 604

12 2/22/99 House of Representatives Do Pass Amended, Passed, AYES 63, NAYS 7. H.J. 667

13 2/22/99 First read in Senate and referred to Education. S.J. 632

14 2/25/99 Scheduled for Committee hearing on this date.

15 2/25/99 Education Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 675

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

991C0850

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB1282** - 2/25/99

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

Introduced by: Representative Michels and Senator Everist

1 FOR AN ACT ENTITLED, An Act to revise the confidentiality related to certain patient  
2 records.

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

4 Section 1. That § 36-4-26.2 be amended to read as follows:

5 36-4-26.2. Section 36-4-26.1 ~~applies neither to facts associated with a patient's treatment and~~  
6 ~~care nor to patient records prepared in conjunction with~~ does not apply to observations made at  
7 the time of treatment by a health care professional present during the patient's treatment or to  
8 patient records prepared during the treatment and care rendered to a patient who is personally  
9 or by personal representative a party to an action or proceeding, the subject matter of which is  
10 the care and treatment of the patient. Furthermore, ~~after the notification of adverse parties as~~  
11 ~~hereinafter provided, § 36-4-26.1 does not apply to the proceedings, records, reports,~~  
12 ~~statements, minutes, or other data of any~~ no member of any committee, department, section,  
13 board of directors, or group covered by § 36-4-26.1, in so far as they relate to the statements or  
14 opinions of a member thereof made or rendered at its meeting, if the member is called as a  
15 witness on behalf of any party in an action involving the quality, type, or necessity of such care  
16 rendered. However:

1 ~~(1) Such information may only be used to impeach the testimony of such witness; and~~  
2 ~~(2) Such witness may not testify unless the party calling the witness has notified all~~  
3 ~~adverse parties to the action at least thirty days before trial of the person's intention~~  
4 ~~to use such witness who has participated in deliberations under that section involving~~  
5 ~~the subject matter of the action, may testify as an expert witness for any party in any~~  
6 ~~action for personal injury or wrongful death, the subject matter of which is the care~~  
7 ~~and treatment of the patient. Notwithstanding membership on a committee,~~  
8 ~~department, section, board of directors, or group covered by § 36-4-26.1, a health~~  
9 ~~care professional observing or participating in the patient's treatment and care may~~  
10 ~~testify as a fact or expert witness concerning that treatment and care, but may not be~~  
11 ~~required to testify as to anything protected by § 36-4-26.1.~~

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Health and Human Services. H.J. 318

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 Health and Human Services Do Pass Amended, Failed, AYES 6, NAYS 5.

7 2/17/99 Health and Human Services Hog Housed.

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

9 2/17/99 Health and Human Services Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 563

10 2/19/99 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 12. H.J. 651

11 2/22/99 First read in Senate and referred to Judiciary. S.J. 620

12 2/24/99 Scheduled for Committee hearing on this date.

13 2/24/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 652

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

617C0817

## HOUSE ENGROSSED NO. **HB1283** - 2/22/99

Introduced by: Representatives Michels and Peterson and Senator Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the licensing and  
2 regulation of the practices of architecture, engineering, land surveying, landscape  
3 architecture, petroleum release assessment, and petroleum release remediation and to the  
4 certification of environmental technical services.

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

6 Section 1. Terms used in this Act mean:

- 7 (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation,  
8 or reconstruction to a building which changes the use, occupancy classification, or  
9 occupant load, or the exiting, structural, mechanical, or electrical systems of a  
10 building as defined by the building code;
- 11 (2) "Architect," any person licensed in good standing and legally authorized to practice  
12 architecture in this state;
- 13 (3) "Architectural intern," any person who has successfully completed an accredited  
14 education program in architecture acceptable to the board and is enrolled in the intern  
15 development program administered by the National Council of Architectural  
16 Registration Boards;
- 17 (4) "Board," the Board of Technical Professions;

- 1 (5) "Building," any structure used or intended to support or shelter any occupancy;
- 2 (6) "Building or floor area," the sum of the areas of all of the floors of a building,  
3 including basements, mezzanine, and intermediate tiers, and penthouses of headroom  
4 height, measured from the exterior faces of exterior walls or from the center line of  
5 the wall separating buildings. The building area does not include such features as pipe  
6 trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof overhangs.  
7 The floor area of enlargements shall be added to the existing building area. A fire or  
8 area separation wall is not an exterior wall for the purposes of this definition;
- 9 (7) "Building official," the officer or other designated authority charged with the  
10 administration and enforcement of the adopted code;
- 11 (8) "Business entity," any corporation, partnership, limited liability corporation, limited  
12 liability partnership, or sole proprietorship that practices or offers to practice  
13 engineering, architecture, land surveying, landscape architecture, petroleum release  
14 assessment, or petroleum release remediation services to the public through its  
15 licensed personnel who are either employees, officers, directors, partners, members,  
16 managers, or owners and that have been issued a certificate of authorization by the  
17 board;
- 18 (9) "Construction administration," the interpretation of drawings and specifications, the  
19 establishment of standards of acceptable workmanship, and the site observation of  
20 construction, by a licensed professional, for the purpose of determining whether the  
21 work is in general accord with the construction contract documents. Shop  
22 drawing review, coordination of a construction project among the owner, architect,  
23 engineer, contractor, and subcontractors, and inspection of construction by  
24 contractors, subcontractors, owner's agents, building officials, or other unlicensed  
25 professionals does not constitute construction administration;

- 1 (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate,  
2 mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of  
3 less than one thousand one hundred gallons;
- 4 (11) "Design-build," a delivery approach in which a project team of design professionals  
5 and builders perform design and construction services under contract with a client;
- 6 (12) "Engineer," a person who is qualified to practice engineering by reason of special  
7 knowledge and use of the mathematical, physical, and engineering sciences and the  
8 principles and methods of engineering analysis and design, acquired by engineering  
9 education and engineering experience;
- 10 (13) "Engineering intern" or "engineer-in-training" or "EIT" or "EI," a person enrolled by  
11 the board as an engineering intern and who has successfully passed the fundamentals  
12 of engineering examination;
- 13 (14) "Enlargement," for the purpose of determining exemptions, is any addition to a  
14 building which changes the use, occupancy classification, or occupant load, or the  
15 exiting, structural, mechanical, or electrical systems of a building as defined by the  
16 building code adopted by the board;
- 17 (15) "Land surveyor," a person licensed in good standing and legally authorized to practice  
18 land surveying in this state;
- 19 (16) "Land surveying intern" or "land surveyor-in-training" or "LSIT" or "LSI," a person  
20 enrolled by the board as a land surveying intern who has successfully passed the  
21 fundamentals of land surveying examination;
- 22 (17) "Landscape architect," a person licensed in good standing and legally authorized to  
23 practice landscape architecture in this state;
- 24 (18) "Landscape architectural intern," a person who has successfully completed an  
25 accredited education program in landscape architecture adopted by the board;

- 1 (19) "License," a certificate indicating authority to practice and use titles within a  
2 profession;
- 3 (20) "Licensee," a person or business entity whose license is in good standing;
- 4 (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel,  
5 fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic  
6 transmission fluid, waste oil, or alcohols that have been denatured with gasoline and  
7 stored to be used as blended fuel-grade ethanol;
- 8 (22) "Petroleum release assessor," a person licensed in good standing and legally  
9 authorized to practice petroleum release assessment in this state;
- 10 (23) "Petroleum release remediator," a person licensed in good standing and legally  
11 authorized to practice petroleum release remediation in this state;
- 12 (24) "Professional engineer," a person licensed in good standing and legally authorized to  
13 practice engineering in this state;
- 14 (25) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or disposing  
15 of a reportable quantity of petroleum;
- 16 (26) "Remedial investigation," an action to identify the corrective action to be taken to  
17 protect the public health, safety, and environment and to contain a release of  
18 petroleum into the environment;
- 19 (27) "Responsible charge," the immediate and responsible direction by a licensed  
20 professional who has exercised personal direction, guidance, and control over the  
21 design, preparation of documents, construction administration, and other professional  
22 services and has exercised professional judgment in all matters relating to those  
23 services;
- 24 (28) "Retired licensee," a person who is retired and is no longer licensed to practice that  
25 person's profession may use the appropriate honorific title or combination of titles of

1 Architect, Retired; Professional Engineer, Retired; Land Surveyor, Retired; or  
2 Landscape Architect, Retired;

3 (29) "Site assessment," an action to identify the existence, source, nature, and extent of a  
4 release and the extent of any danger to public health, safety, and welfare of the public  
5 or environment;

6 (30) "Site observation," the visual observation of a construction project for general  
7 compliance with submitted plans and specifications at significant stages and at project  
8 completion.

9 Section 2. For the purposes of this Act, the term, practice of architecture, means the practice  
10 or offering to practice any service in connection with the design, evaluation, construction,  
11 enlargement, or alteration of a building or group of buildings and the space within and  
12 surrounding such buildings, which have as their principal purpose human occupancy or  
13 habitation. Such service includes consultation; evaluation; expert technical testimony; planning;  
14 providing preliminary studies; designs; overall interior and exterior building design; preparation  
15 of drawings, specifications, and related documents and other technical submissions; construction  
16 administration services which include the review or observation of construction for the purpose  
17 of determining whether the work is in general accordance with the design, drawings,  
18 specifications, codes, and other technical submissions; and coordination of services furnished  
19 by the architect, licensed professional engineers, and other consultants as they relate to  
20 architectural work in connection with the design and construction of any private or public  
21 building, building project, or integral part or parts of buildings, or any addition or alteration  
22 thereto. The term also includes representation of clients in connection with the construction  
23 administration services entered into between clients and contractor and others.

24 Section 3. For the purposes of this Act, the term, practice of engineering, means the practice  
25 or offering to practice of any service or creative work, the adequate performance of which

1 requires engineering education, training, and experience in the application of special knowledge  
2 of the mathematical, physical, and engineering sciences to such services or creative work. Such  
3 service or work includes consultation; investigation; expert technical testimony; evaluation;  
4 planning; design; and design coordination of engineering works and systems; planning the use  
5 of land and water; land-use studies; teaching of advanced engineering subjects; performing  
6 engineering studies; and the review or observation of construction for the purpose to determine  
7 whether the work is in general accordance with drawings, specifications, and other technical  
8 submissions. Any such service or work, either public or private, may be in connection with any  
9 utilities, structures, buildings, machines, equipment, processes, work systems, projects, and  
10 industrial or consumer products, or equipment of a mechanical, electrical, hydraulic, pneumatic,  
11 or thermal nature, insofar as they involve safeguarding life, health, or property, and including  
12 such other professional services as are necessary to the planning, progress, and completion of  
13 any engineering services.

14 For the purposes of this section, the term, design coordination, includes the review and  
15 coordination of those technical submissions prepared by others, including consulting engineers,  
16 architects, landscape architects, land surveyors, and other professionals working under the  
17 direction of the engineer. The term, engineering studies, includes all activities required to support  
18 the sound conception, planning, design, construction, maintenance, and operation of engineered  
19 projects, but excludes the surveying of real property for the establishment of land boundaries,  
20 rights-of-way, easement exhibits relating to land boundaries, and the dependent or independent  
21 surveys or resurveys of the public land survey system.

22 A person is construed to practice or offer to practice engineering if the person practices any  
23 branch of the profession of engineering, if the person, by verbal claim, sign, advertisement,  
24 letterhead, card, or in any other way represents himself or herself to be a professional engineer,  
25 or if the person through the use of some other title implies that the person is a professional

1 engineer or that the person is licensed under these provisions, or if the person holds himself or  
2 herself out as able to perform or does perform any engineering service or work or any other  
3 service designated by the practitioner which is recognized as engineering.

4 Section 4. For the purposes of this Act, the term, practice of land surveying, means the  
5 practice or offering to practice professional services such as consultation, investigation,  
6 testimony evaluation, expert technical testimony, land-use studies, planning, mapping,  
7 assembling, interpreting reliable scientific measurements and information relative to the location,  
8 size, shape, or physical features of the earth, improvements on the earth, the space above the  
9 earth, or any part of the earth, and utilization and development of these facts and interpretation  
10 into an orderly survey map, plan, report, description, or project.

11 The practice of land surveying includes any of the following:

- 12 (1) Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or  
13 boundary of any tract of land or any road, right-of-way, easement, alignment, or  
14 elevation of any of the fixed works embraced within the practice of land surveying;
- 15 (2) Makes any survey for the subdivision of any tract of land;
- 16 (3) Determines, by the use of principles of land surveying, the position for any survey  
17 monument or reference point; or sets, resets, or replaces any such monument or  
18 reference point;
- 19 (4) Determines the configuration or contour of the earth's surface or the position of fixed  
20 objects on the earth's surface by measuring lines and angles and applying the principles  
21 of mathematics;
- 22 (5) Geodetic surveying which includes surveying for determination of the size and shape  
23 of the earth utilizing angular and linear measurements through spatially oriented  
24 spherical geometry;
- 25 (6) Creates, prepares, or modifies electronic or computerized data, including land

1           formation systems and geographic information systems, relative to the performance  
2           of the activities in subdivisions (1) to (5), inclusive, of this section.

3           Section 5. For the purposes of this Act, the term, practice of landscape architecture, means  
4           the practice or offering to practice landscape architecture projects, including preparing  
5           preliminary studies, providing land-use studies, developing design concepts, giving expert  
6           technical testimony, planning for the relationships of physical improvements and intended uses  
7           of the site, establishing form and aesthetic elements, analyzing and providing for life safety  
8           requirements, developing those construction details on the site which are exclusive of any  
9           building or structure and do not require the seal of an engineer or architect, preparing and  
10          coordinating technical submissions, and conducting site observation of landscape architecture  
11          projects.

12          Landscape architecture, for the purposes of landscape preservation, development, and  
13          enhancement, includes: investigation, selection, and allocation of land and water resources for  
14          appropriate use; feasibility studies; formulation of graphic and written criteria to govern the  
15          planning and design of land construction programs; preparation, review, and analysis of master  
16          plans for land use and development; production of overall site plans, landscape grading and  
17          landscape drainage plans, irrigation plans, planting plans, and construction details; specifications;  
18          cost estimates and reports for land development; collaboration in design of roads, bridges, and  
19          structures with respect to the functional and aesthetic requirements of the areas on which they  
20          are to be placed; negotiation and arrangement for execution of land area projects; field  
21          observation and inspection of land area construction, restoration, and maintenance.

22          Section 6. For the purposes of this Act, the term, practice of petroleum release assessment,  
23          means the practice of directing or supervising the field crew performing activities related to  
24          assessments and environmental monitoring; developing assessment plans; directing the placement  
25          of soil borings and determining where to collect samples for analytical data; determining the

1 location of representative soil samples for contaminant analysis; identifying and classifying soil  
2 types and soil conditions; preparing soil boring logs or supervising preparation of logs; testing  
3 and reporting on the physical and chemical properties of soils; identifying and reporting on  
4 geological conditions; developing and implementing groundwater evaluation activities; directing  
5 the placement of monitoring or observation wells; evaluating aquifer characteristics; formulating  
6 input data for groundwater flow models; operating groundwater models and interpreting results;  
7 directing the performance of pump tests or dye tests and other aquifer tests; interpreting the  
8 results of aquifer testing; determining capture zones for groundwater removal systems;  
9 evaluating and reporting on physical and chemical groundwater data; or offering to provide any  
10 services pursuant to this section.

11 Section 7. For the purposes of this Act, the term, practice of petroleum release remediation,  
12 means the practice of interpreting assessment results; formulating input data for contaminant  
13 models; operating contaminant models and interpreting results; identifying the potential fate of  
14 contaminants and environmental transport mechanisms; identifying the environmental risks and  
15 health hazards of contaminants and contaminated media; directing or supervising the disposal of  
16 contaminated soil and groundwater; evaluating and recommending remediation alternatives;  
17 preparing a cost estimate or cost-effective analysis for remedial alternatives; developing soil and  
18 groundwater remediation systems; preparing the plans and specifications for remedial systems;  
19 directing or supervising the installation, operation, and maintenance of remedial systems;  
20 overseeing and directing assessment and remedial activities; signing assessment plans, assessment  
21 reports, and remedial action plans; or offering to provide any of the services pursuant to this  
22 section. A petroleum release remediator may perform all the functions of a petroleum release  
23 assessor.

24 Section 8. Any person practicing or offering to practice architecture, engineering, land  
25 surveying, landscape architecture, or petroleum release assessment or remediation shall submit

1 evidence of qualifications to the board and be licensed in accordance with the provisions of this  
2 Act. No person may practice or offer to practice any of these professions, or to use in connection  
3 with that person's name or otherwise assume, use, or advertise any title or description that may  
4 falsely convey the impression that the person is duly licensed under the provisions of this Act  
5 unless the person is so licensed.

6 Section 9. This chapter does not apply to:

- 7 (1) Any person engaged in military engineering while rendering service exclusively for any  
8 of the armed forces of the United States or this state;
- 9 (2) Any person engaged in the practice of professional engineer or architecture in the  
10 employ of the United States government but only while exclusively engaged as a  
11 United States government employee on such government project or projects which  
12 lie within federally-owned land;
- 13 (3) Any person engaged in the practice of professional engineering, architecture, or land  
14 surveying in the employ of the state and any of its political subdivisions but only while  
15 rendering service exclusively to such employer. Any building resulting from the  
16 practice of professional engineering, architecture, or land surveying under this  
17 subdivision is subject to the size limitation imposed under the exemptions in  
18 subdivision (8) of this section;
- 19 (4) Any employee who prepares technical submissions or administers construction  
20 contracts for a person or organization lawfully engaged in the practice of engineering,  
21 architecture, or land surveying, if the employee is under the direct supervision of a  
22 registered professional engineer, architect, or land surveyor;
- 23 (5) Any full-time employee of a corporation, partnership, firm, business entity, or public  
24 utility while exclusively doing work for the corporation, partnership, firm, business  
25 entity, or public utility, if the work performed is in connection with the property,

1 products, and services utilized by the employer and not for any corporation,  
2 partnership, firm, or business entity practicing or offering to practice architectural,  
3 engineering, or land surveying services to the public. The provisions of this  
4 subdivision do not apply to any building or structure if the primary use is occupancy  
5 by the public;

6 (6) Any person engaged in the preparation of plans and specifications for the erection,  
7 enlargement, or alteration of any of the following buildings:

8 (a) Any dwelling for a single family, and any outbuilding in connection therewith,  
9 such as a barn or private garage;

10 (b) Any two, three, or four family dwelling;

11 (c) Any five to sixteen family dwelling, inclusive, located in a governmental  
12 subdivision of this state which provides a detailed building code review of  
13 building projects by a building inspection department which is a Class A  
14 member of the International Conference of Building Officials;

15 (d) Any farm or ranch building or accessory thereto except any building regularly  
16 used for public purposes;

17 (e) Any temporary building or shed used exclusively for construction purposes, not  
18 exceeding two stories in height, and not used for living quarters;

19 (7) Any person who prepares detailed or shop plans required to be furnished by a  
20 contractor to a registered professional engineer or architect, and any construction  
21 superintendent supervising the execution of work designed by an architect or  
22 professional engineer registered in accordance with this Act;

23 (8) Any person engaged in the preparation of plans and specifications for the new  
24 construction, the enlargement or the alteration of any of the following buildings:

25 (a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical

1 office, nursing facility, assisted living facility, jail, retirement home, or  
2 mortuary, if the gross square footage of the new construction, the enlargement,  
3 or the alteration is four thousand square feet or less;

4 (b) Any building occupied as an auditorium, church, school, or theater if the gross  
5 square footage of the new construction, the enlargement, or the alteration is  
6 five thousand square feet or less;

7 (c) Any building occupied as a bowling alley, office, shopping center, bank, fire  
8 station, service station, or store if the gross square footage of the new  
9 construction, the enlargement, or the alteration is seven thousand square feet  
10 of less;

11 (d) Any building occupied as an industrial plant or public garage if the gross square  
12 footage of the new construction, the enlargement, or the alteration is eleven  
13 thousand square feet or less;

14 (e) Any building occupied as a warehouse if the gross square footage of the new  
15 construction, the enlargement, or the alteration is twenty thousand square feet  
16 or less;

17 (f) Any building with an occupancy other than those listed in subsection (a) to (e),  
18 inclusive, of this subdivision if the gross square footage of the new  
19 construction, the enlargement, or the alteration is four thousand square feet of  
20 less;

21 (g) Any preengineered or predesigned building, or any preengineered or  
22 predesigned building with a predesigned system, designed for the intended use  
23 of that building, including building structure, electrical, plumbing, and  
24 mechanical systems, if the buildings and systems are supplied directly, or  
25 indirectly, by a company engaged in the business of designing and supply such

1 buildings and systems and if the company has in it employ one or more  
2 engineers or architects licensed in South Dakota, who prepare all designs for  
3 such buildings and systems.

4 No person exempted may use the title of professional engineer, architect, or land surveyor,  
5 or any other word, words, letters, or signs in connection with the person's name that may falsely  
6 convey the impression that the person is a licensed professional engineer, architect, or land  
7 surveyor.

8 Section 10. For the purposes of subdivision (8) of section 9 of this Act, if a building consists  
9 of more than one type of occupancy, each portion of the building shall conform to the limitations  
10 established by that subdivision for each type of occupancy. The area of the building shall be such  
11 that the sum of the ratios of the actual area for each separate occupancy divided by the total  
12 allowable area allowed by that subdivision for each separate occupancy does not exceed one.

13 Section 11. This Act does not prohibit a contractor from offering to provide or from  
14 providing design-build services if the architectural and engineering services offered or provided  
15 in connection with the design-build services are rendered by an architect or professional engineer  
16 licensed in accordance with this Act.

17 Section 12. This Act does not apply to providers of services such as drilling or monitoring  
18 well installation, analytical testing, monitoring, electrical, plumbing, excavation, or construction  
19 if the service provided is part of a site assessment, remedial investigation, or corrective action  
20 to remediate water or soil contaminated from a petroleum release performed or executed by an  
21 authorized petroleum release business entity with a certificate of authorization.

22 Section 13. An architect may engage in the practice of professional engineering, or a  
23 professional engineer may engage in the practice of architecture, but only to the extent that such  
24 practice is incidental or of minor importance to a project or service being legally performed under  
25 this Act.

1 Section 14. The Board of Technical Professions is hereby created to administer the  
2 provisions of this Act. Each member of the board shall receive a certificate of appointment from  
3 the Governor, each member and shall file with the secretary of state a written oath for the faithful  
4 discharge of the member's official duties. The board shall consist of seven members to be  
5 appointed by the Governor for a term of four years. In implementing the four-year terms, the  
6 Governor shall vary the terms to enable the board to have no more than two terms expire in any  
7 one year. The board shall be composed of two professional engineers, two architects, two land  
8 surveyors, and one member from the public. Members may be reappointed to succeed  
9 themselves. A member shall hold over the expiration of a term until a successor is duly appointed  
10 and qualified.

11 Section 15. Each member of the board shall be a citizen of the United States and a resident  
12 of this state. The public member may not be or have been engaged in any activity subject to  
13 licensure under this Act. The members may not all be of the same political party.

14 Section 16. The members of the board, or any committee of the board, and the executive  
15 director of the board are immune from liability in damages, and no cause of action for damages  
16 may arise against them for any act or proceeding undertaken or performed by them within their  
17 official capacity if they acted in good faith. These persons, while acting upon disciplinary matters  
18 and in carrying out civil remedies, are deemed to be acting as officers of the state. The attorney  
19 general shall represent and appear for them in any action or proceeding brought by or against  
20 them because of such acts.

21 Section 17. The Governor may remove any member of the board for misconduct, incapacity,  
22 or neglect of duty. Any member appointed to fill a vacancy arising from other than the natural  
23 expiration of a term shall serve for only the unexpired portion of the term.

24 Section 18. The board shall annually elect from its members a chair, a vice chair, and a  
25 secretary. The board shall hold at least six regular meetings in each year. Special meetings may

1 be called and notice of all meetings shall be given in such manner as the public meetings laws  
2 may provide. At all meetings, a majority of the board constitutes a quorum. The board and its  
3 employees may be included in the state blanket bond purchased pursuant to § 3-5-5.1.

4 Section 19. The executive director of the board shall receive and account for all money  
5 derived under the provisions of this Act. All money shall be used by the board to administer the  
6 duties set forth under this Act. The board may determine the manner of disbursing the money and  
7 purposes for which disbursements shall be made. Warrants for the payment of disbursements  
8 shall be issued by the state auditor and paid by the state treasurer upon presentation of itemized  
9 vouchers approved by the board. The total of the warrants may not exceed the total balance.

10 Section 20. The board may employ counsel and other necessary assistance to aid in the  
11 enforcement of this Act or for the assistance of any proceeding commenced by the attorney  
12 general or by a state's attorney, the compensation and expenses of whom shall be paid from the  
13 technical professions fund.

14 Section 21. The board shall employ an executive director who shall work under the direction  
15 of the board and shall be delegated the duties necessary to conduct board business. The board  
16 may employ staff and rent offices as necessary for the proper performance of its duties as  
17 prescribed in this Act. The compensation and expenses shall be paid from the technical  
18 professions fund.

19 Section 22. The board shall, pursuant to chapter 1-26, promulgate rules which may be  
20 reasonably necessary for the performance of its duties, the regulation of proceedings before it,  
21 and the licensure of the professions it regulates. The existing rules promulgated under the  
22 previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules,  
23 pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors,  
24 landscape architects, and petroleum release assessors and remediators in the following areas:

25 (1) Forms such as applications, renewals, licenses or certificates, receipts, and wallet

- 1 cards for applicants, licensed professionals, and business entities;
- 2 (2) Fees for applications, examinations, renewals, late penalties, lists and labels of
- 3 licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to
- 4 collect fees for examinations, waiver of fees;
- 5 (3) Criteria for types of education degrees, approval of accredited programs, intern
- 6 programs, type of experience, length of experience, national and state specific
- 7 examinations, use of computer examinations, criteria from other countries, procedure
- 8 to evaluate foreign degrees, eligibility of applicants, dual licenses;
- 9 (4) Continuing professional education and development content, hours, carryovers, and
- 10 requirements;
- 11 (5) How, when, and where to seal plans and documents; type of seal; required services
- 12 to be provided; and criteria to define complete plans, minimum standards of practice,
- 13 and guidelines;
- 14 (6) Description of and criteria for construction administration, including a designation of
- 15 who is to perform construction administration and criteria for a prime professional or
- 16 a coordinating professional;
- 17 (7) Requirements for compliance with local building code;
- 18 (8) The adoption of a code of professional conduct;
- 19 (9) Procedures for disciplinary proceedings; and
- 20 (10) Procedures for contested cases pursuant to chapter 1-26.

21 Section 23. The Board of Technical Professions shall continue within the Department of  
22 Commerce and Regulation and shall retain all the prescribed functions, including administrative  
23 functions, of the previous State Commission of Engineering, Architectural and Land Surveying  
24 Examiners.

25 Section 24. The board shall maintain the following record and report policy:

- 1 (1) A record of its proceedings and all current applications of licensure shall be retained;
- 2 (2) The record of the board shall be prima facie evidence of the proceedings of the board,  
3 and a transcript thereof, duly certified by the executive director of the board, shall be  
4 admissible as evidence with the same force and effect as if the original were produced;  
5 and
- 6 (3) The following are of a confidential nature and are not public records: examination  
7 scores, examination material, examination problem solutions, letters of inquiry and  
8 references concerning applicants, board inquiry forms concerning applicants and  
9 licensees, and investigation files if any investigation is still pending.

10 Section 25. Any applicant for enrollment as an engineering intern shall provide evidence  
11 satisfactory to the board that the applicant has graduated from or is admitted in an accredited  
12 engineering curriculum and has passed an examination. The examination may be taken during the  
13 applicant's senior year of study or at such time as may be determined by the board. The board  
14 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and  
15 examination criteria.

16 Section 26. Any applicant for licensure as a professional engineer shall provide the following  
17 evidence satisfactory to the board:

- 18 (1) Graduation from an accredited engineering college, university, or technical program;
- 19 (2) Completion of the minimum number of years of diversified engineering experience  
20 under the supervision of a licensed professional engineer; and
- 21 (3) Successful completion of examinations.

22 A person who has begun the requirement for licensure without minimum education and has  
23 qualifying experience as of July 1, 1999, shall apply to the board before July 1, 2004, for  
24 approval to take the examination under the qualifications that previously existed under § 36-18-  
25 17.4. The board shall promulgate rules, pursuant to chapter 1-26, to establish education,

1 experience, and examination criteria.

2 Section 27. Any applicant for licensure as an architect shall provide the following evidence  
3 satisfactory to the board:

- 4 (1) Graduation with an accredited professional degree in architecture;
- 5 (2) Completion of the national architectural intern development program; and
- 6 (3) Successful completion of examinations.

7 The board may qualify an applicant who holds a certification issued by the National Council  
8 of Architectural Registration Boards in lieu of the qualifications listed in this section. The board  
9 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and  
10 examination criteria.

11 Section 28. Any applicant for enrollment as a land surveying intern shall provide evidence  
12 satisfactory to the board that the applicant has graduated from an accredited surveying or  
13 engineering curriculum, or substantially similar experience acceptable to the board and has  
14 passed an examination. The examination may be taken during the applicant's senior year of study  
15 or at such time as may be determined by the board. The board shall promulgate rules pursuant  
16 to chapter 1-26 to establish education, experience, and examination criteria.

17 Section 29. Any applicant for licensure as a land surveyor shall provide the following  
18 evidence satisfactory to the board:

- 19 (1) Graduation from an accredited engineering or land surveying college, university, or  
20 technical program with a minimum of twenty credit hours of surveying curriculum,  
21 or substituted experience, in whole or part, acceptable to the board;
- 22 (2) Completion of the minimum number of years of diversified surveying experience  
23 under the supervision of a licensed land surveyor; and
- 24 (3) Successful completion of examinations.

25 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,

1 and examination criteria.

2 Section 30. Any applicant for licensure as a landscape architect shall provide the following  
3 evidence satisfactory to the board:

- 4 (1) Graduation from an accredited program of landscape architecture;
- 5 (2) Completion of a council record from the Council of Landscape Architectural  
6 Registration Boards; and
- 7 (3) Successful completion of examinations.

8 The board may qualify an applicant who holds a certification issued by the Council of  
9 Landscape Architectural Registration Boards in lieu of the qualifications listed in this section.  
10 The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience,  
11 and examination criteria.

12 Section 31. Any applicant for licensure as a petroleum release assessor or remediator shall  
13 provide the following evidence satisfactory to the board:

- 14 (1) Completion of education and experience requirements; and
- 15 (2) Successful completion of examinations.

16 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,  
17 and examination criteria.

18 Section 32. The board may require the applicant to appear for an oral interview if there are  
19 questions as to the depth, extent, and quality of any experience. Failure to supply additional  
20 evidence or information within thirty days from the date of a written request from the board, or  
21 failure to appear before the board if an appearance is requested, may be considered cause for  
22 disciplinary action or disapproval of an application. The board shall interpret qualifying  
23 experience and education according to the following:

- 24 (1) Qualifying experience is diversified, general practice experience of a progressive  
25 degree of difficulty, magnitude, and responsibility under proper professional guidance

1 and supervision of licensed persons;

2 (2) For partially completed work in accredited or approved degree granting curriculums,  
3 education credit of three-fourths of a year may be allowed for each thirty semester  
4 hours of study. For work in vocational or trade schools, education credit of one-half  
5 of a year may be allowed for each thirty semester hours of study;

6 (3) Education from foreign schools shall be evaluated with accredited programs in the  
7 United States, and experience in foreign employment under licensed persons shall be  
8 evaluated by the board;

9 (4) Qualifying experience under proper professional guidance and supervision of licensed  
10 persons gained in work experience with governmental agencies, the military,  
11 construction, sales, and industry requiring the application of skills normally taught in  
12 the schools of engineering, science, architecture, or land surveying may be evaluated  
13 by the board. The board shall give credit for experience as warranted;

14 (5) Teaching at the junior year level and above of engineering, science, architectural,  
15 landscape architectural, and land surveying courses in accredited or approved  
16 curriculums is acceptable experience for a maximum of one year.

17 Section 33. The board shall admit to examination any candidate who pays a fee established  
18 by the board and submits an application with evidence satisfactory to the board that the applicant  
19 satisfies the necessary education and experience requirements. The board may require an  
20 applicant for licensure or a current licensee to take an examination as it deems necessary to  
21 determine that person's professional minimum competency. Upon approval of examination  
22 applications, examination fees may be paid by the applicant directly to a national vendor or third  
23 party. The board may hold membership in and be represented at national councils or  
24 organizations of professional practices licensed under this Act and may pay the appropriate  
25 membership fees. The board may allow proctoring of examinations for approved candidates at

1 out-of-state or overseas sites by administrators of national council member boards. The board  
2 may accept candidates to be proctored in this state from other national council member boards.  
3 A take-home questionnaire based on statutes and rules and related to professionalism and ethics  
4 may also be required. The board shall promulgate rules, pursuant to chapter 1-26, to establish  
5 application, examination, and proctor fees for all examinations.

6 Section 34. The board shall notify each applicant of the results of the examination and those  
7 entitled to licensure or enrollment. If an applicant fails the examination and the applicant's  
8 application is still current, subsequent reexaminations may be granted upon payment of a fee to  
9 be fixed by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish  
10 reexamination fees for all licensure and enrollment applicants.

11 Section 35. The board may give comity consideration to any person who holds a current and  
12 valid license issued to that person for active practice by the proper authority in any state or  
13 territory of the United States, the District of Columbia, or any foreign country, based on  
14 requirements that do not conflict with the provisions of this Act and were of a standard not lower  
15 than that specified in the applicable licensure act in effect in this state at the time such license was  
16 issued. An applicant may be required to take examinations as the board deems necessary to  
17 determine the applicant's competency. A comity applicant for landscape architecture shall hold  
18 a current and valid certification from the Council of Landscape Architectural Registration Boards  
19 to be eligible for comity licensure. The board shall promulgate rules, pursuant to chapter 1-26,  
20 relating to the application fee for licensure by comity.

21 Section 36. The board shall grant a license to any applicant as a professional engineer,  
22 architect, land surveyor, landscape architect, petroleum release assessor or remediator, or for any  
23 two or more of these titles who has met the requirements of this Act.

24 Section 37. The license shall be displayed in a conspicuous place in the licensee's principal  
25 office, place of business, or place of employment within the state. A new license to replace a lost,

1 destroyed, or mutilated license shall be issued upon payment of a fee established by the board  
2 pursuant to chapter 1-26.

3 Section 38. The recipient of a license issued under this Act may practice engineering,  
4 architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum  
5 release remediation and use the appropriate title professional engineer, architect, land surveyor,  
6 landscape architect, petroleum release assessor, or petroleum release remediator. A licensee may  
7 use a title either with or without prefixing the word, licensed or registered. No licensee may  
8 practice a profession or use a title unless the license specifically permits such practice and usage.  
9 An unrevoked and unexpired license issued as provided in this Act is presumptive evidence in  
10 all courts and places that the person named is legally licensed.

11 Section 39. A license expires two years after the date of issuance and becomes invalid on that  
12 date unless renewed by that date. Any professional engineer, architect, land surveyor, landscape  
13 architect, or petroleum release assessor or remediator licensed under this Act who desires to  
14 continue to practice or offer to practice the licensee's profession shall:

- 15 (1) Pay the renewal fee established by the board in rules promulgated pursuant to chapter  
16 1-26; and
- 17 (2) Successfully complete all continuing professional development requirements  
18 established by the board or make a showing of good cause why the licensee was  
19 unable to comply with such requirements.

20 The board shall promulgate rules, pursuant to chapter 1-26, to establish continuing  
21 professional education and development criteria.

22 Section 40. The board may decline to renew a license if an applicant has not completed  
23 continuing professional development requirements. A license for a two-year period shall be  
24 issued upon completion of the requirements. The board may provide, by rules promulgated  
25 pursuant to chapter 1-26, for the inactive or retired status of a person who has been duly licensed

1 under this Act and who chooses to relinquish or not to renew a license.

2 Section 41. The board shall notify by mail any person licensed under this Act of the date of  
3 expiration of the license, the requirement of professional development hours, and the amount of  
4 the fee required for renewal. The notice shall be mailed to the last known address of the licensee  
5 at least one month in advance of the date of expiration of the license. A licensee shall notify the  
6 board of any address changes.

7 Section 42. A person may reinstate an expired license or request inactive status within three  
8 years after a license's date of expiration if the person is otherwise qualified. The fee for the  
9 reinstatement of the license or requesting inactive status after it has expired shall be increased  
10 by an amount to be determined by the board in rules promulgated pursuant to chapter 1-26. A  
11 person requesting reinstatement of an expired or inactive license shall complete the requirements  
12 for continuing professional development and any reexaminations and pay any penalty fees. If a  
13 person fails to reinstate an expired license or request inactive status within the three years after  
14 the date of expiration, all relevant files shall be deleted. A person requesting licensure after three  
15 years shall submit an application for a new license.

16 Section 43. Any licensed person may request that the person's license be placed on inactive  
17 or retired status. A fee to place files on inactive or retired status shall be determined by the board  
18 in rules promulgated pursuant to chapter 1-26. Failure to render any fees required for inactive  
19 or retired status shall result in the automatic termination of inactive or retired status. The request  
20 for files to be placed on inactive or retired status may be denied by the board. No person may  
21 practice or offer to practice while that person's files are inactive or retired.

22 Section 44. Any licensed professional engineer, architect, land surveyor, and landscape  
23 architect shall procure and use an appropriate seal. The seal shall contain the following  
24 information:

25 (1) The name, South Dakota;

- 1       (2)    Licensee's name;
- 2       (3)    License number; and
- 3       (4)    The appropriate title or combination of titles: Professional Engineer, Architect, Land
- 4                Surveyor, Landscape Architect.

5       The seal shall have an outer circle with a two-inch diameter and an inner circle with a one  
6   and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered.  
7   The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile  
8   found acceptable to the board. The licensee's original written signature and the date shall be  
9   adjacent to or across the seal. Computer-generated or other facsimile signatures and dates may  
10   not be used. Petroleum release assessors and remediators, or interns, may not obtain or use any  
11   seal.

12       Section 45. The application of the licensee's seal and signature and the date constitutes  
13   certification that the work on which it was applied was done by the licensee or under the  
14   licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that  
15   can be legibly reproduced on the following:

- 16       (1)    All originals, copies, tracings, or other reproducibles of all final drawings,  
17                specifications, reports, plats, plans, land surveys, design information, and calculations  
18                prepared by the licensee or under the licensee's responsible charge when presented  
19                to a client or any public or governmental agency. A licensee may not review or check  
20                technical submissions of another licensed professional or unlicensed person and seal  
21                the documents as the licensee's own work;
- 22       (2)    Preliminary work shall contain a note that the submittal is Not for Construction,  
23                Preliminary, or other such explanation that it is not final;
- 24       (3)    In the case of multiple seals, the title or index sheet may be sealed, signed, and dated  
25                by all involved. In addition, each sheet shall be sealed, signed, and dated by the

1 licensee or licensees responsible for that sheet;

2 (4) Drawings that are transmitted electronically to a client or governmental agency shall  
3 have the computer-generated seal removed from the original file. The electronic media  
4 shall have the following inserted in lieu of the seal, signature, and date: This document  
5 originally issued and sealed by (name of licensee/sealer), (title), (license number), on  
6 (date of sealing). This media should not be considered a certified document.

7 Section 46. No person other than an architect or professional engineer may provide  
8 architectural and engineering services which include construction administration services on  
9 projects that are not exempt pursuant to sections 2 and 3 of this Act. The architect or  
10 professional engineer of record, or another designated architect or professional engineer without  
11 conflict of interest, shall provide a written report of observed deficiencies or variations from the  
12 submitted plans and specifications to the building official, owner, and builder before project  
13 completion. The board may promulgate rules pursuant to chapter 1-26 to establish construction  
14 administration services criteria including coordinating and prime professional criteria for persons  
15 licensed by the board.

16 Section 47. Any office physically located and maintained in this state to offer engineering,  
17 architectural, land surveying, landscape architectural, petroleum release assessment, or petroleum  
18 release remediation services shall have an appropriately licensed person who is regularly  
19 employed in that office and who has responsible charge and direct supervision and control of all  
20 professional services. A licensee who renders occasional, part-time, or consulting services to or  
21 for a firm or office may not be designated as the person in responsible charge for the professional  
22 activities of the firm or office unless a schedule is posted at the office for the public's knowledge  
23 and filed with and approved by the board stating when the licensee is physically in the office.

24 Section 48. Any business entity that desires to practice engineering, architecture, land  
25 surveying, landscape architecture, or petroleum release assessment or remediation in this state

1 shall register with the board by making application for a certificate of authorization. A business  
2 entity is responsible for the conduct or acts of its agents, employees, officers, partners, members,  
3 or managers in respect to any engineering, architecture, land surveying, landscape architecture,  
4 petroleum release assessment, or petroleum release remediation services performed or to be  
5 executed in this state. No person is relieved of the responsibility for that person's conduct or acts  
6 performed by reason of that person's employment by or relationship with a business entity. A  
7 licensee who renders occasional, part-time, or consulting services to or for a business entity may  
8 not be designated as the person in responsible charge for the professional activities of the  
9 business entity.

10 Section 49. A business entity desiring a certificate of authorization or renewal shall file a  
11 written application with the board which shall contain the following:

- 12 (1) Names and addresses of the sole proprietorship and all general and limited partners,  
13 officers, and directors of any business entity;
- 14 (2) Names and addresses of all general and limited partners, officers, directors, and  
15 employees or sole proprietors of such business entity who are duly licensed to practice  
16 engineering, architecture, land surveying, landscape architecture, petroleum release  
17 assessment, or petroleum release remediation in this state and who are or will be in  
18 responsible charge of any professional services in this state by the business entity;
- 19 (3) A statement by a partner, officer, or owner that the business entity will not permit the  
20 performance of any professional service, as defined in this Act, by any person of the  
21 business entity unless the person is licensed under this Act; and
- 22 (4) All other information the board may deem necessary as promulgated by rule pursuant  
23 to chapter 1-26.

24 Section 50. The board shall issue a certificate of authorization or a renewal to a business  
25 entity upon receipt of an application for a certificate of authorization and a fee as set by the

1 board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts  
2 exist which would entitle the board to suspend or revoke the certificate if issued to the applicant.  
3 The certificate of authorization is not transferable.

4 Section 51. The business entity shall file with the board a written report of any change in the  
5 information submitted on the application that occurs during the term of the certificate of  
6 authorization. The business entity shall report the change within thirty days after the effective  
7 date of the change. Failure to provide the report constitutes grounds for the board to suspend  
8 or revoke the certificate of authorization.

9 Section 52. The provisions with respect to issuance, expiration, renewal, and reissuance of  
10 the certificate of licensure of persons contained in this Act apply to certificates of authorization  
11 issued to business entities under the provisions of this Act. A business entity is subject to  
12 disciplinary proceedings and penalties, and certificates of authorization are subject to suspension  
13 or revocation for cause, in the same manner and to the same extent as is provided with respect  
14 to individuals and their certificates of licensure in this Act. The terms, licensee and certificate  
15 of licensure, as used in this Act, apply to any business entity holding a certificate of authorization  
16 issued under this Act and to such certificate of authorization.

17 Section 53. A violation of any of the provisions of this Act by a business entity is not grounds  
18 for the revocation, suspension, or refusal to renew a license of an individual employee of the  
19 business entity unless the board finds that the employee was a party to the violation.

20 Section 54. The board shall inquire into the identity of any person alleged to be engaging in  
21 the unlawful practice of engineering, architecture, land surveying, landscape architecture,  
22 petroleum release assessment, or petroleum release remediation. The board shall investigate  
23 alleged violations of the provisions of this Act, and report to the proper state's attorney or the  
24 attorney general any person or case that in the judgment of the board warrants prosecution. The  
25 attorney general or the several state's attorneys may prosecute violations of this Act in the name

1 or on behalf of the board.

2 Section 55. When investigating alleged violations, the board may administer oaths to  
3 witnesses appearing before the board, subpoena licensees as witnesses and compel their  
4 attendance, and require the submittal of plans, specifications, books, records, papers, and other  
5 documents. If a licensee refuses to obey any subpoena, or refuses to testify or produce any  
6 materials required, the board may take disciplinary action or present its petition to the court of  
7 the county in which the licensee resides, and the court may enter a suitable order compelling  
8 compliance with the provisions of this Act and imposing such other terms and conditions as the  
9 court may deem suitable. The board may also summon nonlicensees as witnesses and request  
10 their attendance, and request the submittal of plans, specifications, books, records, papers, and  
11 other documents. If a nonlicensee refuses to cooperate, testify, or produce any materials  
12 requested, the board may petition the court of the county in which the nonlicensee resides, and  
13 the court may enter a suitable order compelling compliance with the provisions of this Act and  
14 imposing such other terms and conditions as the court may deem suitable.

15 Section 56. The board may take action without proof of actual injury on the following  
16 violations:

- 17 (1) Has violated any statute, rule, or order that the board has issued or is empowered to  
18 enforce;
- 19 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether  
20 or not the conduct or acts relate to professional practice;
- 21 (3) Has engaged in conduct or acts that are grossly negligent, incompetent, reckless, or  
22 otherwise in violation of established standards related to that person's professional  
23 practice;
- 24 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether  
25 or not the person admits guilt, or has been shown to have engaged in acts or practices

1           tending to show that the applicant or licensee is incompetent or has engaged in  
2           conduct reflecting adversely on the person's ability or fitness to engage in that  
3           person's professional practice. A copy of the record of conviction or plea of guilty or  
4           nolo contendere is conclusive evidence;

5           (5) Has employed fraud or deception in obtaining a license or renewal of a license or in  
6           passing all or a portion of the examination;

7           (6) Has had that person's professional license, registration, certificate, right to  
8           examination, or other similar rights to practice revoked, suspended, canceled, given  
9           probation, limited, censured, reprimanded, or not renewed for cause in any state or  
10          territory of the United States, the District of Columbia, or in any foreign country;

11          (7) Failed to meet any requirement for issuance or renewal of the person's license or  
12          certificate;

13          (8) Has used or attempted to use as that person's own the certificate or seal of another;

14          (9) Has used or attempted to use an expired, suspended, or revoked license;

15          (10) Has placed that person's seal or signature to a plan, specification, report, plat, or  
16          other technical submission or document not prepared by that person or under that  
17          person's responsible charge;

18          (11) Aided or assisted another person in violating any provision of this Act or the rules  
19          pertaining to this Act;

20          (12) Failed to promptly and appropriately provide information requested by the board as  
21          a result of a formal or informal complaint to the board which would indicate a  
22          violation of this Act;

23          (13) Has provided false testimony or information to the board;

24          (14) Failed to report known violations of this Act;

25          (15) Has engaged in the use of untruthful or improbable statements in advertisements;

- 1 (16) Failed to complete continuing professional development requirements set by the  
2 board;
- 3 (17) Made misleading or untruthful representations in advertisements or published  
4 materials;
- 5 (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- 6 (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- 7 (20) Has committed an act, engaged in conduct, or committed practices that may result in  
8 an immediate threat to the public; or
- 9 (21) Has provided professional services in technical areas not covered by that person's  
10 license or competency.

11 Section 57. If the board determines that a person or business entity is in violation of this Act,  
12 the board may take the following actions:

- 13 (1) Deny an application;
- 14 (2) Suspend, temporarily suspend, revoke, or refuse to renew an enrollment or license;
- 15 (3) Place on probation, condition, or limit a licensee's practice;
- 16 (4) Reimburse the board for expenses, fine, censure, or reprimand a person or business  
17 entity;
- 18 (5) Refuse to permit a person to sit for examination or refuse to release a person's  
19 examination scores;
- 20 (6) Require a person to sit for a reexamination; and
- 21 (7) Pursue legal actions against a person or business entity that is not licensed to offer or  
22 render practices covered by this Act.

23 Section 58. In lieu of or in addition to any disciplinary remedy provided in section 57 of this  
24 Act or civil remedy provided in section 61 of this Act, the board may require, as a condition of  
25 continued licensure, termination of suspension, reinstatement of license, examination, or release

1 of examination grades, that the person:

- 2 (1) Submit to a qualifying review of the person's ability, skills, or quality of work. The  
3 person may be required to attend remedial education courses; and
- 4 (2) Complete to the satisfaction of the board continuing professional education courses  
5 as the board may specify by rule or order, pursuant to chapter 1-26.

6 Section 59. Proceedings for the revocation or suspension of a license shall be conducted  
7 pursuant to chapter 1-26 and rules promulgated pursuant to this Act.

8 Section 60. The findings and actions of the board on disciplinary matters shall be subject to  
9 appeal as provided by chapter 1-26 and rules promulgated pursuant to this Act.

10 Section 61. Any person who has violated any provision of this Act or any rule promulgated  
11 pursuant to this Act, is subject to the following penalties:

- 12 (1) Administrative fine:
  - 13 (a) Licensed person: Any person licensed by the board who violates any provision  
14 of this Act is liable for an administrative fine not to exceed two thousand  
15 dollars for each offense;
  - 16 (b) Licensed business entity: Any business entity permitted to practice by the board  
17 that violates any provision of this Act is liable for an administrative fine not to  
18 exceed five thousand dollars for each offense.

19 An administrative fine not paid within sixty days from the date of the order imposing  
20 the fine may be enforced by an action in the appropriate county circuit court. Any  
21 person aggrieved by an order under this subdivision may make an appeal pursuant to  
22 chapter 1-26;

- 23 (2) Injunction: If the board deems it necessary for the public safety, it may bring an action  
24 in the name of the state in the circuit court in any county in which jurisdiction is  
25 proper to enjoin the act, practice, or violation and to enforce compliance with this Act

1 or any rule promulgated pursuant to this Act. Upon showing that a person has  
2 engaged in an otherwise unauthorized act or practice, a permanent or temporary  
3 injunction, or restraining order, or other appropriate relief shall be obtained against  
4 the person to prohibit the continuation of the unauthorized act or practice. If a person  
5 has caused a structure to be designed, constructed, or built by engaging in an  
6 unauthorized act or practice, a permanent or temporary injunction or restraining  
7 order, or other appropriate relief, shall be obtained against the project prohibiting the  
8 use and occupancy of any structure. For purposes of injunctive relief under this  
9 subdivision, irreparable harm exists if the board shows that a person has engaged in  
10 an act or practice constituting the unauthorized use of a title, words, figures, or sign  
11 implying licensure, or a violation of a statute, rule, or order that the board has issued  
12 or is empowered to enforce;

13 (3) Cease and desist order: The board may issue and have served upon a person an order  
14 requiring the person to cease and desist from any unauthorized practice or act which  
15 is in violation of this Act or any rule promulgated pursuant to this Act. The cease and  
16 desist order shall give reasonable notice of the rights of the person to request a  
17 hearing pursuant to chapter 1-26 and shall state the reasons for the entry of the order.

18 Section 62. Service of the order is effective if the order is served on the person or counsel  
19 of record personally or by certified mail to the most recent address provided to the board for the  
20 person or counsel of record. Unless otherwise agreed by the board and the person requesting the  
21 hearing, the hearing shall be held no later than ninety days after the request for the hearing is  
22 received by the board.

23 Section 63. The board or administrative law judge shall issue a report within thirty days of  
24 the close of the contested case hearing record. Within thirty days after the report and any  
25 exceptions to it, the board shall issue a further order vacating, modifying, or making permanent

1 the cease and desist orders as the facts require.

2 Section 64. If no hearing is requested within the thirty days of service of the order, the order  
3 becomes final and remains in effect until it is modified or vacated by the board. If the person to  
4 whom a cease and desist order is issued fails to appear at the hearing after being duly notified,  
5 the person is in default and the proceeding may be determined against that person upon  
6 consideration of the cease and desist order, the allegations of which may be considered to be  
7 true. Action taken pursuant to this section does not relieve a person from criminal prosecution  
8 by a competent authority or from disciplinary action by the board with respect to the person's  
9 license, registration, certification, application for examination, or renewal.

10 Section 65. No person may:

11 (1) Practice, or offer to practice, the professions of engineering, architecture, land  
12 surveying, landscape architecture, petroleum release assessment, or petroleum release  
13 remediation in this state without being licensed or exempt in accordance with the  
14 provisions of this Act;

15 (2) Use or employ the title of architect, landscape architect, land surveyor, professional  
16 engineer, petroleum release assessor, or petroleum release remediator with or without  
17 qualifying adjectives without being licensed in accordance with the provisions of this  
18 Act;

19 (3) Use any other words, letters, or figures indicating or intending to imply that the  
20 person is a professional engineer, architect, land surveyor, landscape architect,  
21 petroleum release assessor, or petroleum release remediator without being licensed  
22 in accordance with the provision of this Act;

23 (4) Present or attempt to use the certificate of licensure or seal of another, or affix a  
24 professional engineer's, architect's, land surveyor's, or landscape architect's seal on  
25 any plans, specifications, drawings, or other technical submittals which have not been

1 prepared by that person or under that person's responsible charge and direct personal  
2 supervision;

3 (5) Present any false or forged evidence of any kind to the board in obtaining a certificate  
4 of licensure;

5 (6) Falsely impersonate any other licensee;

6 (7) Attempt to use an expired, suspended, or revoked license;

7 (8) Knowingly allow person's name or seal to be used upon plans or work not actually  
8 performed by that person or under that person's responsible charge and direct  
9 supervision; or

10 (9) By act of commission or omission, violates any of the provisions of this Act.

11 A violation of this section is a Class 2 misdemeanor.

12 Section 66. No person may:

13 (1) Accept or contract to receive, directly or indirectly, any commission, percentage, gift,  
14 or other item of value for that person's influence in securing a contract or approving  
15 the performance of a contract, from any manufacturer, agent, or vendor of any  
16 material of any sort used or recommended to be used in the construction of any  
17 project for the plans or construction of which any person is employed; or

18 (2) Give or offer to give to any person any commission, percentage, gift, or other item  
19 of value for that person's influence in securing a contract or approving the  
20 performance of a contract or supplying any material of any sort which may be for  
21 consideration in the construction of any project. A violation of this section is a Class  
22 2 misdemeanor for the first offense and a Class 1 misdemeanor for the second or any  
23 subsequent offense.

24 Section 67. The board may impose a fee to reimburse the board for all or part of the cost of  
25 proceedings resulting in disciplinary action authorized by this Act, the imposition of civil

1 penalties, or the issuance of a cease and desist order. The fee may be imposed if the board shows  
2 a person has committed an act or engaged in unauthorized practice, including the unauthorized  
3 use of a title, words, figures, or signs implying licensure, or has violated a statute, rule or order  
4 of the board. The costs include the amount paid by the board for services from attorney fees,  
5 investigators, court reporters, witnesses, expert witnesses, reproduction of records, board  
6 members' per diem compensation, board staff time, and expense incurred by board members and  
7 staff.

8 Section 68. A professional engineer, architect, land surveyor, landscape architect, petroleum  
9 release assessor, or petroleum release remediator is not liable for the safety of persons or  
10 property on or about a construction project site, or for the construction techniques, procedures,  
11 sequences, and schedules, or for the conduct, action, errors, or omissions of any construction  
12 contractor, subcontractor, construction manager, or material supplier, their agents or employees,  
13 unless that person assumes responsibility therefor by contract or by that person's actual conduct.  
14 This section does not relieve a professional engineer, architect, land surveyor, landscape  
15 architect, petroleum release assessor, or petroleum release remediator from liability for that  
16 person's negligence in design work.

17 Section 69. Any contract, written or oral, for engineering, architectural, land surveying,  
18 landscape architectural, petroleum release assessment, or petroleum release remediation services  
19 made by any person in violation of any provision of this Act is unenforceable as to such services.  
20 It is a complete defense to any action to enforce payment for any services, if the party  
21 contracting for services proves that the person rendering or offering to render services was not  
22 at the time such services were offered or rendered, legally authorized to contract for such  
23 services.

24 Section 70. No public officer or employee, as defined in subdivisions 22-1-2(37) and (39),  
25 charged with the authority or responsibility of approving or accepting plans, specifications, plats,

1 or any other technical submissions, may accept or approve such plans, specifications, plats, or  
2 technical submissions which have been prepared in violation of this Act.

3 The building official shall require the owner to engage and designate an architect or  
4 professional engineer who shall act as the architect or professional engineer of record on projects  
5 that are not exempt. If the circumstances require, the owner may designate a substitute architect  
6 or professional engineer of record who shall perform all of the duties required of the original  
7 architect or professional engineer of record. The building official shall be notified in writing by  
8 the owner if the architect or professional engineer of record is changed or is unable to continue  
9 to perform the duties. The architect or professional engineer of record is responsible for  
10 reviewing and coordinating all submittal documents prepared by others, including deferred  
11 submittal items, for compatibility with the design of the building. A building permit issued with  
12 respect to technical submissions which do not conform with the requirements of this Act are  
13 invalid.

14 Section 71. No register of deeds of any county may file or record any map, plat, survey, or  
15 other technical submissions within the definition of land surveying which does not have  
16 impressed thereon and affixed thereto the personal signature, seal, and date of a land surveyor  
17 by whom or under whose responsible charge and direct personal supervision the map, plat,  
18 survey, or other technical submissions were prepared.

19 Section 72. The board may promulgate rules, pursuant to chapter 1-26, regarding procedures  
20 and standards for certifying those who perform environmental technical services relative to site  
21 assessment, remedial investigations, and corrective actions necessary to remediate water or soil  
22 contaminated with a regulated substance and to establish fees to support this activity. Procedures  
23 and requirements may be promulgated by rule for determining eligibility, denial, suspension, and  
24 revocation of certification. Standards may include more than one level of certification for persons  
25 and business entities, any combination of academic background, professional experience, testing,

1 or other technical professional licenses. Any person or business entity who practices without  
2 certification pursuant to this section is guilty of a Class 1 misdemeanor.

3 Section 73. No person or business entity may perform environmental technical services  
4 without certification. A violation of this section is a Class 1 misdemeanor.

5 Section 74. That §§ 36-18-4.1 to 36-18-73, inclusive, be repealed.

6 Section 75. All licenses and enrollments in effect on July 1, 1999, and issued pursuant to  
7 chapter 36-18, are continued for the balance of the term for which last issued.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Commerce. H.J. 318

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

5 2/16/99 Scheduled for Committee hearing on this date.

6 2/16/99 Commerce Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 527

7 2/18/99 Motion to Amend, Passed, AYES 37, NAYS 29. H.J. 623

8 2/18/99 House of Representatives Do Pass Amended, Failed, AYES 39, NAYS 27. H.J. 624

9 2/18/99 Intent to reconsider. H.J. 625

10 2/19/99 House of Representatives Reconsidered, AYES 64, NAYS 5. H.J. 637

11 2/19/99 House of Representatives Placed on Calendar. H.J. 637

12 2/19/99 Motion to Amend, Passed. H.J. 646

13 2/19/99 House of Representatives Do Pass Amended, Passed, AYES 58, NAYS 9. H.J. 648

14 2/19/99 House of Representatives Title Amended Passed. H.J. 648

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

547C0803

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB1302** - 2/26/99

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

Introduced by: Representatives Garnos, Eccarius, and Wilson and Senators Rounds and Dennert

1 FOR AN ACT ENTITLED, An Act to prohibit certain deceptive advertising practices.

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

3 Section 1. That § 37-24-6 be amended by adding thereto a NEW SUBDIVISION to read as  
4 follows:

5 Knowingly advertise or cause to be listed through the internet or in a telephone directory a  
6 business address that misrepresents where the business is actually located or that falsely states  
7 that the business is located in the same area covered by the telephone directory. This subdivision  
8 does not apply to a telephone service provider, an internet service provider, or a publisher or  
9 distributor of a telephone directory, unless the conduct proscribed in this subdivision is on behalf  
10 of the provider, publisher, or distributor.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 288

3 2/2/99 Referred to Commerce. H.J. 319

4 2/16/99 Scheduled for Committee hearing on this date.

5 2/16/99 Commerce Deferred to 41st legislative day.

6 2/16/99 Commerce Tabled, AYES 7, NAYS 6. H.J. 532

7 2/18/99 Commerce Removed from Table, AYES 13, NAYS 0.

8 2/18/99 Commerce Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 594

9 2/19/99 Commerce Hog Housed.

10 2/22/99 House of Representatives Do Pass Amended, Passed, AYES 69, NAYS 0. H.J. 664

11 2/22/99 House of Representatives Title Amended Passed. H.J. 665

12 2/22/99 First read in Senate and referred to Commerce. S.J. 632

13 2/25/99 Scheduled for Committee hearing on this date.

14 2/25/99 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 674

15 2/25/99 Commerce Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

283C0874

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HCR1010 - 2/24/99**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **BILL HISTORY**

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

3 2/23/99 Commerce Adopt Resolution as Amended, AYES 11, NAYS 1. H.J. 696

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0264

## HOUSE ENGROSSED NO. **SB60** - 2/26/99

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

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

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

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

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 2/18/99 First read in House and referred to Transportation. H.J. 614

16 2/22/99 Scheduled for Committee hearing on this date.

17 2/22/99 Transportation Do Pass, Passed, AYES 13, NAYS 0. H.J. 658

18 2/22/99 Transportation Place on Consent Calendar.

19 2/24/99 House of Representatives Deferred to another day. H.J. 749

20 2/25/99 Motion to Amend, Passed. H.J. 775

21 2/25/99 House of Representatives Do Pass Amended, Passed, AYES 62, NAYS 2. H.J. 775

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

653C0695

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

574C0747

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

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

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

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

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

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

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

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

581C0505

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB172** - 2/18/99

Introduced by: Senators Vitter, Drake, Flowers, Hutmacher, and Rounds and Representatives Wetz, Cutler, Diedrich (Larry), Sutton (Duane), and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the disclosure of  
2 damage on motor vehicles.

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

4 Section 1. That § 32-3-51.7 be amended to read as follows:

5 32-3-51.7. Each certificate of title issued by the department shall contain the following  
6 phrase: South Dakota state law requires the disclosure of damage on motor vehicles. This  
7 information is available upon written request from the Department of Revenue, Division of  
8 Motor Vehicles. Each certificate of title shall also contain on its front a statement as to whether  
9 previous damage disclosure statements indicate the motor vehicle had been damaged at one time  
10 in excess of ~~two~~ three thousand dollars as provided by § 32-3-51.8.

11 Section 2. That § 32-3-51.8 be amended to read as follows:

12 32-3-51.8. Upon the sale, transfer, or trade-in of a motor vehicle, or if licensing a motor  
13 vehicle in South Dakota which is titled in another state or jurisdiction, the seller, transferor,  
14 trader, or person wishing to license in South Dakota the motor vehicle which is titled in another  
15 state or jurisdiction shall submit an accurately completed damage disclosure statement when  
16 applying for a certificate of title pursuant to § 32-3-18. The completed damage disclosure

1 statement may be on the back of the certificate of title or on a separate document that has been  
2 approved for use by the department. Except as otherwise provided by this section, no certificate  
3 of title may be issued by the department unless the damage disclosure statement accompanies the  
4 application. It is a Class 1 misdemeanor to intentionally falsify any information on the damage  
5 disclosure statement. No person or dealer is liable to a subsequent owner of a vehicle because  
6 a prior owner of the vehicle failed to disclose that the vehicle had previously been damaged and  
7 repaired. This section does not apply to motor vehicles more than nine model years old or with  
8 a gross vehicle weight rating of more than sixteen thousand pounds and does not apply if a  
9 rebuilt title or junking certificate is sought.

10 This section does apply to all other motor vehicles, but only damage in excess of ~~two~~ three  
11 thousand dollars shall be disclosed in the statement. If the motor vehicle has incurred damages  
12 more than once, only those damages which occurred at one time would be considered in  
13 determining whether the damages exceeded ~~two~~ three thousand dollars.

14 Section 3. That § 32-3-51.14 be amended to read as follows:

15 32-3-51.14. The department shall prescribe, pursuant to chapter 1-26, the format for the  
16 damage disclosure statement provided by § 32-3-51.8. An area for a damage disclosure  
17 statement shall appear on the back of each certificate of title issued by the department. The  
18 department may also approve separate documents on which a damage disclosure statement may  
19 be submitted. The damage disclosure statement form shall indicate whether the motor vehicle has  
20 been damaged such that it cost more than ~~two~~ three thousand dollars to repair to its predamaged  
21 condition and any other damage information the department deems appropriate. If a separate  
22 document from the certificate of title contains the damage disclosure statement, the document  
23 shall also require the following information: year, make, model, and vehicle identification number  
24 of the motor vehicle.

25 Section 4. That § 32-3-51.15 be amended to read as follows:

1       32-3-51.15. The dollar amount of damage to a motor vehicle required to be disclosed  
2 pursuant to § 32-3-51.8 shall include the costs necessary to return the damaged motor vehicle  
3 to its predamaged condition. Such costs include parts, labor, paint, and frame work done on the  
4 damaged motor vehicle. If the retail value of labor has not been determined by a purchase in the  
5 ordinary course of business (for example, the labor is performed by the owner of the vehicle),  
6 the retail value of the labor is presumed to be the product of the repair time, as provided in a  
7 generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.

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

10       Any vehicle that is required to be titled pursuant to this chapter and is sold or offered for sale  
11 by a vehicle dealer or a used vehicle dealer as defined in § 32-6B-1 shall display a sticker, decal,  
12 or notice that discloses damage to the vehicle in accordance with the provisions of §§ 32-3-51.7,  
13 32-3-51.8, 32-3-51.14, and 32-3-51.15, as determined by the department in rules promulgated  
14 pursuant to chapter 1-26. The rules shall also prescribe the format and construction of the  
15 sticker, decal, or notice.

1 **BILL HISTORY**

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

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

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

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

6 2/8/99 Senate Deferred to another day. S.J. 381

7 2/10/99 Motion to Amend, Passed. S.J. 428

8 2/10/99 Senate Do Pass Amended, Passed, AYES 19, NAYS 16. S.J. 429

9 2/11/99 First read in House and referred to Transportation. H.J. 490

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

11 2/17/99 Transportation Do Pass Amended, Failed, AYES 4, NAYS 9.

12 2/17/99 Transportation Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 566

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

880C0863

## HOUSE ENGROSSED NO. **SB228** - 2/26/99

Introduced by: Senator Vitter

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

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

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

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

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

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

1 **BILL HISTORY**

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

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

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

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

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

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

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

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

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

11 2/24/99 House of Representatives Deferred to another day. H.J. 761

12 2/25/99 Motion to Amend, Passed. H.J. 777

13 2/25/99 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 4. H.J. 777