

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

169E0486

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 154** - 02/05/2001

Introduced by: Senators Bogue, Daugaard, de Hueck, Koetzle, Moore, and Whiting and  
Representatives Madsen, Brown (Jarvis), Gillespie, McCaulley, and  
Michels

1 FOR AN ACT ENTITLED, An Act to define the practice of law and to increase the penalty for  
2 practicing without a license.

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

4 Section 1. That § 16-16-1 be amended to read as follows:

5 16-16-1. No person, ~~excepting~~ except as provided in § 16-18-2, ~~shall be permitted to~~ may  
6 practice as an attorney and counselor at law in any court of record within this state, either by  
7 using or subscribing his or her own name or the name of any other person ~~or persons~~, without  
8 having previously obtained a license for that purpose from the Supreme Court of this state and  
9 having become an active member in good standing of the State Bar of South Dakota. A violation  
10 of this section is a ~~Class 2~~ Class 1 misdemeanor.

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

13 The term, practice of law, means the performance for another person or entity, of any of the  
14 following services:

- 1 (1) Representation before a judicial, legislative, or executive, administrative, or other  
2 governmental official or body, or before a government-owned body, or before an  
3 arbitrator or similar body;
- 4 (2) Preparation or review of documents involving liberty, property, or other rights or  
5 interests; or
- 6 (3) Any other service including, but not limited to, advice or negotiation, which in view  
7 of the facts and circumstances requires the knowledge, skill, and judgment of a person  
8 trained in law.

9 Section 3. That chapter 16-16 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Whether or not they constitute the practice of law, the following services are permitted:

- 12 (1) Practicing law in accordance with §§ 16-16-7.1, 16-16-7.6, 16-16-17.1, 16-18-2, 16-  
13 18-2.1 to 16-18-2.10, inclusive, and 16-18-34 to 16-18-34.6, inclusive;
- 14 (2) Acting as a lay representative before administrative agencies or tribunals, if statutorily  
15 authorized;
- 16 (3) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator;
- 17 (4) Participating in labor negotiations, arbitrations, or conciliations arising under  
18 collective bargaining rights or agreements;
- 19 (5) Providing assistance to another to complete a form provided by a court for protection  
20 under chapters 22-19A and 25-10 unless a fee is charged to do so;
- 21 (6) Acting as a registered legislative lobbyist under chapter 2-12;
- 22 (7) Preparing a federal, state, or local tax return or an appearance before a federal, state,  
23 or local taxing authority in connection with an audit or administrative appeal of an  
24 audit or return by a person with respect to their own tax returns, or tax returns of

1 entities of which they are a substantial (ten percent or more) owner. The preparation  
2 of federal, state, or local tax returns for third parties or the appearance before agents  
3 of taxing authorities in connection with audits on behalf of third parties or  
4 appearances before nonevidentiary administrative appeal bodies are also permitted;

5 (8) Performing other activities that the South Dakota Supreme Court has determined do  
6 not constitute the unauthorized practice of law;

7 (9) Preparing documents authorized by subdivision 36-21A-71(24) or completing forms  
8 or providing assistance to another to complete forms associated with real estate  
9 transactions approved by the South Dakota Real Estate Commission pursuant to  
10 chapter 36-21A, including agency agreements, management agreements, and purchase  
11 agreements, if done by a licensee in good standing under chapter 36-21A.