

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0313 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB1023 - 2/11/00

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Game, Fish, and Parks

1 FOR AN ACT ENTITLED, An Act to prohibit the use of certain equipment in hunting activities
2 at night, to provide certain exemptions from such prohibition, and to revise a related penalty.

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

4 Section 1. That § 41-8-17 be amended to read as follows:

5 41-8-17. ~~No~~ During the time from sunset to sunrise, no person may use or possess night-
6 vision equipment or throw or cast the rays of a spotlight, headlight, or other artificial light on any
7 highway, or in any field, pasture, woodland, forest, or prairie, for the purpose of spotting,
8 locating, or taking or attempting to take or hunt any animal while having in possession or control
9 any firearm, bow or other implement whereby any game could be killed. However, ~~outside of the~~
10 ~~Black Hills fire protection district:~~

11 (1) A person may use a hand held light while on foot, to take raccoons after they have
12 been treed by dogs;

13 (2) A landowner or occupant and one guest accompanied by the landowner or occupant
14 may use an artificial light on ~~his~~ the owner's or occupant's land, with a shotgun using
15 shot shells only or a firearm using a .22 caliber rimfire cartridge, in the taking of
16 ~~rabbits, hares~~ jackrabbits, coyotes, beaver during its hunting season, foxes, raccoons,

1 opossums, badgers, skunks, or rodents; and

2 (3) Any person employed by the Department of Game, Fish and Parks as performing
3 animal damage control ~~officer~~ may use night-vision equipment and artificial lights in
4 the performance of ~~his~~ the person's duty ~~in the taking of nuisance animals on private~~
5 ~~land if the person has obtained written. In the taking of animals causing damage the~~
6 employee shall obtain permission from the owner or lessee of such land.

7 For the purposes of this section, night-vision equipment is an optical device utilizing light
8 amplifying circuits that are electrical or battery powered. The provisions of this section do not
9 apply to a law enforcement officer in the performance of ~~his~~ the officer's duty.

10 A violation of this section is ~~subject to § 41-8-18~~ a Class 2 misdemeanor.

11 Section 2. That § 41-8-18 be amended to read as follows:

12 41-8-18. A violation of § 41-8-2, 41-8-6, or 41-8-15 ~~or 41-8-17~~ is a Class 1 misdemeanor
13 for each prohibited act or each big game animal or any part thereof, taken, caught, killed, sold,
14 offered, or exposed for sale, in possession or in possession with intent to sell, shipped by
15 common carrier, or transported to any point inside or outside the state in violation of law. Upon
16 conviction of any person for hunting or taking big game, except wild turkey, during the
17 nighttime, during a closed season or without a license, the court shall ~~revoke that person's~~
18 ~~hunting privileges for a period of one year, and~~ impose a fine of not less than two hundred fifty
19 dollars for each animal involved and that person shall be required to serve a minimum of three
20 days in the county jail and shall have their hunting privileges revoked pursuant to §§ 41-6-74.1
21 and 41-6-74.2. A second or subsequent conviction of any person for hunting or taking big game,
22 except wild turkey, during the nighttime, during a closed season, or without a license is a Class
23 6 felony. In addition, the court shall revoke that person's hunting privileges for a period of five
24 years.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to Agriculture and Natural Resources. H.J. 16

3 1/18/00 Scheduled for Committee hearing on this date.

4 1/18/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 1.

5 H.J. 127

6 1/21/00 House of Representatives Deferred to another day. H.J. 183

7 1/24/00 Motion to Amend, Passed. H.J. 210

8 1/24/00 House of Representatives Do Pass Amended, Passed, AYES 48, NAYS 18. H.J. 211

9 1/25/00 First read in Senate and referred to Agriculture and Natural Resources. S.J. 196

10 2/10/00 Scheduled for Committee hearing on this date.

11 2/10/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 7, NAYS 0.

12 S.J. 406

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0316 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB1026 - 2/11/00

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

1 FOR AN ACT ENTITLED, An Act to revise certain bonding procedures and the annual fee of
2 agents who sell hunting and fishing licenses for the Department of Game, Fish and Parks.

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

4 Section 1. That § 41-6-59 be amended to read as follows:

5 41-6-59. Any agent, who has been appointed in ~~any~~ the previous year ~~and has provided either~~
6 ~~a bond or other security in any previous year~~ to sell licenses and permits, is not required to
7 furnish a bond or other security ~~if the agent is not issued licenses and permits with a value of~~
8 ~~more than fifty thousand dollars at any one time. An agent, who has previously provided either~~
9 ~~a bond or other security and has licenses and permits of a value no greater than twenty thousand~~
10 ~~dollars issued at any one time, shall pay to the Department of Game, Fish and Parks an annual~~
11 ~~fee of twenty dollars. An agent, who has previously provided either a bond or other security and~~
12 ~~has licenses and permits of a value greater than twenty thousand dollars but less than fifty~~
13 ~~thousand dollars issued to them at any one time, but~~ shall pay the department an annual fee of
14 fifty twenty-five dollars. ~~An agent, who has more than fifty thousand dollars of licenses and~~
15 ~~permits issued at any one time shall be bonded or shall furnish security equal to the total value~~
16 ~~of the licenses and permits issued to the agent at any one time less fifty thousand dollars. Any~~

1 agent, who ~~has was not previously been bonded or who has not previously provided other~~
2 ~~security to~~ appointed in the previous year to sell the licenses and permits, shall be bonded or shall
3 furnish security equal to the total value of the licenses issued to the agent at any one time. A
4 certificate of deposit, money order, or other negotiable instrument issued by a bank, savings and
5 loan association, or a credit union bearing the agent's social security number or employer
6 identification number payable to the department is sufficient security. If an agent fails to timely
7 pay the amount owed to the department, the department may cash the certificate and satisfy the
8 amount owed to the department and remit the balance to the agent. If the agent has paid all the
9 fees owed and requests a return of the certificate of deposit, money order, or other negotiable
10 instrument, the department shall endorse it payable to the agent and return it to the agent. No
11 agent who defaults on payment of the amount owed to the department may be appointed an
12 agent until the unpaid amount, plus interest at the Category B rate of interest as defined in
13 § 54-3-16, is paid.

14 Section 2. This Act is effective on January 1, 2001.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to Agriculture and Natural Resources. H.J. 17

3 1/18/00 Scheduled for Committee hearing on this date.

4 1/18/00 Deferred by Chair.

5 1/20/00 Scheduled for Committee hearing on this date.

6 1/20/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 13, NAYS 0.

7 H.J. 155

8 1/24/00 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 1. H.J. 212

9 1/25/00 First read in Senate and referred to Agriculture and Natural Resources. S.J. 196

10 2/10/00 Scheduled for Committee hearing on this date.

11 2/10/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 0.

12 S.J. 408

13 2/10/00 Agriculture and Natural Resources Place on Consent Calendar.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0333

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **HB1028** - 2/10/00

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

1 FOR AN ACT ENTITLED, An Act to permit the provision of certain drugs and drug samples
2 by physician assistants, nurse practitioners, and nurse midwives.

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

4 Section 1. That § 36-4A-22 be amended to read as follows:

5 36-4A-22. Specifically, and by way of limitations, an assistant to the primary care physician
6 may:

7 (1) Take a complete, detailed, and accurate history; do a complete physical examination,
8 when appropriate, to include pelvic and breast examinations specifically excluding
9 endoscopic examinations; record pertinent data in acceptable medical form; and, if the
10 physical examination is for participation in athletics, certify that the patient is healthy
11 and able to participate;

12 (2) Perform or assist in the performance of the following routine laboratory and
13 governing techniques:

14 (a) The drawing of venous or peripheral blood and the routine examination of the
15 blood;

16 (b) Urinary bladder catheterization and routine urinalysis;

- 1 (c) Nasogastric intubation and gastric lavage;
- 2 (d) The collection of and the examination of the stool;
- 3 (e) The taking of cultures;
- 4 (f) The performance and reading of skin tests;
- 5 (g) The performance of pulmonary function tests excluding endoscopic
- 6 procedures;
- 7 (h) The performance of tonometry;
- 8 (I) The performance of ~~audiometry~~ hearing screenings;
- 9 (j) The taking of EKG tracings;
- 10 (3) Make a tentative medical diagnosis and institute therapy or referral; ~~to~~ prescribe
- 11 ~~medication~~ medications and provide drug samples or a limited supply of labeled
- 12 medications, including controlled drugs or substances listed on Schedule II in chapter
- 13 34-20B for one period of not more than forty-eight hours, for symptoms and
- 14 temporary pain relief; ~~to~~ treat common childhood diseases; to assist in the follow-up
- 15 treatment of geriatric and psychiatric disorders referred by the physicians. Medications
- 16 or sample drugs provided to patients shall be accompanied with written administration
- 17 instructions and appropriate documentation shall be entered in the patient's medical
- 18 record;
- 19 (4) Perform the following routine therapeutic procedures:
- 20 (a) Injections;
- 21 (b) Immunizations;
- 22 (c) Debridement, suture, and care of superficial wounds;
- 23 (d) Debridement of minor superficial burns;
- 24 (e) Removal of foreign bodies from the external surface of the skin (specifically
- 25 excluding foreign bodies of the cornea);

- 1 (f) Removal of sutures;
- 2 (g) Removal of impacted cerumen;
- 3 (h) Subcutaneous local anesthesia, excluding any nerve blocks;
- 4 (I) Strapping, casting, and splinting of sprains;
- 5 (j) Anterior nasal packing for epistaxis;
- 6 (k) Removal of cast;
- 7 (l) Application of traction;
- 8 (m) Application of physical therapy modalities;
- 9 (n) Incision and drainage of superficial skin infections;
- 10 (5) Assist the primary care physician in health maintenance of his patients by:
 - 11 (a) Well-baby and well-child clinics to include initial and current booster
 - 12 immunization for communicable disease;
 - 13 (b) Pre- and post-natal surveillance to include clinics and home visits;
 - 14 (c) Family planning, counseling, and management;
- 15 (6) Institute emergency measures and emergency treatment or appropriate measures in
 - 16 situations such as cardiac arrest, shock, hemorrhage, convulsions, poisonings, and
 - 17 emergency obstetric delivery. Emergency measures includes writing a chemical or
 - 18 physical restraint order when the patient may do personal harm or harm others;
- 19 (7) Assist the primary care physician in the management of long-term care to include:
 - 20 (a) Ordering indicated laboratory procedures;
 - 21 (b) Managing a medical care regimen for acute and chronically ill patients within
 - 22 established standing orders. (Prescription of modifications needed by patients
 - 23 coping with illness or maintaining health, such as in diet, exercise, relief from
 - 24 pain, medication, and adaptation to handicaps or impairments);
 - 25 (c) Making referrals to appropriate agencies;

- 1 (8) Assist the primary care physician in the hospital setting by arranging hospital
2 admissions under the direction of the physician, by accompanying the primary care
3 physician on rounds, and recording the physician's patient progress notes; by
4 accurately and appropriately transcribing and executing specific orders at the direction
5 of the physician; by assistance at surgery; by compiling detailed narrative and case
6 summaries; by completion of the forms pertinent to the patient's medical record;
- 7 (9) Assist the primary care physician in the office in the ordering of drugs and supplies,
8 in the keeping of records, and in the upkeep of equipment;
- 9 (10) Assist the primary care physician in providing services to patients requiring continuing
10 care (nursing home, extended care, and home care) including follow-up visits after the
11 initial treatment by the physician;
- 12 (11) Assist the primary care physician in the completion of official documents such as
13 death certificates, birth certificates, and similar documents required by law, including
14 signing the documents;
- 15 (12) Take X-rays to be read by a physician. A physician's assistant may not administer
16 injections in conjunction with the taking of any X-rays.

17 Section 2. That § 36-9A-12 be amended to read as follows:

18 36-9A-12. A nurse practitioner may perform the following overlapping scope of advanced
19 practice nursing and medical functions pursuant to § 36-9A-15, including:

- 20 (1) The initial medical diagnosis and the institution of a plan of therapy or referral;
- 21 (2) The prescription of medications and provision of drug samples or a limited supply of
22 labeled medications, including controlled drugs or substances listed on Schedule II in
23 chapter 34-20B for one period of not more than forty-eight hours, for treatment of
24 causative factors and symptoms. Medications or sample drugs provided to patients
25 shall be accompanied with written administration instructions and appropriate

1 documentation shall be entered in the patient's medical record;

2 (3) The writing of a chemical or physical restraint order when the patient may do personal
3 harm or harm others;

4 (4) The completion and signing of official documents such as death certificates, birth
5 certificates, and similar documents required by law; and

6 (5) The performance of a physical examination for participation in athletics and the
7 certification that the patient is healthy and able to participate in athletics.

8 Section 3. That § 36-9A-13 be amended to read as follows:

9 36-9A-13. A nurse midwife may perform the following overlapping scope of advanced
10 practice nursing and medical functions pursuant to § 36-9A-15, including:

11 (1) Management of the prenatal and postpartum care of the mother-baby unit;

12 (2) Management and direction of the birth;

13 (3) Provision of appropriate health supervision during all phases of the reproductive life
14 span to include family planning services, menopausal care, and cancer screening and
15 prevention; and

16 (4) Prescription of appropriate medications and provision of drug samples or a limited
17 supply of appropriate labeled medications for individuals under the nurse midwife's
18 care pursuant to the scope of practice defined in this section, including controlled
19 drugs or substances listed on Schedule II in chapter 34-20B for one period of not
20 more than forty-eight hours. Medications or sample drugs provided to patients shall
21 be accompanied with written administration instructions and appropriate
22 documentation shall be entered in the patient's medical record.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to Health and Human Services. H.J. 17

3 1/19/00 Scheduled for Committee hearing on this date.

4 1/19/00 Health and Human Services Do Pass Amended, Failed, AYES 6, NAYS 5.

5 1/19/00 Deferred by Chair.

6 1/21/00 Scheduled for Committee hearing on this date.

7 1/21/00 Deferred by Chair.

8 1/26/00 Scheduled for Committee hearing on this date.

9 1/26/00 Health and Human Services Do Pass Amended, Passed, AYES 8, NAYS 4. H.J. 242

10 1/28/00 House of Representatives Deferred to another day.

11 2/1/00 House of Representatives Do Pass Amended, Passed, AYES 62, NAYS 7. H.J. 335

12 2/2/00 First read in Senate and referred to Health and Human Services. S.J. 298

13 2/9/00 Scheduled for Committee hearing on this date.

14 2/9/00 Health and Human Services Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 400

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

382D0339

HOUSE ENGROSSED NO. **HB1092** - 2/1/00

Introduced by: Representatives Konold, Brown (Jarvis), Crisp, Diedtrich (Elmer), Pummel, Smidt, and Wetz and Senators Madden and Brosz

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of home inspectors.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Client," any person who engages, or seeks to engage, the services of a home
5 inspector for the purpose of obtaining inspection of and written report upon the
6 condition of a residential building;

7 (2) "Commission," the South Dakota Real Estate Commission;

8 (3) "Home inspector," any person registered or licensed as a home inspector pursuant to
9 the provisions of this Act;

10 (4) "Home inspection," an inspection and written evaluation of all the following
11 components of a residential building: heating system, cooling system, plumbing
12 system, electrical system, structural components, foundation, roof, masonry structure,
13 and exterior and interior components;

14 (5) "Residential building," a structure consisting of not more than four family dwelling
15 units.

16 Section 2. The commission shall issue and renew certificates to licensed and registered home

1 inspectors pursuant to the provisions of this Act.

2 Section 3. No person may provide, or hold oneself out as able to provide, a home inspection
3 for compensation unless registered or licensed in accordance with the provisions of this Act. A
4 violation of this section is a Class 1 misdemeanor.

5 Section 4. An applicant for a license as a home inspector shall file a written application
6 provided by the commission showing that the applicant meets the following requirements:

- 7 (1) Good moral character;
- 8 (2) Successful completion of high school or high school equivalency;
- 9 (3) Employment as a registered home inspector for no less than one year and performance
10 of not less than one hundred home inspections for compensation; and
- 11 (4) Successful completion of a licensing examination approved by the commission.

12 Section 5. An applicant for registration as a home inspector shall file a written application
13 provided by the commission showing that the applicant meets the following requirements:

- 14 (1) Good moral character;
- 15 (2) Successful completion of high school or high school equivalency;
- 16 (3) Successful completion of an approved course of study of not less than forty hours, as
17 prescribed by the commission in rules promulgated pursuant to chapter 1-26; and
- 18 (4) Successful completion of a registration examination approved by the commission.

19 Section 6. The commission shall promulgate rules pursuant to chapter 1-26 for licensed and
20 registered home inspectors in the following areas:

- 21 (1) Standards and requirements for prelicense and continuing education, including
22 qualifications of instructors, procedures for granting a certificate of accreditation,
23 notification of a material change in an approved course offering, suspension,
24 revocation, and denial of course approval, certification of attendance, preregistration,
25 and hours required to renew a license or registration;

- 1 (2) A code of ethics and standards of practice;
- 2 (3) Fees for applications, examinations, registration, licensure, and renewals, not to
3 exceed two hundred dollars for application and one hundred dollars for renewal;
- 4 (4) Procedures and qualifications for application, minimum requirements for examination,
5 procedures for the examination and the administration of the examination, the
6 required score for passing the examination, and procedures for replacement of a
7 license;
- 8 (5) Procedures for disciplinary proceedings, including requirements for filing a complaint,
9 dismissal of a complaint, informal and formal resolution of a complaint, formal
10 complaint and answer requirements, final action and review, disqualification of a
11 commission member from a hearing, and authorization for per diem and mileage; and
- 12 (6) Procedures for declaratory rulings, petitions for rules, and contested cases.

13 Section 7. The provisions of this Act do not apply to any of the following persons:

- 14 (1) Any person who is employed as a code enforcement official by the state or a political
15 subdivision of the state when acting within the scope of that governmental
16 employment;
- 17 (2) Any person regulated by the state as an architect, professional engineer, electrical
18 contractor, or plumber, who is acting within the scope of practice of the person's
19 profession or occupation;
- 20 (3) Any real estate broker or salesperson licensed by the state when acting within the
21 scope of that person's license;
- 22 (4) Any real estate appraiser certified, licensed, or registered by the state when acting
23 within the scope of that person's license;
- 24 (5) Any person engaged as an insurance adjuster, when acting within the scope of that
25 person's profession; or

1 (6) Any manufactured home dealer who is licensed by the state, when acting within the
2 scope of that person's license.

3 Section 8. Upon payment to the commission of a fee and the submission of a written
4 application provided by the commission, the commission may issue a home inspector license to
5 any person who holds a valid license issued by another state or possession of the United States
6 or the District of Columbia which has standards substantially equivalent to those of this state,
7 as determined by the commission.

8 Section 9. During the first three hundred sixty-five days after the effective date of this Act,
9 the commission shall issue to any person, upon application, a home inspector license, if the
10 applicant meets the requirements of subdivisions (1), (2), and (4) of section 4 of this Act and has
11 been engaged in the practice of home inspections for compensation for not less than one year
12 prior to the effective date of this Act and has performed not less than one hundred home
13 inspections for compensation.

14 Section 10. Any license or registration expires on December thirty-first of the year following
15 issuance and may be renewed biennially. An application for renewal shall be filed with the
16 commission no later than November thirtieth of the year of expiration. Any renewal application
17 filed after that date is subject to a late renewal penalty of twenty dollars per month or fraction
18 thereof. However, no late renewal may be filed after June thirtieth of the year following the
19 expiration of the registration or license.

20 Section 11. The commission may suspend, revoke, reprimand, or assess a monetary penalty
21 not to exceed two thousand five hundred dollars, or may provide for a combination or
22 revocation, suspension, reprimand, or monetary penalty, for any violation of this Act or any
23 administrative rule adopted to administer this Act.

24 Section 12. All fees and any fines imposed by the commission shall be paid to the fund of the
25 commission.

1 Section 13. The commission may refuse to grant or may suspend or revoke a home inspector
2 license or registration upon proof, to the satisfaction of the commission, that the holder has:

3 (1) Disclosed any information concerning the results of the home inspection without the
4 approval of a client or the client's representative;

5 (2) Accepted compensation from more than one interested party for the same service
6 without the written consent of all interested parties;

7 (3) Accepted commissions or allowances, directly or indirectly, from other parties dealing
8 with the holder's client in connection with work for which the holder is responsible;
9 or

10 (4) Failed to disclose promptly to a client information about any business interest of the
11 holder which may affect the client in connection with the home inspection.

12 Section 14. This Act is effective on January 1, 2001.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to Commerce. H.J. 58

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/25/00 Scheduled for Committee hearing on this date.

5 1/25/00 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 221

6 1/27/00 House of Representatives Deferred to another day.

7 1/28/00 House of Representatives Deferred to another day. H.J. 288

8 1/31/00 Motion to Amend, Passed. H.J. 312

9 1/31/00 House of Representatives Do Pass Amended, Passed, AYES 51, NAYS 17. H.J. 312

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

454D0386

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1095** - 2/10/00

Introduced by: Representatives Hunt, Diedrich (Larry), Fischer-Clemens, Koehn, Monroe, Volesky, and Young and Senators Lawler, Flowers, Hutmacher, Kleven, and Moore

1 FOR AN ACT ENTITLED, An Act to authorize professional corporations, limited liability
2 companies, or limited liability partnerships owned by certain health care professionals of
3 more than one profession.

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

5 Section 1. Terms used in this Act mean:

6 (1) "Authorized licensee," a natural person licensed as a health care professional under
7 Title 36 and entitled to form a professional corporation pursuant to chapters 47-11,
8 47-11A, 47-11B, 47-11C, 47-11D, and 47-11E;

9 (2) "Professional employee," an employee of a professional corporation who is an
10 authorized licensee, but not a shareholder of the corporation.

11 Section 2. For the purposes of this Act, the term, professional corporation, includes a limited
12 liability company organized under chapter 47-34A or a limited liability partnership organized
13 under chapter 48-7. With respect to a limited liability company, references in this Act to articles
14 of incorporation, by-laws, directors, officers, shareholders, and shares of stock refer to articles
15 of organization, operating agreement, governors, managers, members, and membership interest,

1 respectively. With respect to a limited liability partnership, references in this Act to articles of
2 incorporation and by-laws refer to partnership agreement, references to directors, officers, and
3 shareholders refer to partners, and references to shares of stock refer to partnership interests.

4 Section 3. One or more authorized licensees may form a professional corporation for the
5 purpose of rendering two or more kinds of professional services and services ancillary thereto.
6 A professional corporation may not employ a person who is an authorized licensee unless at least
7 one shareholder of the professional corporation is an authorized licensee of the same profession.

8 Section 4. No professional corporation may provide any professional service or ancillary
9 service without a certificate of registration from the licensing board of each category of licensee
10 who is a shareholder. An application for such registration shall be made to the applicable boards
11 in writing and shall contain the name and address of the corporation, the information required
12 in section 10 of this Act, and such other information as may be required by each licensing board.

13 Section 5. Upon receipt of an application made pursuant to section 4 of this Act, each
14 licensing board shall investigate the proposed professional corporation. If the board finds that
15 the shareholders and professional employees within its jurisdiction are properly licensed and have
16 no disciplinary action pending before the board and if it appears that the corporation will be
17 conducted in compliance with the law and rules of the board, the board shall issue an annually
18 renewable certificate of registration upon payment of a registration fee in an amount to be
19 established by rule pursuant to chapter 1-26. The application for renewal of a certificate of
20 registration must report any change in status of the corporation or its shareholders. The
21 corporation shall promptly report to any licensing board having jurisdiction the occurrence of
22 any event mentioned in subdivisions (1), (2), and (3) of section 8 of this Act.

23 Section 6. The certificate of registration issued pursuant to section 5 of this Act shall be
24 conspicuously posted upon the premises to which it is applicable.

25 Section 7. An application for an amended certificate of registration shall be filed with any

1 boards having jurisdiction of the professional corporation any time the location or ownership of
2 the professional corporation changes. The respective boards shall investigate the corporation to
3 determine whether it continues to meet the requirements of this Act. Certificates of registration
4 are not assignable.

5 Section 8. Any licensing board having jurisdiction over a professional corporation may
6 suspend or revoke the certificate of registration issued under this Act for any of the following
7 reasons:

- 8 (1) The revocation or suspension of the license to practice of any shareholder or
9 professional employee not promptly removed or discharged by the corporation;
- 10 (2) Unprofessional conduct by any shareholder or professional employee not promptly
11 removed or discharged by the corporation;
- 12 (3) The death of the last remaining shareholder; or
- 13 (4) Upon a finding that the certificate holder has failed to comply with the provisions of
14 this Act or rules prescribed by any licensing board having jurisdiction over the
15 certificate holder.

16 Section 9. Before any certificate of registration is suspended or revoked, the holder is entitled
17 to a hearing pursuant to chapter 1-26 before the board or boards having jurisdiction. The hearing
18 may be held jointly by the boards, but each board shall render its own decision. Any party to such
19 a hearing is entitled to appeal pursuant to chapter 1-26. If any licensing board finds that the
20 suspension or revocation is necessary to protect the public health, safety, or welfare or because
21 willful acts are involved, it may dispense with the requirement of prior notice and hearing.
22 However, the professional corporation shall have a seasonable hearing after any such suspension
23 or revocation.

24 Section 10. In addition to providing the information required by the South Dakota Business
25 Corporation Act, the following information is also required in the forming documents of a

1 professional corporation, the organizing documents of a limited liability company, or the
2 registration documents of a limited liability partnership:

- 3 (1) The name of the corporation, limited liability company, or limited liability partnership;
- 4 (2) The purpose of the corporation, limited liability company, or limited liability
5 partnership;
- 6 (3) A statement that the shareholders of the corporation, members of the limited liability
7 company, or partners in a limited liability partnership may only be professional
8 persons licensed to render the kind of professional service that fit the purpose of the
9 corporation, limited liability company, or limited liability partnership; and
- 10 (4) A statement that the officers and directors of a corporation, the governors and
11 managers of a limited liability company, and the partners of a limited liability
12 partnership, must be professional persons licensed to render the kind of professional
13 services that fit the purpose of the corporation, limited liability company, or limited
14 liability partnership.

15 Section 11. The corporate name of a corporation formed pursuant to this Act shall end with
16 the words, Professional Corporation, or the abbreviation, P.C., or the word, Limited, or the
17 abbreviation, Ltd. The name of any limited liability company shall end with the words,
18 Professional Limited Liability Company, or the abbreviation, P.L.L.C., or the words, Limited
19 Liability Company, or the abbreviation, L.L.C. The name of any limited liability partnership shall
20 end with the words, Professional Limited Liability Partnership, or the abbreviation, P.L.L.P., or
21 the words, Limited Liability Partnership, or the abbreviation, L.L.P.

22 Section 12. A professional corporation may own real and personal property necessary or
23 appropriate for rendering professional service and may invest its funds in real estate, mortgages,
24 stocks, bonds, or any other type of investment.

25 Section 13. This Act does not authorize an individual to practice any profession, or furnish

1 any professional service, for which the individual is not licensed.

2 Section 14. A professional corporation may exercise any powers accorded it by its generally
3 applicable governing law, so long as the professional corporation exercises those powers solely
4 to provide the pertinent professional services or to accomplish tasks ancillary to providing those
5 services.

6 Section 15. No professional corporation may adopt, implement, or follow a policy,
7 procedure, or practice, which would give any licensing board having jurisdiction grounds for
8 disciplinary action, cause a violation of professional ethics, or cause a violation of the
9 professional duty to use due care, against a shareholder or professional employee who follows,
10 agrees to, or acquiesces in the policy, procedure, or practice. Any licensing board having
11 jurisdiction shall be notified of any practice or policy adopted by the professional corporation
12 that violates any provision of this Act. Any dissension or deadlock resulting in a corporate policy
13 or action violating the terms of this Act shall be reported to any licensing board having
14 jurisdiction. Any licensing board having jurisdiction shall have access to any business records and
15 any patient records relevant to the actions of its respective licensee.

16 Section 16. This Act does not alter any law applicable to the relationship between a
17 professional licensee furnishing health care services and the person receiving those services,
18 including liability arising out of those services. To the extent required by the licensing law
19 governing any authorized licensee or professional employee, the corporation shall comply with
20 the provisions of such law relevant to the maintenance of professional liability insurance for those
21 affected health care professionals employed by the corporation.

22 Section 17. Patient records shall be kept strictly confidential. No provision of this Act,
23 including interdisciplinary access to patient records by any stockholder, professional employee,
24 or any employee of a professional corporation, constitutes a waiver of any privilege on
25 confidential communications which otherwise exists under any provision of the law of this state.

1 Section 18. The licensing boards having jurisdiction over professional corporations
2 authorized in chapters 47-11, 47-11A, 47-11B, 47-11C, 47-11D, and 47-11E are authorized to
3 promulgate rules pursuant to chapter 1-26 to implement the provisions of this Act, including the
4 following provisions:

- 5 (1) Definition of terms;
- 6 (2) Applications for registration and renewed registration as provided by sections 4 and
7 5 of this Act;
- 8 (3) Procedure for investigations as provided by sections 5 and 15 of this Act;
- 9 (4) Standards for hearings and summary suspension or revocation as provided by section
10 9 of this Act; and
- 11 (5) Interboard consultation and hearings as provided by sections 4, 5, 7, 9, and 15 of this
12 Act.

13 Section 19. The provisions of this Act do not affect or preempt any requirements contained
14 in Title 58.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to Judiciary. H.J. 58

3 1/21/00 Scheduled for Committee hearing on this date.

4 1/21/00 Judiciary Do Pass, Passed, AYES 12, NAYS 0. H.J. 188

5 1/25/00 House of Representatives Do Pass, Passed, AYES 49, NAYS 19. H.J. 232

6 1/26/00 First read in Senate and referred to Judiciary. S.J. 210

7 2/7/00 Senate Referred to State Affairs.

8 2/9/00 Scheduled for Committee hearing on this date.

9 2/9/00 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 379

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

606D0131 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB1096 - 2/11/00

Introduced by: Representatives Wetz, Apa, Brown (Richard), Diedrich (Larry), Duenwald, Earley, Eccarius, Hunt, Jaspers, Konold, Koskan, Lintz, McNenny, Napoli, Pummel, Sutton (Duane), and Young and Senators Madden, Brown (Arnold), Drake, Dunn (Jim), Everist, Kleven, and Vitter

1 FOR AN ACT ENTITLED, An Act to assign liability for certain attempts to prevent or delay
2 the control or eradication of weeds or the mountain pine beetle.

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

4 Section 1. If any person or entity takes legal action in any form to prevent or delay any
5 federal, state, or local government agency or any person from attempting to control or eradicate
6 an infestation of weeds, as defined by state law, or an infestation of the mountain pine beetle on
7 any public land, including federal land for which a state or local government agency has applied
8 for permission to attempt to control or eradicate such an infestation, and if the infestation
9 subsequently spreads to adjacent private land, the person or entity that brought such legal action
10 is liable to the owner of the private land for damages resulting from the infestation.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to committee assignment waived. H.J. 59

3 1/18/00 Referred to Agriculture and Natural Resources. H.J. 120

4 1/25/00 Scheduled for Committee hearing on this date.

5 1/25/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 13, NAYS 0.

6 H.J. 220

7 1/27/00 House of Representatives Deferred to another day. H.J. 273

8 1/31/00 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 6. H.J. 311

9 2/1/00 First read in Senate and referred to Agriculture and Natural Resources. S.J. 275

10 2/8/00 Scheduled for Committee hearing on this date.

11 2/10/00 Scheduled for Committee hearing on this date.

12 2/10/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 6, NAYS 2.

13 S.J. 406

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

941D0492

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1122** - 2/10/00

Introduced by: Representatives McNenny, Hennies, Juhnke, Napoli, Pummel, and Sutton
(Duane) and Senators Albers and Kleven

1 FOR AN ACT ENTITLED, An Act to require a removal agency to notify a county sheriff or
2 chief of police after removing certain motor vehicles.

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

4 Section 1. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If any removal agency as defined by § 32-36-2 removes any unattended motor vehicle from
7 a public street or highway and the removal is not at the request of a law enforcement officer, the
8 removal agency shall report the removal to the county sheriff, if the removal occurred outside
9 any municipality, or to the chief of police, if the removal occurred inside any municipality, within
10 twenty-four hours of removing the motor vehicle. Failure to make a report as provided by this
11 section is a Class 2 misdemeanor.

12 Section 2. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If a removal agency fails to make a report as required by section 1 of this Act, the removal
15 agency is not entitled to any towing or storage fees for the removed vehicle and no such towing
16 or storage fees may be billed or collected by the removal agency.

1 **BILL HISTORY**

2 1/18/00 First read in House and referred to Local Government. H.J. 116

3 1/27/00 Scheduled for Committee hearing on this date.

4 1/27/00 Deferred by Chair.

5 2/1/00 Scheduled for Committee hearing on this date.

6 2/1/00 Local Government Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 337

7 2/1/00 Local Government Place on Consent Calendar.

8 2/3/00 House of Representatives Do Pass Amended, Passed, AYES 66, NAYS 3. H.J. 390

9 2/4/00 First read in Senate and referred to Local Government. S.J. 323

10 2/9/00 Scheduled for Committee hearing on this date.

11 2/9/00 Local Government Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 401

12 2/9/00 Local Government Place on Consent Calendar.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

571D0648

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1175** - 2/3/00

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

Introduced by: Representatives Hunt and Fiegen and Senator Moore

1 FOR AN ACT ENTITLED, An Act to authorize the Division of Insurance to promulgate rules
2 regarding the privacy of medical records.

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

4 Section 1. The director of insurance shall promulgate rules pursuant to chapter 1-26, to
5 protect the privacy of personally identifiable health care and medical information, data, and
6 records. The rules shall cover health care and medical information, data, and records collected,
7 used, or disclosed by any person licensed or registered under Title 58 or any person with whom
8 such licensees or registrants contract, and shall include all health care and medical information,
9 data, and records received by or in the possession of the Division of Insurance. The rules may
10 include the following:

- 11 (1) Definition of terms;
- 12 (2) Standards for the protection of the privacy and confidentiality of personally
13 identifiable health care information and medical records;
- 14 (3) Rules for the collection, use, storage, security, disclosure, release, and disposal of
15 health care and medical information, data, and records in all forms, including printed
16 material, plastic media, audio, video, computerized and electronic transmissions;

- 1 (4) Rules regarding the sale and exchange of health care and medical information, data,
2 and records;
- 3 (5) Rules to define the responsibilities and limitations of those needing or requiring access
4 to health care and medical information, data, and records;
- 5 (6) Rules for procedures and documents required for the release or transfer of health care
6 and medical information, data, and records, including the identity of who may release
7 such information and records and under what conditions and provisions of the law,
8 as needed to protect the privacy of personally identifiable health care and medical
9 information, data, and records;
- 10 (7) Rules for the collection, use, storage, security, disclosure, distribution, release, and
11 disposal of health care information and medical records obtained, used, or held in
12 connection with the operation, maintenance, or review of insurance certificates,
13 contracts, policies, and plans, and health maintenance organizations, subject to the
14 jurisdiction of the director of insurance.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 137

3 1/20/00 Referred to State Affairs. H.J. 160

4 1/24/00 Scheduled for Committee hearing on this date.

5 1/24/00 State Affairs Deferred to another day.

6 1/31/00 Scheduled for Committee hearing on this date.

7 2/2/00 State Affairs Hog Housed.

8 2/2/00 Scheduled for Committee hearing on this date.

9 2/2/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 4. H.J. 363

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

119D0660

SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB1193** - 2/11/00

Introduced by: Representatives Cutler, Hunt, and Wudel and Senators Rounds and Moore

1 FOR AN ACT ENTITLED, An Act to clarify the authority of federally regulated charter bus
2 service operators to provide charter bus services to schools.

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

4 Section 1. That § 13-29-1 be amended to read as follows:

5 13-29-1. The school board of any school district may acquire, own, operate, or hire buses
6 for the transportation of students to and from its schools either from within or without the
7 district or for transportation to and from athletic, musical, speech, and other interscholastic
8 contests in which participation is authorized by the school board. The school district may
9 contract with a federally regulated charter bus operation to provide charter bus service for
10 transportation of students, chaperones, and employees to and from athletic, musical, speech,
11 other interscholastic contests, and special events in which participation is authorized by the
12 school board. Buses used for this purpose need not meet requirements of a school bus unless
13 such buses are used for the daily transportation of students to and from schools either from
14 within or without the district. If the use of a school bus is granted by the school board pursuant
15 to subdivision 49-28-2(1) or (8), the school district is not liable for suit or damages which may
16 arise as the result of the use. The school board may authorize the use of the buses owned by the

1 board for transportation of adults pursuant to subdivision 49-28-2(1) or (7). The provisions to
2 transport adults, provided in this section, shall not apply to school districts which contain a first
3 class municipality. Use of a school bus for transportation of persons enumerated in subdivision
4 49-28-2(7) is limited to providing shelter, health care, nutrition, religious activities, and other
5 necessities of life.

6 Section 2. That § 13-29-6 be amended to read as follows:

7 13-29-6. Each school bus used for the transportation of school children which is owned by
8 a school district, a nonpublic school or alternative education program or privately owned and
9 operated under a contract with a school board or nonpublic school or alternative instruction
10 program shall be inspected before the beginning of each school year by a representative of the
11 Division of Highway Patrol to certify that the vehicle complies with state law, and rules of the
12 South Dakota Board of Education, the Department of Commerce and Regulation, and the
13 Division of Highway Patrol. However, if a school bus is purchased from a licensed motor vehicle
14 dealer during the school year, the dealer may inspect and certify that the vehicle complies with
15 such law and rules. The owner of any bus certified by a dealer shall have the bus inspected by the
16 Division of Highway Patrol before the beginning of the next school year. ~~A~~ The owner of the bus
17 shall display a certificate certifying that the school bus has successfully passed ~~the~~ inspection ~~shall~~
18 ~~be~~ issued by the Division of Highway Patrol or the dealer in a form prescribed by the Division
19 of Highway Patrol ~~and shall be displayed~~ in the vehicle above the windshield. Any school board,
20 contractor, or person operating a school bus that has not been certified commits a petty offense.
21 This section does not apply to federally regulated charter bus service operations.

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

23 32-32-1. ~~School~~ A school bus shall mean every is any vehicle with a capacity of ten or more
24 pupils ~~excluding and~~ the driver owned or operated by or for a school or a school district as
25 authorized under § 13-29-1, ~~and used for the purpose of transporting to transport~~ school children

1 to and from school or ~~used~~ in connection with school activities. Buses operated by a federally
2 regulated charter bus service provider used in connection with school activities, other than to
3 daily transport children to and from school, need not meet the requirements of this chapter.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 140

3 1/20/00 Referred to Education.

4 1/27/00 Scheduled for Committee hearing on this date.

5 1/27/00 Education Do Pass, Passed, AYES 13, NAYS 0. H.J. 264

6 1/27/00 Education Place on Consent Calendar.

7 1/31/00 House of Representatives Do Pass, Passed, AYES 62, NAYS 2.

8 2/1/00 First read in Senate and referred to Education. S.J. 275

9 2/10/00 Scheduled for Committee hearing on this date.

10 2/10/00 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 408

11 2/10/00 Education Place on Consent Calendar.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

349D0613

HOUSE JUDICIARY COMMITTEE
ENGROSSED NO. **HB1194** - 2/3/00

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

Introduced by: Representatives Wilson, Cutler, Duniphan, and Fischer-Clemens and Senators Daugaard and Flowers

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of a protection order in the case
2 of certain crimes of violence or assaults.

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

4 Section 1. Any person who has suffered physical injury as a result of an assault or a crime
5 of violence as defined in subdivision 22-1-2(9) may petition the court for a protection order. The
6 petition shall be accompanied by an affidavit made under oath stating the specific facts and
7 circumstances of the injury and the acts which caused the injury. The petition shall be governed
8 by the procedures and penalties described in §§ 22-19A-9 to 22-19A-16, inclusive.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 140

3 1/20/00 Referred to Judiciary.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/31/00 Scheduled for Committee hearing on this date.

6 2/2/00 Judiciary Hog Housed.

7 2/2/00 Scheduled for Committee hearing on this date.

8 2/2/00 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 362

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

951D0690

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1293** - 2/2/00

Introduced by: Representatives Derby, Duniphan, Fiegen, and Peterson and Senator Hainje

1 FOR AN ACT ENTITLED, An Act to revise the procedure to determine if real estate taxes have
2 been paid before the date due.

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

4 Section 1. That § 10-21-23 be amended to read as follows:

5 10-21-23. On the first day of May of the year after which taxes have been assessed, one-half
6 of all unpaid real estate taxes are delinquent. However, all real estate taxes totaling fifty dollars
7 or less shall be paid in full on or before April thirtieth. On the first day of each month thereafter
8 there shall be added as interest on the delinquent taxes at the Category B rate of interest as
9 established in § 54-3-16. If the other half is not paid on or before the thirty-first day of October
10 of the same year, that also becomes delinquent on November first and the same interest shall
11 attach in the same manner. If the last day of the month falls on a Saturday or Sunday, the tax is
12 due and payable on the last working day. The tax payment shall either be received in the office
13 on the last working day or the tax payment shall be postmarked by the last day of the month that
14 the taxes are due.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 201

3 1/25/00 Referred to Local Government.

4 2/1/00 Scheduled for Committee hearing on this date.

5 2/1/00 Local Government Do Pass Amended, Passed, AYES 10, NAYS 3. H.J. 337

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

184D0151

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB85** - 2/10/00

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

Introduced by: Senators Brown (Arnold), Albers, Brosz, Daugaard, Drake, Dunn (Rebecca), Duxbury, Flowers, Halverson, Ham, Kloucek, Lange, Lawler, Olson, Reedy, Shoener, and Symens and Representatives Fiegen, Brown (Jarvis), Brown (Richard), Crisp, Diedrich (Larry), Engbrecht, Fischer-Clemens, Fitzgerald, Klaudt, Kooistra, McCoy, Napoli, Pummel, Smidt, and Wetz

1 FOR AN ACT ENTITLED, An Act to revise certain powers of the South Dakota Building
2 Authority, to provide for the establishment of a corporation by the authority, to provide for
3 the transfer and sale of all future right, title, and interest of certain amounts payable to the
4 state by various tobacco companies under a master settlement agreement, and to declare an
5 emergency.

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

7 Section 1. Terms used in this Act mean:

- 8 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
9 organized and existing under chapter 5-12;
- 10 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
11 indebtedness, or other obligations issued, incurred, or otherwise created pursuant to
12 this Act and payable directly or indirectly out of or representing an interest in tobacco
13 settlement revenues or other rights under or with respect to the master settlement
14 agreement;

- 1 (3) "Corporation," the special purpose body corporate and politic established by the
2 authority by resolution as provided in section 3 of this Act;
- 3 (4) "Master settlement agreement," the master settlement agreement entered into on
4 November 23, 1998, by attorneys general from the several states, including the State
5 of South Dakota, and various tobacco companies, as amended on January 1, 2000;
- 6 (5) "Master settlement escrow agent," the escrow agent under the master settlement
7 agreement;
- 8 (6) "Net proceeds of bonds," the proceeds of bonds issued by the corporation under this
9 Act less any amounts applied or to be applied to pay transaction and administrative
10 expenses and to fund any reserves deemed necessary or appropriate by the
11 corporation;
- 12 (7) "Net proceeds of sale of tobacco settlement revenues," the funds and other
13 consideration received by the State of South Dakota from any sale, conveyance, or
14 other transfer pursuant to section 2 of this Act less any amounts applied or to be
15 applied to pay transaction and administrative expenses and to fund any reserves;
- 16 (8) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 and
17 noncollateralized direct obligations of any bank or savings institution, insurance
18 company, or bank or insurance holding company if such institution or holding
19 company is rated in the highest two quality categories by a nationally recognized
20 rating agency;
- 21 (9) "Tobacco settlement revenues," any amount now or hereafter payable to the State of
22 South Dakota under or in connection with the Master Settlement Agreement;
- 23 (10) "Tobacco settlement trust fund," the State of South Dakota tobacco settlement trust
24 fund created pursuant to section 21 of this Act;
- 25 (11) "Tobacco settlement interest fund," the fund created by section 22 of this Act.

1 Section 2. All or any portion of the right, title, and interest of the State of South Dakota in,
2 to and under the master settlement agreement, to receive or collect tobacco settlement revenues,
3 may be sold, conveyed, or otherwise transferred by the state to the authority or to a corporation
4 established by the authority pursuant to this Act so long as the net proceeds of sale of tobacco
5 settlement revenues are:

- 6 (1) Deposited to the tobacco settlement trust fund;
- 7 (2) Deposited with or for the benefit of the authority for the purpose of paying all or any
8 part of the cost of one or a combination of projects permitted under chapter 5-12; or
- 9 (3) Paid to or for the benefit of the tobacco settlement trust and its assets.

10 No project may be undertaken by the authority with funds deposited pursuant to subdivision
11 (2) of this section unless the project has been approved by the Legislature. If any proceeds of the
12 sale are deposited with or for the benefit of the South Dakota Building Authority, then the South
13 Dakota Building Authority shall submit a written report to the Legislature advising the
14 Legislature of the deposit. Any sale, conveyance, or other transfer of tobacco settlement
15 revenues shall be evidenced by an instrument or agreement in writing signed on behalf of the
16 state by the Governor. The Governor shall file a certified copy of any instrument or agreement,
17 together with a report indicating the application of the net proceeds of the sale of tobacco
18 settlement proceeds with the Legislature. Each instrument or agreement may include an
19 irrevocable direction to the master settlement escrow agent to pay all or a specified portion of
20 amounts due to the State of South Dakota under or in connection with the master settlement
21 agreement, including, without limitation, the tobacco settlement revenues, as have been sold,
22 conveyed, or otherwise transferred directly to or upon the order of the authority or corporation
23 or any trustee under an indenture or other agreement securing any bonds of the corporation or
24 the authority issued, incurred, or created for the purpose of raising funds to pay the purchase
25 price to the state. Upon the filing, the sale, conveyance, or other transfer is a true sale and

1 absolute conveyance of all right, title, and interest therein described in accordance with the terms
2 thereof, valid, binding, and enforceable in accordance with the terms thereof and the instrument
3 or agreements and any related instrument, agreement, or other arrangement, including any
4 pledge, grant of security interest, or other encumbrance made by the corporation or the authority
5 to secure any bonds issued, incurred, or created by the corporation or the authority, are not
6 subject to disavowal, disaffirmance, cancellation, or avoidance by reason of insolvency of any
7 party, lack of consideration or any other fact, occurrence, or rule of law.

8 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The authority shall establish by resolution a special purpose corporation which shall be body
11 corporate and politic and instrumentality of, but separate and apart from, the State of South
12 Dakota and the authority. The corporation shall be established for the express limited public
13 purposes set forth in this Act and no part of the net earnings of the corporation may inure to any
14 private individual.

15 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The corporation shall be governed by a board of directors consisting of the members of the
18 authority and two additional directors appointed by the Governor, which directors shall be
19 independent from the state. The resolution establishing the corporation shall serve as the charter
20 of the corporation and may be amended from time to time by the authority, but the resolution
21 shall provide that the power and the authority of the corporation is subject to the terms,
22 conditions, and limitations of this Act and any applicable covenants or agreements of the
23 corporation in any indenture or other agreement relating to any then outstanding bonds. The
24 corporation may enter into contracts regarding any matter connected with any corporate purpose
25 within the objects and purposes of this Act.

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

3 The authority and corporation may delegate by resolution to one or more officers or
4 employees of the authority or corporation any powers and duties as it may deem proper.

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

7 The corporation may pledge as security for any bonds the rights under the master settlement
8 agreement held by the corporation, including the rights to receive or collect tobacco settlement
9 revenues, the proceeds thereof, or moneys or other funds deposited with or held by the
10 corporation. Any pledge made by the corporation is valid and binding from the time the pledge
11 is made. The property, revenues, moneys, and other funds so pledged and thereafter held or
12 received by the corporation shall immediately be subject to the lien of such pledge without any
13 physical delivery thereof or further act and subject only to the provisions of prior agreements.
14 The lien of such pledge shall be valid and binding as against all parties having claims of any kind
15 in tort, contract, or otherwise against the corporation irrespective of whether the parties have
16 notice thereof. No ordinance, resolution, trust agreement, or other instrument by which the
17 pledge is created need be filed or recorded except in the records of the corporation.

18 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 In connection with the issuance of bonds, the corporation may enter into arrangements to
21 provide additional security and liquidity for the bonds. The arrangements may include, without
22 limitation, bond insurance, letters of credit, and lines of credit by which the corporation may
23 borrow funds to pay or redeem its bonds and purchase or remarketing arrangements for assuring
24 the ability of owners of the bonds to sell or have redeemed their bonds. The corporation may
25 enter into contracts and may agree to pay fees to persons providing the arrangements, including

1 from bond proceeds.

2 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The resolution authorizing the issuance of its bonds or the indenture or other agreement
5 approved by the resolution may provide that interest rates may vary from time to time depending
6 upon criteria established by the corporation, which may include, without limitation, a variation
7 in interest rates as may be necessary to cause the bonds to be remarketable from time to time at
8 a price equal to their principal amount, and may provide for appointment of a national banking
9 association, bank, trust company, investment banker, or other financial institution to serve as a
10 remarketing agent in that connection. The indenture or other agreement with respect to the
11 bonds may provide that alternative interest rates or provisions do apply during such times as the
12 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
13 for the bonds.

14 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 In connection with the bonds under this Act, the corporation may enter into contracts that
17 it determines necessary or appropriate to permit it to manage payment or interest rate risk. These
18 contracts may include interest rate exchange agreements, contracts providing for payment or
19 receipt of funds based on levels of or changes in interest rates, contracts to exchange cash flows
20 or series of payments, and contracts incorporating interest rate caps, collars, floors, or locks.

21 Section 10. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
24 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
25 moratorium law or statute. Nor may any public officer, organization, entity or other person

1 authorize the corporation to be or become a debtor or bankrupt under the federal bankruptcy
2 code or any other federal or state bankruptcy, insolvency, or moratorium law or statute.

3 Section 11. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The corporation may not guarantee the debts of another. No indebtedness, bonds or
6 obligation, issued, incurred, or created by the State of South Dakota or any state agency or
7 instrumentality may be or become a lien, charge, or liability against the corporation or the
8 property or funds of the corporation except for debts incurred directly by the corporation.

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

11 The purposes of the corporation established by the authority pursuant to this Act are to:

- 12 (1) Purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
13 interest of the state in, to, and under the master settlement agreement, including all
14 right, title, and interest to receive or collect tobacco settlement revenues;
- 15 (2) Raise funds through the issuance of bonds or other obligations or evidences of
16 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
17 securitization, factoring, or other conveyance of the rights described above in
18 subdivision (1) of this section for the purposes described in this Act;
- 19 (3) Serve the Legislature by making reports concerning the foregoing;
- 20 (4) Sue and be sued and to prosecute and defend, at law or in equity, in any court having
21 jurisdiction of the subject matter and of the parties;
- 22 (5) Have and to use a corporate seal and to alter the same at pleasure;
- 23 (6) Maintain an office at any place the authority by resolution may designate; and
- 24 (7) Do all things necessary and convenient to carry out the purposes of this Act.

25 Section 13. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The corporation is vested with the same power and authority and is subject to the same
3 limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1, 5-12-4, 5-
4 12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3, 5-12-
5 27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and authority
6 shall be exercised with respect to and shall be limited to the purposes of the corporation set forth
7 in section 12 of this Act. The corporation may not engage in any unrelated activities.

8 Section 14. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 No bond of the corporation issued, incurred, or created under this Act may be or become a
11 lien, charge, or liability against the State of South Dakota or the authority, nor against the
12 property or funds of the State of South Dakota or the authority within the meaning of the
13 Constitution or statutes of South Dakota.

14 Section 15. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The State of South Dakota pledges to and agrees with the holders of the bonds, notes,
17 certificates, or other obligations issued, incurred, or created by the corporation under this Act
18 that the state will not limit or alter the rights and powers vested in the corporation by this Act
19 so as to impair the terms of any contract made by the corporation with those holders or in any
20 way impair the rights and remedies of those holders until the bonds, notes, certificates, or other
21 obligations, together with interest thereon, interest on any unpaid installments of interest, and
22 all costs and expenses in connection with any action or proceedings by or on behalf of those
23 holders are fully met and discharged. In addition, the state pledges to and agrees with the holders
24 of the bonds, notes, certificates, or other obligations issued, incurred, or created by the
25 corporation under this Act that the state will not limit or alter the basis on which tobacco

1 settlement revenues are to be paid to the corporation or the authority so as to impair the terms
2 of any such contract. The corporation is authorized to include these pledges and agreements of
3 the state in any contract with the holders of bonds, notes, certificates, or other obligations issued,
4 incurred, or created by the corporation under this Act.

5 Section 16. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Neither the State of South Dakota nor the authority is liable on bonds, notes, certificates, or
8 other obligations issued, incurred, or created by the corporation under this Act. Such bonds,
9 notes, certificates, or other obligations are not a debt of the state or the authority, and this Act
10 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
11 The bonds, notes, certificates, or other securities shall contain a statement to this effect on the
12 face of the bonds, notes, certificates, or other obligations.

13 Section 17. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond, note, certificate, or other obligation issued, incurred,
16 or created by the corporation under this Act or for any act or failure to act of the corporation
17 and the corporation is not liable for any obligation of the authority or for any act or failure to act
18 by the authority.

19 Section 18. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. Accordingly, the income of the authority, and all
23 properties at any time owned by the authority, are exempt from all taxation in the State of South
24 Dakota.

25 Section 19. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 For purposes of chapter 47-31A, any bonds, notes, certificates, or other obligations issued,
3 incurred, or created by the corporation under this Act are deemed to be securities issued by a
4 public instrumentality of the State of South Dakota.

5 Section 20. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The corporation may employ attorneys, accountants, tobacco industry consultants and
8 financial experts, managers, and such other employees and agents as may be necessary and fix
9 their compensation.

10 Section 21. The tobacco settlement trust fund is hereby established in the state treasury. The
11 net proceeds of sale of tobacco revenues less any amounts deposited with or for the benefit of
12 the authority pursuant to the provisions of section 2 of this Act, shall be deposited in the
13 tobacco settlement trust fund. In addition, any residual interest in or to tobacco settlement
14 revenues or other rights under the master settlement agreement, to the extent not required to
15 make payments with respect to any bonds of the corporation, are payable to or for the benefit
16 of the tobacco settlement trust fund. The principal of the tobacco settlement trust fund may not
17 be expended except for costs and expenses incurred in investing or otherwise administering the
18 tobacco settlement trust and its assets. The amounts in the tobacco settlement trust fund shall
19 be invested pursuant to §§ 4-5-23 and 4-5-26. An amount equal to the interest or other
20 investment income earned on money in the trust fund each fiscal year shall be transferred to the
21 tobacco settlement interest fund created in section 22 of this Act.

22 Section 22. The tobacco settlement interest fund is established in the state treasury. The
23 money in the tobacco settlement interest fund shall remain in the fund until appropriated by the
24 Legislature. The amounts in the tobacco settlement interest fund shall be invested pursuant to
25 §§ 4-5-23 and 4-5-26.

1 Section 23. Whereas, this Act is necessary for the support of the state government and its
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
3 force and effect from and after its passage and approval.

1 **BILL HISTORY**

2 1/18/00 First read in Senate and referred to Education. S.J. 71

3 1/25/00 Scheduled for Committee hearing on this date.

4 1/25/00 Education Do Pass, Passed, AYES 7, NAYS 0. S.J. 181

5 1/26/00 Referred to State Affairs, AYES 22, NAYS 12. S.J. 208

6 2/6/00 Scheduled for Committee hearing on this date.

7 2/7/00 Scheduled for Committee hearing on this date.

8 2/7/00 Deferred by Chair.

9 2/9/00 State Affairs Hog Housed.

10 2/9/00 Scheduled for Committee hearing on this date.

11 2/9/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 372