

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

490E0481

SENATE ENGROSSED NO. **HB 1083** - 02/14/2001

Introduced by: Representatives Konold, Broderick, Brown (Jarvis), Madsen, Olson (Mel),
Pederson (Gordon), and Sebert and Senators Munson, Daugaard,
McCracken, Moore, Sutton (Dan), and Volesky

1 FOR AN ACT ENTITLED, An Act to authorize employers to pay wages by direct deposit.

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

3 Section 1. That § 60-11-9 be amended to read as follows:

4 60-11-9. Every employer shall pay all ~~cash~~ wages due to ~~his~~ employees at least once each
5 calendar month unless otherwise provided by law, or on regular agreed pay days designated in
6 advance by the employer, in lawful money of the United States ~~or with checks on banks~~
7 ~~convenient to the place of employment.~~ An employer may pay wages by check, cash, or direct
8 deposit to the employee's bank account, unless an employer and employee agree to another form
9 of payment.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

607E0174

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1092 - 02/12/2001

Introduced by: Representatives Brown (Jarvis), Abdallah, Broderick, Duniphan, Garnos,
and Konold and Senators Albers, Brosz, and Moore

1 FOR AN ACT ENTITLED, An Act to include in certain drug offenses the altered state of a
2 controlled drug or substance or marijuana once absorbed into the body.

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

4 Section 1. That § 22-42-1 be amended to read as follows:

5 22-42-1. Terms used in this chapter, ~~unless the context plainly requires otherwise,~~ mean:

6 (1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a
7 drug or substance, listed in Schedules I through IV. The term includes an altered state
8 of a drug or substance listed in Schedules I through IV absorbed into the human body;

9 (2) "Counterfeit substance," a controlled drug or substance which, or the container of
10 labeling of which, without authorization, bears the trade-mark, trade name, or other
11 identifying mark, imprint, number, or device, or any likeness thereof, of a
12 manufacturer, distributor, or dispenser other than the person or persons who
13 manufactured, distributed, or dispensed such substance and which thereby falsely
14 purports or is represented to be the product of, or to have been distributed by, such

- 1 other manufacturer, distributor, or dispenser;
- 2 (3) "Deliver" or "delivery," the actual or constructive transfer of a controlled drug,
3 substance, or marijuana whether or not there exists an agency relationship;
- 4 (4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
5 research subject by or pursuant to the lawful order of a practitioner, including the
6 prescribing, administering, packaging, labeling, or compounding necessary to prepare
7 the substance for such delivery, and a "dispenser" is one who dispenses;
- 8 (5) "Distribute," to deliver a controlled drug, substance, or marijuana. "Distribution"
9 means the delivery of a controlled drug, substance, or marijuana;
- 10 (6) "Manufacture," the production, preparation, propagation, compounding, or
11 processing of a controlled drug or substance, either directly or indirectly by extraction
12 from substances of natural origin, or independently by means of chemical synthesis or
13 by a combination of extraction and chemical synthesis. A "manufacturer" includes any
14 person who packages, repackages, or labels any container of any controlled drug or
15 substance, except practitioners who dispense or compound prescription orders for
16 delivery to the ultimate user;
- 17 (7) "Marijuana," all parts of any plant of the genus *cannabis*, whether growing or not, in
18 its natural and unaltered state, except for drying or curing and crushing or crumbling.
19 The term includes an altered state of marijuana absorbed into the human body. The
20 term does not include fiber produced from the mature stalks of such plant, or oil or
21 cake made from the seeds of such plant;
- 22 (8) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or
23 veterinary medicine licensed to practice his profession, or pharmacists licensed to
24 practice their profession; physician's assistants certified to practice their profession;

1 government employees acting within the scope of their employment; and persons
2 permitted by certificates issued by the Department of Health to distribute, dispense,
3 conduct research with respect to, or administer a substance controlled by chapter
4 34-20B;

5 (9) "Precursor" or "immediate precursor," a substance which the Department of Health
6 has found to be and by rule designates as being a principal compound commonly used
7 or produced primarily for use, and which is an immediate chemical intermediary used
8 or likely to be used, in the manufacture of a controlled drug or substance, the control
9 of which is necessary to prevent, curtail, or limit such manufacture;

10 (10) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of
11 drugs, substances, and immediate precursors listed in chapter 34-20B;

12 (11) "Ultimate user," a person who lawfully possesses a controlled drug or substance for
13 ~~his~~ that person's own use or for the use of a member of ~~his~~ that person's household or
14 for administration to an animal owned by ~~him~~ that person or by a member of ~~his~~ that
15 person's household.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

457E0461

SENATE ENGROSSED NO. **HB 1110** - 02/14/2001

Introduced by: Representatives Hennies (Thomas), Bartling, Burg, Clark, Frost, Garnos, Hunhoff, Jensen, McCaulley, Rhoden, and Slaughter and Senators Albers, Diedrich (Elmer), McCracken, Putnam, and Vitter

1 FOR AN ACT ENTITLED, An Act to criminalize the delivery of certain contraband to juvenile
2 detention facilities and to revise the definition of contraband with regard to certain
3 correctional facilities.

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

5 Section 1. That § 24-11-48 be amended to read as follows:

6 24-11-48. No employee or other person may deliver or procure to be delivered, or have in
7 such person's possession with intent to deliver, to any ~~inmate in a jail~~ person incarcerated in a jail
8 or a juvenile detention facility, or deposit or conceal in or around any jail or in or around a
9 juvenile detention facility, or in any mode of transport entering the grounds of any jail or juvenile
10 detention facility and its ancillary facilities used to house inmates or juveniles, any article or thing
11 contrary to § 24-11-47 with intent that any inmate obtain or receive the same. A violation of this
12 section is a Class 6 felony.

13 Section 2. That § 24-2-14 be amended to read as follows:

14 24-2-14. No alcoholic beverages, prescription ~~or nonprescription~~ drugs, controlled

1 substances as defined by chapter 34-20B, ~~hallucinogen~~, marijuana, weapons as defined in
2 subdivision 22-1-2(10), or any article of indulgence may be possessed by any inmate of the state
3 penitentiary except by order of a physician, physician assistant, or nurse practitioner, as defined
4 in chapters 36-4, 36-4A, and 36-9A, respectively, which order shall be in writing and for a
5 definite period. A violation of this section constitutes a felony pursuant to the following
6 schedule:

- 7 (1) Possession of alcoholic beverages or marijuana is a Class 6 felony;
- 8 (2) Possession of prescription ~~or nonprescription~~ drugs; or controlled substances ~~or~~
9 ~~hallucinogens~~ is a Class 4 felony;
- 10 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

11 Section 3. That § 24-11-47 be amended to read as follows:

12 24-11-47. No alcoholic beverages, controlled substances as defined by chapter 34-20B,
13 ~~hallucinogens~~, marijuana, or weapons as defined in subdivision 22-1-2(10), may be possessed by
14 any inmate of a jail. No prescription ~~or nonprescription~~ drugs may be possessed by any inmate
15 of a jail except by order of a physician, physician assistant, or nurse practitioner, as defined in
16 chapters 36-4, 36-4A, and 36-9A, respectively. Such order shall be in writing and for a definite
17 period. A violation of this section constitutes a felony pursuant to the following schedule:

- 18 (1) Possession of alcoholic beverages or marijuana is a Class 6 felony;
- 19 (2) Possession of prescription ~~or nonprescription~~ drugs; or controlled substances ~~or~~
20 ~~hallucinogens~~ is a Class 4 felony;
- 21 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

704E0214

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1142 - 02/14/2001

Introduced by: Representatives Kooistra, Elliott, Garnos, Glenski, Holbeck, Lange, and Olson (Mel) and Senator McIntyre

1 FOR AN ACT ENTITLED, An Act to appropriate money for leveraging educational assistance
2 partnership grants.

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

4 Section 1. The Legislature finds that financial aid to qualified resident students in education
5 beyond high school in South Dakota is in the public interest.

6 Section 2. Terms used in this Act mean:

7 (1) "Eligible institution," any institution of education beyond the high school level,
8 located in South Dakota, which includes all public and private nonprofit and
9 proprietary institutions, including four-year colleges and universities, community and
10 junior colleges, area technical or vocational schools, trade schools, technical institutes,
11 schools of nursing or of the health professions, or any institution which is determined
12 by the secretary to be regularly accredited to offer postsecondary educational services
13 by a recognized and appropriate accrediting agency, as determined by the secretary,
14 and which has an agreement with the United States secretary of education for the

1 conduct of any of the programs established under Title IV of The Higher Education
2 Act of 1965, as amended through January 1, 2001;

3 (2) "Financial need," the amount of assistance, as determined by a federal Department of
4 Education approved needs analysis system, required for a student to attend an eligible
5 institution;

6 (3) "Qualified student," any resident student who is enrolled in an eligible institution in
7 a course of study on at least a half-time basis, as certified by the institution, and who
8 has established financial need and who is maintaining satisfactory progress toward
9 graduation. Correspondence courses do not constitute a course of study;

10 (4) "Resident student," any person who has been determined by the secretary to be a
11 resident of South Dakota and who is enrolled at an eligible institution;

12 (5) "Secretary," the secretary of the Department of Education and Cultural Affairs;

13 (6) "Leveraging educational assistance partnership program (LEAPP) grant," any award
14 by the State of South Dakota to a qualified student under this Act.

15 Section 3. There is hereby appropriated from the people's interest fund the sum of eighty-five
16 thousand dollars (\$85,000), or so much thereof as may be necessary, to the Department of
17 Education and Cultural Affairs to provide grants pursuant to this Act.

18 Section 4. The secretary of the Department of Education and Cultural Affairs shall approve
19 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

20 Section 5. Any amounts appropriated in this Act not lawfully expended or obligated by
21 June 30, 2002, shall revert in accordance with § 4-8-21.

22 Section 6. The secretary may award a LEAPP grant to any qualified resident who is admitted
23 to and is attending any eligible institution on at least a half-time basis, has established financial
24 need, and has received qualifying matching aid.

1 Section 7. A participating eligible institution shall calculate the amount of a LEAPP grant to
2 a qualified student for the normal academic year, or its equivalent, from a range of five hundred
3 dollars to one thousand dollars, inclusive, and shall make a recommendation to the secretary for
4 approval, disapproval, or modification of a grant. The institution making the recommendation
5 for each LEAPP grant shall consider any other financial assistance available to the qualified
6 student in relation to the financial assistance available to other qualified students attending that
7 institution and may not exceed the lesser of the unmet need of the qualified student or the
8 amount of qualifying matching aid.

9 Section 8. Each applicant, in accordance with the rules promulgated by the secretary, shall:

- 10 (1) Complete and file an application for a LEAPP grant;
- 11 (2) Provide the information required to make a financial need determination; and
- 12 (3) Report promptly to the secretary any information requested which is necessary to
13 make a proper determination with respect to the student's application.

14 Section 9. The secretary shall promulgate rules, pursuant to chapter 1-26, to administer the
15 LEAPP grants. The rules shall include:

- 16 (1) Specification of application forms and financial need statements;
- 17 (2) Definitions of tuition, fees, and residency;
- 18 (3) Criteria for approval or disapproval of LEAPP grants;
- 19 (4) Procedures for proration of funds if grant applications exceed available funds; and
- 20 (5) Specific records to be kept according to accounting practices.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

168E0534

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1153 - 02/15/2001

Introduced by: Representatives Adelstein, Brown (Richard), Sutton (Duane), and Van Etten and Senators Daugaard, Brown (Arnold), and Whiting

1 FOR AN ACT ENTITLED, An Act to increase the tax on cigarettes and to dedicate the
2 increased revenue to a trust fund.

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

4 Section 1. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to the tax imposed by § 10-50-3, whether or not a sale occurs, there is imposed
7 an additional tax at the following rates on all cigarettes held in this state for sale by any person:

8 Class A, on cigarettes weighing not more than three pounds per thousand, five one-half mills
9 on each cigarette.

10 Class B, on cigarettes weighing more than three pounds per thousand, five and three-
11 twentieths mills on each cigarette.

12 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If the total revenue received from the tax imposed by § 10-50-3 and section 1 of this Act

1 exceeds the total revenue received in fiscal year 2001 from the tax imposed by § 10-50-3, such
2 excess from the tax imposed by section 1 of this Act shall be deposited in the tobacco prevention
3 and reduction trust fund created pursuant to § 34-46-12.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

763E0583

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1155** - 02/13/2001

Introduced by: Representatives Adelstein and Van Etten and Senators Daugaard, Brown
(Arnold), and McCracken

1 FOR AN ACT ENTITLED, An Act to restrict smoking in public buildings and certain places of
2 business.

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

4 Section 1. That § 22-36-2 be amended to read as follows:

5 22-36-2. No person may smoke tobacco or carry any lighted tobacco product in the
6 following places:

- 7 (1) Any hospital or medical or dental clinic;
- 8 (2) Any nursing facility;
- 9 (3) Any public library, museum, indoor theater, or concert hall;
- 10 (4) Any elementary or secondary school building;
- 11 (5) Any public conveyance;
- 12 (6) Any jury room;
- 13 (7) Any elevator;
- 14 (8) Any registered or unregistered day care program, day care center, day care

1 cooperative, or family day care home governed by chapter 26-6 during the time in
2 which children who are not family members of the day care provider are receiving
3 care;

4 (9) Any enclosed indoor area used by the general public or serving as a place of work.

5 This section does not prohibit the smoking of tobacco or tobacco products in the places
6 named in this section, if the smoking is confined to ~~areas~~ an enclosed room designated as a
7 smoking ~~areas~~ area.

8 A violation of this section is a petty offense.

9 Section 2. This Act does not apply to the following:

10 (1) Any place owned and operated by a social, fraternal, or religious organization when
11 used by the membership of the organization, its guests or families;

12 (2) Any place that is rented or leased for private functions from which the public is
13 excluded and for which arrangements are under the control of the sponsor of the
14 function; or

15 (3) Any place that is a business and that derives more than fifty percent of its annual gross
16 revenues from gaming or the sale of alcohol or a combination thereof.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

816E0618

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1163 - 02/15/2001

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

Introduced by: Representatives Kloucek, Bartling, Begalka, Bradford, Burg, Elliott, Flowers, Frost, Hanson (Gary), Hargens, Hundstad, Jensen, Kooistra, Lange, McCoy, Nachtigal, Nesselhuf, Peterson (Jim), Rhoden, Sigdestad, Valandra, and Van Norman and Senators Staggers, Apa, Dennert, Koetzle, McIntyre, Reedy, and Volesky

1 FOR AN ACT ENTITLED, An Act to exempt certain membership fees from sales and use tax.

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

3 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 There are hereby exempted from the provisions of this chapter and the computation of the
6 tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel
7 membership organization operated for the benefit of its members. However, this exemption does
8 not apply to any membership fee that represents payment for tangible personal property and
9 services provided by the membership organization.

10 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 There are hereby exempted from the provisions of this chapter and the computation of the

1 tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel
2 membership organization operated for the benefit of its members. However, this exemption does
3 not apply to any membership fee that represents payment for tangible personal property and
4 services provided by the membership organization.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

291E0548

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1195** -

02/15/2001

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

Introduced by: Representatives Lintz, Burg, Duenwald, Juhnke, Nachtigal, and Rhoden
and Senators Diedrich (Larry), Dennert, Drake, Duxbury, and Putnam

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the practice of
2 veterinary medicine.

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

4 Section 1. That § 36-12-2 be amended to read as follows:

5 36-12-2. The following persons shall not be considered to be engaging in the practice of
6 veterinary medicine in this state:

7 (1) Those who administer to livestock, title of which rests in himself, or in his regular
8 employer, or free service in any case;

9 (2) Those who conduct experimentation in scientific research in the development of
10 methods, technics, or treatment, directly or indirectly applicable to the problems of
11 medicine and who in connection therewith uses animals;

12 (3) Services to poultry in its entirety;

13 (4) Regular students in a legally chartered and recognized college of veterinary medicine,

1 while in the performance of studies and acts assigned by their instructors;

2 (5) Those who are licensed in another state of the United States when engaged in this
3 state in consultation with veterinarians legally practicing herein, providing such
4 consultation does not exceed thirty days in any one year;

5 (6) Those who are senior students in an approved school of veterinary medicine and who
6 shall obtain from the Board of Veterinary Medical Examiners an undergraduate permit
7 to practice in the office and under the direct supervision of any veterinarian practicing
8 within this state;

9 (7) Those who are employees of the State of South Dakota or the United States of
10 America while in the performance of their duties as such employee;

11 (8) Those selling drugs, medicines, household remedies, or appliances at wholesale or
12 retail and advising as to the use and purpose of such drugs, medicines, household
13 remedies, or appliances;

14 (9) Veterinary livestock assistants registered by the State Board of Veterinary Medical
15 Examiners who work under the supervision of a veterinarian licensed in the State of
16 South Dakota to perform spaying of cattle and administration of biologics and
17 pharmaceuticals under the order of their supervising veterinarians. The State Board
18 of Veterinary Medical Examiners shall promulgate rules pursuant to chapter 1-26 for
19 the registration of veterinary livestock assistants.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0726

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1208** - 02/15/2001

Introduced by: Representatives Michels, Duniphan, and Sebert and Senators Munson,
Brosz, Brown (Arnold), and Everist

1 FOR AN ACT ENTITLED, An Act to extend the date for filing claims with the subsequent
2 injury fund.

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

4 Section 1. That § 62-4-34.7 be amended to read as follows:

5 62-4-34.7. Administration of the subsequent injury fund by the Division of Insurance and
6 reimbursement of complete and valid claims shall continue until approved, denied, or settled. ~~Any~~
7 No claim for reimbursement from the subsequent injury fund shall may be filed by June 30, 1999.
8 ~~Only those claims timely filed with the division by June 30, 1999, pursuant to the requirements~~
9 ~~of § 62-4-34.1 in effect prior to July 1, 1999, and completed by October 1, 1999, pursuant to~~
10 ~~the requirements set forth in § 62-4-34.4 in effect prior to July 1, 1999, shall be eligible for~~
11 ~~reimbursement from the subsequent injury fund. Any claim timely filed by June 30, 1999, and~~
12 ~~completed by October 1, 1999, based on a subsequent injury that occurs on or after July 1, 2001.~~
13 Any claim for reimbursement filed as set forth in this section; shall be approved or denied by the
14 division pursuant to the requirements of §§ 62-4-34 to 62-4-36.3, inclusive, in effect prior to

1 July 1, 1999. The division shall continue to make any necessary assessments pursuant to the
2 requirements set forth in § 62-4-35 in effect prior to July 1, 1999, until all eligible claims
3 completed as set forth in this section that are approved by the division or determined by the court
4 to be eligible for reimbursement are paid, and until all matters in litigation concerning the
5 subsequent injury fund are resolved. Any claim in matters being litigated concerning the
6 subsequent injury fund is not eligible for interest or costs. Any remaining balance in the fund after
7 all obligations of the fund have been satisfied shall be deposited in the general fund. Priority of
8 payment shall be determined as of the date and time they are determined by the division to be
9 complete and valid. No claim against the subsequent injury fund is vested until it is complete as
10 set forth in this section. Any completed claim regardless of the date of injury or the date of notice
11 of claim is subject to the two-thirds method of reimbursement pursuant to § 62-4-34 in effect
12 prior to July 1, 1999.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0605 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1232 - 02/15/2001

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation for the implementation and
2 development of the electronic-government project and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of one hundred
5 seventy-five thousand dollars (\$175,000), or so much thereof as may be necessary, to the Bureau
6 of Information and Telecommunications to provide for the implementation and development of
7 the electronic-government project.

8 Section 2. The commissioner of the Bureau of Information and Telecommunications shall
9 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by
10 this Act.

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

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

472E0638

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1253 - 02/15/2001

Introduced by: Representatives Begalka, Fryslie, Jaspers, Konold, Lange, and Pummel and
Senators Koskan, Brosz, Brown (Arnold), Greenfield, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding dealer franchises and
2 to include outdoor power equipment.

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

4 Section 1. That § 37-5-5 be amended to read as follows:

5 37-5-5. If any person, firm, or corporation, or their successors, engaged in the business of
6 selling and retailing farm implements or machinery and repair parts for farm implements or
7 machinery, or in the business of selling and retailing industrial and construction equipment and
8 repair parts for industrial and construction equipment, or in the business of selling and retailing
9 outdoor power equipment and repair parts for outdoor power equipment, or in the business of
10 selling and retailing office furniture, equipment, and supplies and repair parts for office furniture,
11 equipment, and supplies, or in the business of selling and retailing automobiles, trucks,
12 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles or repair parts for
13 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles
14 enters into a written or oral contract evidenced by franchised agreement, sales agreement, dealer

1 agreement, or security agreement, or other form of agreement or arrangement of like effect, the
2 term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the foregoing and their
3 successors. If such person, firm, or corporation, or their successors maintains a stock of parts
4 or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor
5 of farm implements or machinery or repair parts therefor, or industrial and construction
6 equipment or repair parts therefor, or outdoor power equipment or repair parts therefor, or
7 office furniture, equipment, and supplies or repair parts therefor, or automobiles, trucks,
8 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts
9 therefor, and either the wholesaler, manufacturer, or distributor, or their successors, or the
10 retailer, or successor, desires to cancel or discontinue the contract, such wholesaler,
11 manufacturer, or distributor, or successor, shall pay to the retailer, or successor, unless the
12 retailer, or successor, should desire to keep the merchandise, a sum equal to one hundred percent
13 of the net cost of all current unused complete farm implements, machinery and attachments,
14 industrial and construction equipment and attachments, outdoor power equipment and
15 attachments, office furniture, equipment, and supplies, and attachments, and automobiles, trucks,
16 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including
17 transportation and reasonable assembly charges which have been paid by the retailer and ~~eighty-~~
18 ~~five~~ ninety-five percent of the current net prices on repair parts, including superseded parts, listed
19 in a current price list or catalog which parts had previously been purchased from the wholesaler,
20 manufacturer, or distributor, or predecessor, and held by the retailer on the date of the
21 cancellation or discontinuance of the contract. The wholesaler, manufacturer, or distributor, or
22 successor, shall also pay the retailer a sum equal to five percent of the current net price of all
23 parts returned for the handling, packing, and loading of the parts back to the wholesaler,
24 manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the

1 net cost of the farm implements, machinery and attachments, industrial and construction
2 equipment and attachments, outdoor power equipment and attachments, office furniture,
3 equipment, and supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal
4 watercraft, all-terrain vehicles, and snowmobiles, plus transportation and reasonable assembly
5 charges and ~~eighty-five~~ ninety-five percent of the current net prices on repair parts, plus five
6 percent handling and loading costs on repair parts only, plus freight charges which have been
7 paid by the retailer, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain
8 vehicles, or snowmobiles, plus freight charges, or repair parts therefor, plus five percent handling
9 and loading costs on repair parts only, the title to the farm implements, farm machinery, industrial
10 and construction equipment, outdoor power equipment, office furniture, equipment, and
11 supplies, and repair parts, or automobiles, trucks, motorcycles, boats, personal watercraft,
12 all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the manufacturer, wholesaler,
13 or distributor making the payment, and the manufacturer, wholesaler, or distributor, is entitled
14 to the possession of the farm implements, industrial and construction equipment, outdoor power
15 equipment, office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,
16 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor.

17 Section 2. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A wholesaler, manufacturer, or distributor shall also repurchase from the retailer and the
20 retailer shall sell any specialized computer hardware or software, specialized tool, or signage
21 which the wholesaler, manufacturer, or distributor required the retailer to purchase or lease as
22 part of the retail agreement. Upon delivery to the wholesaler, manufacturer, or distributor of any
23 such specialized computer hardware or software, tool, or signage, the wholesaler, manufacturer,
24 or distributor shall pay to the retailer:

- 1 (1) For such computer hardware and software specifically required by the wholesaler,
2 manufacturer, or distributor purchased within the last five years, the net cost less
3 twenty percent per year depreciation. For purposes of this subdivision, the term,
4 software, means software that is sourced from the wholesaler, manufacturer, or
5 distributor, or its approved vendor, to meet the minimum requirements of the
6 wholesaler, manufacturer, or distributor;
- 7 (2) For current logoed signage constituting the principal outdoor signage required by the
8 wholesaler, manufacturer, or distributor, identifying the retailer as its representative,
9 the original net cost to the dealer less fifteen percent per year, but in no case less than
10 twenty percent of the original net cost to the dealer;
- 11 (3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer,
12 or distributor which is unique to the product line and in complete, usable condition,
13 seventy-five percent of the original net cost to the dealer if within ten years of
14 purchase by the retailer, provided that new, unused specialized repair tools applicable
15 to the products of the wholesaler, manufacturer, or distributor shall be purchased at
16 one hundred percent of the original net cost to the dealer.

17 Section 3. That § 37-5-7 be amended to read as follows:

18 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial
19 and construction equipment and repair parts therefor, and outdoor power equipment and repair
20 parts thereof, and of office furniture, equipment, and supplies and repair parts therefor, and of
21 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or
22 snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in
23 § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements,
24 machinery, and attachments, industrial and construction equipment; and attachments, outdoor

1 power equipment and attachments, office furniture, equipment, and supplies; and attachments,
2 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
3 snowmobiles, and ~~eighty-five~~ ninety-five percent of the current net price of repair parts therefor
4 as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect
5 at the time the contract is canceled or discontinued and specialized computer hardware and
6 software, specialized tools, or signage as specified in section 2 of this Act. For purposes of
7 §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts
8 therefor, industrial and construction equipment and repair parts therefor, and outdoor power
9 equipment and repair parts therefor, has actual proof of purchase of any repair parts or other
10 merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair
11 parts even though not currently listed in any price list or catalog and all other merchandise,
12 purchased within ten years of the dealership cancellation or termination shall be repurchased at
13 the original purchase price.

14 Section 4. That § 37-5-7.1 be amended to read as follows:

15 37-5-7.1. The payments to be made to the retailer pursuant to §§ 37-5-5 to 37-5-9, inclusive,
16 shall be made ~~not~~ no later than ~~six months~~ sixty days from the date the ~~contract is canceled or~~
17 ~~discontinued~~; merchandise is received by the wholesaler, manufacturer, or distributor and shall
18 be accompanied by a final detailed statement of account thereon.

19 Section 5. That § 37-5-8 be amended to read as follows:

20 37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements,
21 and repair parts for farm machinery, and farm implements, or of industrial and construction
22 equipment and repair parts for industrial and construction equipment, outdoor power equipment
23 and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies
24 and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks,

1 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts
2 therefor, or their successors, upon cancellation of a contract by either a retailer or a
3 manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to
4 the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and
5 repair parts for farm machinery and farm implements, or industrial and construction equipment,
6 and repair parts for industrial and construction equipment, outdoor power equipment and repair
7 parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair
8 parts for office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,
9 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer
10 of the products, who may have a retail sales contract dated after July 1, 1969, in the case of
11 contracts covering farm machinery, implements and attachments or automobiles and trucks, or
12 after July 1, 1970, in the case of contracts covering industrial and construction equipment and
13 attachments, or after July 1, 2001, in the case of the contracts covering outdoor power
14 equipment and attachments, or after July 1, 1995, in the case of contracts covering office
15 furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering
16 motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft,
17 all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing
18 contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery,
19 implements and attachments or automobiles and trucks, or in force and effect on July 1, 1970,
20 in the case of contracts covering industrial and construction equipment and attachments, or in
21 force and effect on July 1, 1995, in the case of contracts covering office furniture, equipment,
22 and supplies, or in force and effect on July 1, 2001, in the case of the contracts covering outdoor
23 power equipment and attachments, or in force and effect on July 1, 1973, in the case of contracts
24 covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal

1 watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or
2 distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil
3 action to be brought by the retailer for one hundred percent of the net cost of the farm
4 implements, machinery and attachments, industrial and construction equipment and attachments,
5 outdoor power equipment and attachments, office furniture, equipment, and supplies and
6 attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of
7 contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus
8 transportation charges which have been paid by the retailer and ~~eighty-five~~ ninety-five percent
9 of the current net price of repair parts, plus five percent for handling and loading plus freight
10 charges which have been paid by the retailer, plus charges for any specialized computer hardware
11 and software, specialized tool, and signage as specified in section 2 of this Act.

12 Section 6. That § 37-5-9 be amended to read as follows:

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repair parts
17 therefor, or in the business of selling and retailing office furniture, equipment, and supplies or
18 repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles,
19 boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the
20 wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall
21 repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at
22 a sum equal to one hundred percent of the net cost of all current unused complete farm
23 implements, machinery and attachments, industrial and construction equipment and attachments,
24 outdoor power equipment and attachments, office furniture, equipment, and supplies and

1 attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain
2 vehicles, and snowmobiles, including transportation and reasonable assembly charges which have
3 been paid by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair
4 parts, including superseded parts, listed in current price lists or catalogues, plus a sum equal to
5 five percent of the current net price of all parts returned for handling, packing, and loading of
6 the parts, and any specialized computer hardware or software, specialized tool, or signage as
7 specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail
8 dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is
9 deemed a cancellation or discontinuance of contract by the retailer under the provisions of
10 § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5
11 to 37-5-9, inclusive.

12 Section 7. That § 37-5-9 be amended to read as follows:

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repairs therefor,
17 or in the business of selling and retailing office furniture, equipment, and supplies or repair parts
18 therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats,
19 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler,
20 distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase
21 from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal
22 to one hundred percent of the net cost of all current unused complete farm implements,
23 machinery and attachments, industrial and construction equipment and attachments, outdoor
24 power equipment and attachments, office furniture, equipment, and supplies and attachments,

1 and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
2 snowmobiles, including transportation and reasonable assembly charges which have been paid
3 by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair parts,
4 including superseded parts, listed in current price lists or catalogues, plus a sum equal to five
5 percent of the current net price of all parts returned for handling, packing, and loading of the
6 parts any specialized computer hardware or software, specialized tool, or signage as specified
7 in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership.
8 If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a
9 cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and
10 as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9,
11 inclusive.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

285E0681 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1255 - 02/15/2001

Introduced by: Representatives Jensen and Juhnke and Senator Koskan

1 FOR AN ACT ENTITLED, An Act to appropriate money for the restoration of the Hamill Dam.

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

3 Section 1. There is hereby appropriated from the general fund the sum of thirty-five thousand
4 dollars (\$35,000), or so much thereof as may be necessary, to the Department of Environment
5 and Natural Resources for a grant to the South Central Resource Conservation and Development
6 Council, Inc. for the purpose of the Hamill Dam restoration project.

7 Section 2. The appropriation in section 1 of this Act is contingent upon Tripp County
8 providing thirty-five thousand dollars (\$35,000) for the purpose of the Hamill Dam restoration
9 project.

10 Section 3. The appropriation in section 1 of this Act is contingent on the Department of
11 Game, Fish and Parks entering into agreements such that the South Dakota fishing and hunting
12 licenses are honored on Hamill Dam waters and on lands within one mile of Hamill Dam waters
13 and that free public access is obtained. The agreements required by this section shall be in effect
14 for ninety-nine years.

15 Section 4. The secretary of the Department of Environment and Natural Resources shall

1 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by
2 this Act.

3 Section 5. Any amounts appropriated in this Act not lawfully expended or obligated by
4 June 30, 2002, shall revert in accordance with § 4-8-21.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

209E0414

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1263** - 02/15/2001

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

Introduced by: Representatives Richter, Adelstein, and Clark and Senators Drake,
Duxbury, and Symens

1 FOR AN ACT ENTITLED, An Act to create a board of postsecondary vocational education.

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

3 Section 1. There is hereby created the Board of Postsecondary Vocational Education. The
4 board shall consist of five members appointed by the Governor, and confirmed by the Senate as
5 follows: two members shall represent the various businesses and industries in South Dakota; two
6 members shall represent education; and one member shall be an at-large member. All members
7 shall be South Dakota residents and shall serve four-year terms. No member may serve more
8 than two consecutive full terms. No more than three members of the board may be of the same
9 political party.

10 Section 2. If a vacancy occurs as provided in § 3-4-1, the Governor shall appoint a member
11 to fill the vacancy, and the appointee shall serve for the balance of the unexpired term, unless the
12 Senate at the next legislative session fails to confirm the appointee. If the Senate fails to confirm
13 the interim appointee, the appointee shall serve until the last day of March and then a new
14 appointee shall be named by the Governor to serve what remains of the term.

1 Section 3. The Board of Postsecondary Vocational Education shall meet at least four times
2 a year. At its first meeting, and then annually thereafter, the board shall elect, from among its
3 members, a president, whose term of office shall be one year. The affirmative vote of a majority
4 of the members of the board is required for official actions. The board shall record its minutes,
5 which are open to the public. Meetings of the board are open meetings as per chapter 1-25. Any
6 member of the board may administer oaths and examine witnesses whenever necessary in the
7 performance of the duties of the board.

8 Section 4. The Board of Postsecondary Vocational Education shall have control of the public
9 postsecondary technical institutes defined in chapter 13-39, and is established within the
10 Department of Education and Cultural Affairs. The board shall be classified as a management
11 board for purposes of per diem and expenses pursuant to § 4-7-10.4.

12 Section 5. The Board of Postsecondary Vocational Education shall appoint an executive
13 director of postsecondary vocational education, who shall be a full-time employee of the board.
14 The executive director shall have a graduate degree from a recognized college or university and
15 shall, by training and experience, be familiar with the operations and problems of postsecondary
16 vocational institutions. The executive director shall have general control and supervision over
17 postsecondary vocational education, and shall carry out the directives of the board and be under
18 the board's general jurisdiction and supervision.

19 Section 6. That § 13-49-1 be amended to read as follows:

20 13-49-1. The control of the public postsecondary educational institutions of the state offering
21 college credit which are sustained wholly or in part by the state, excluding postsecondary
22 technical institutes defined in chapter 13-39, shall be vested in a board of nine members,
23 designated as the board of regents. The members shall be appointed by the Governor, by and
24 with the consent of the Senate.

1 Section 7. That § 13-39-1.2 be amended to read as follows:

2 13-39-1.2. Terms used in this chapter, mean:

3 (1) "Adult vocational education," the training provided to upgrade or update the
4 occupational skills of persons who are preparing to, or have already, entered an
5 occupation;

6 (2) "Center board," the governing body of a multidistrict center for secondary vocational
7 education;

8 (3) "Director," the director of secondary vocational education;

9 (4) "Division," the division of education services and resources of the Department of
10 Education and Cultural Affairs;

11 ~~(4)~~(5) "Executive director," the executive director of postsecondary vocational education;

12 (6) "Facilities," buildings, rooms, property and permanent equipment, including vehicles,
13 used to provide vocational education;

14 ~~(5)~~(7) "LEA," a local education agency limited to public school districts and the legal entities
15 that a school district is authorized to establish;

16 ~~(6)~~(8) "Multidistrict center," a multidistrict secondary occupational vocational education
17 center;

18 ~~(7)~~(9) "Multi-use facility," a structure or part of a structure for student or faculty use as a
19 lounge area, cafeteria, classroom, or large group area not operated as a student union
20 building in which student fees are charged and utilized to pay for construction and
21 maintenance of a facility under the direct or indirect control of the students;

22 ~~(8)~~(10) "Participating district," a school district which has voting representation on a
23 multidistrict center board;

24 ~~(9)~~(11) "Postsecondary technical institute," a public nonprofit school legally authorized

1 to provide public postsecondary ~~technical~~ vocational education which does not
2 culminate in a baccalaureate degree at that school;

3 ~~(10)~~(12) "Secretary," the ~~state~~ secretary of the Department of Education and Cultural
4 Affairs;

5 ~~(11)~~—"State board," ~~the South Dakota Board of Education~~;

6 ~~(12)~~(13) "Vocational education," organized programs at the secondary, postsecondary
7 or adult levels directly related to the preparation of individuals for paid or
8 unpaid employment, or for the additional preparation for a career requiring
9 other than a baccalaureate or advanced degree.

10 Section 8. That § 13-3-1.4 be amended to read as follows:

11 13-3-1.4. Subject to policies established by the South Dakota Board of Education, the
12 secretary of the Department of Education and Cultural Affairs has general supervision over all
13 accredited elementary and secondary schools ~~and postsecondary technical institutes~~ in the state,
14 including ~~adult~~ secondary vocational education, kindergarten, preschool, and summer schools.

15 Section 9. That § 13-1-12.1 be amended to read as follows:

16 13-1-12.1. The South Dakota Board of Education shall adopt rules pursuant to chapter 1-26
17 to establish standards for the classification and accreditation of schools within this state, to
18 establish standards for preparation of certified personnel, to set forth procedures for determining
19 the eligibility of school districts to receive state foundation aid effective January 1, 1997, to
20 adopt policies and rules necessary to establish standards and procedures for ~~vocation-technical~~
21 secondary vocational education and to establish minimum curriculum requirements for all public
22 and nonpublic schools within the state.

23 Section 10. That § 13-39-8 be amended to read as follows:

24 13-39-8. Notwithstanding § 13-15-2, the general control and supervision over secondary

1 vocational education as provided in this chapter is the duty of the director of secondary
2 vocational education under the direction of the secretary of the Department of Education and
3 Cultural Affairs.

4 Section 11. That § 13-39-9 be amended to read as follows:

5 13-39-9. The director of secondary vocational education has general control and supervision
6 over all secondary vocational education in all public secondary schools, ~~public postsecondary~~
7 ~~institutions not under the control of the board of regents~~ and all other vocational education
8 functions assigned ~~to him~~ by the secretary of the Department of Education and Cultural Affairs.

9 Section 12. That § 13-39-12 be amended to read as follows:

10 13-39-12. The secretary of the Department of Education and Cultural Affairs and the
11 executive director of postsecondary vocational education may cooperate on behalf of the South
12 Dakota Board of Education and the Board of Postsecondary Vocational Education, respectively,
13 with federal agencies in the administration of any Acts of Congress relating to vocational
14 education.

15 Section 13. That § 13-39-13 be amended to read as follows:

16 13-39-13. The secretary of the Department of Education and Cultural Affairs and the
17 executive director of postsecondary vocational education may enter into contracts and
18 agreements with any agency of the United States government or any agency of the state
19 government or its political subdivisions for the purpose of vocational education, receive grants
20 of federal funds for vocational education and expend those funds under rules adopted,
21 respectively, by the South Dakota Board of Education or the Board of Postsecondary Vocational
22 Education pursuant to chapter 1-26.

23 Section 14. That § 13-39-18 be amended to read as follows:

24 13-39-18. The executive director of postsecondary vocational education shall submit all

1 requests for new programs from the postsecondary technical institutes in the state to the ~~state~~
2 ~~board~~ Board of Postsecondary Vocational Education for action.

3 Section 15. That § 13-39-19 be amended to read as follows:

4 13-39-19. The secretary of the Department of Education and Cultural Affairs may distribute
5 funds appropriated ~~to him~~ by the Legislature, or granted by any federal agency to the state, in
6 accordance with chapter 4-8B, for vocational education in public secondary ~~and postsecondary~~
7 ~~technical institutes~~ schools in the state in accordance with a state plan or plans adopted by the
8 South Dakota Board of Education. The executive director of postsecondary vocational education
9 may distribute funds appropriated or granted, in accordance with chapter 4-8B, for
10 postsecondary vocational education in accordance with plans by the Board of Postsecondary
11 Vocational Education. The aid disbursed to the different schools ~~and technical institutes~~ of the
12 state and all expenses incurred in the administration of the provisions of any federal acts relating
13 to vocational education shall be paid out of the funds of the secretary or the executive director
14 appropriated for that purpose and from the federal funds allotted to the State of South Dakota
15 for similar purposes. The state treasurer is the custodian of all money paid to the state from
16 federal appropriations for the purpose of vocational education, and shall disburse the funds on
17 warrants issued by the state auditor upon vouchers approved by the director of secondary
18 vocational education or the executive director of postsecondary vocational education. The
19 secretary of the Department of Education and Cultural Affairs shall authorize the director of
20 secondary vocational education to submit vouchers to the state auditor for the amount payable
21 as state and federal aid to each school approved under the provisions of this chapter. The
22 executive director of postsecondary vocational education shall submit vouchers to the state
23 auditor for the amount payable as state and federal aid to each technical institute approved under
24 the provisions of this chapter. Upon receipt of the vouchers, the state auditor shall draw warrants

1 on the state treasury in favor of the treasurer or business manager of the public secondary ~~and~~
2 school or postsecondary technical institute for the sum approved by the secretary or executive
3 director.

4 Section 16. That § 13-39-21 be amended to read as follows:

5 13-39-21. The director of secondary vocational education and the executive director of
6 postsecondary vocational education shall prescribe a uniform system for gathering and reporting
7 vocational education data.

8 Section 17. That § 13-39-27 be amended to read as follows:

9 13-39-27. For the purposes of providing vocational education, all LEAs of this state may
10 establish, in cooperation with the ~~division~~ Department of Education and Cultural Affairs or the
11 Board of Postsecondary Vocational Education, a vocational department, classes or facilities for
12 vocational education, as provided in this chapter, under terms and conditions agreed upon. Any
13 LEA board may enter into any agreement to provide vocational education. An agreement made
14 pursuant to this section is not subject to the limitation of the tuition law. An LEA may expend
15 its money for vocational education.

16 Section 18. That § 13-39-28 be amended to read as follows:

17 13-39-28. Anyone who may profit from the vocational education course to which the person
18 applies may be enrolled upon application and acceptance in accordance with the provisions of
19 §§ 13-39-1.2 to 13-39-29, inclusive, and as prescribed by the South Dakota Board of Education
20 or the Board of Postsecondary Vocational Education.

21 Section 19. That § 13-39-29 be amended to read as follows:

22 13-39-29. The secretary of the Department of Education and Cultural Affairs, through the
23 director, and the executive director of postsecondary vocational education may receive, acquire,
24 have charge of, and operate all properties for the purposes authorized in this chapter. The

1 secretary or executive director may acquire by gift, subject to the provisions of § 5-24-12, or
2 purchase real and personal property for the use of vocational education and may dispose of or
3 transfer the same whenever the purposes of this chapter are benefited. ~~The~~ Neither the executive
4 director or the secretary may ~~not~~ purchase, lease, sell, encumber, or alienate any real property
5 without the consent and prior approval of the Legislature.

6 Section 20. That § 13-39-34 be amended to read as follows:

7 13-39-34. Any LEA proposing to operate a postsecondary technical institute or establish an
8 existing postsecondary technical institute as a separate legal entity may petition the ~~state~~ Board
9 of Postsecondary Vocational Education pursuant to §§ 13-39-35 to 13-39-36, inclusive. The
10 ~~state~~ board may conduct hearings, investigate school records, and secure other data relating to
11 the proposed postsecondary technical institute, its geographical location, the demography and
12 economy of the area, and any other facts relating to the proposed postsecondary technical
13 institute which the ~~state~~ board may consider appropriate.

14 Section 21. That § 13-39-35 be amended to read as follows:

15 13-39-35. If the ~~South Dakota board of education~~ Board of Postsecondary Vocational
16 Education finds that the classification petitioned for would further the educational interests of
17 the state, more nearly equalize the educational opportunities in certain phases of technical
18 education to persons in this state who are of the age and maturity to pursue study in preparation
19 for entering the labor market, be of potential benefit to persons in all communities of the state,
20 and is otherwise in accordance with the plans of the ~~state~~ board, it may recommend the petition
21 be approved by the Legislature.

22 Section 22. That § 13-39-35.2 be amended to read as follows:

23 13-39-35.2. The joint resolution passed pursuant to § 13-39-35.1 shall specify the duties and
24 powers of a the postsecondary technical institute. The resolution may also specify the procedure

1 for selecting members of the governing board, which may include local elections for such
2 members. A school established pursuant to § 13-39-35.1 may be a distinct legal entity separate
3 and apart from the school district or districts which established it.

4 Section 23. That § 13-39-36 be amended to read as follows:

5 13-39-36. If the petition is approved by the Legislature, the LEA may establish the proposed
6 school and the ~~state board~~ Board of Postsecondary Vocational Education shall classify the school
7 as a postsecondary technical institute. The ~~state~~ board shall conduct general supervision as
8 provided in § 13-39-37 and in the rules adopted pursuant to chapter 1-26 by the ~~state~~ board.

9 Section 24. That § 13-39-37 be amended to read as follows:

10 13-39-37. The ~~South Dakota board of education~~ Board of Postsecondary Vocational
11 Education may adopt rules pursuant to chapter 1-26, to be administered by the executive
12 director, governing the operation and maintenance of postsecondary technical institutes which
13 will afford the people of the state, insofar as practicable, an equal opportunity to acquire a public
14 technical education. The rules may provide for the following:

- 15 (1) Curriculum and standards of instruction and scholarship;
- 16 (2) Attendance requirements, age limits of trainees, eligibility for attendance, and tuition
17 payments and other charges;
- 18 (3) Apportionment and distribution of funds made available to the board for carrying out
19 the purposes of §§ 13-39-34 to 13-39-39, inclusive;
- 20 (4) Transportation requirements and payments;
- 21 (5) General administrative matters;
- 22 (6) The submission of the annual budget of the postsecondary technical institute which
23 shall include, but is not limited to, a description of programs, a list of staff positions,
24 and the amount for supplies and operating expenses associated with the programs

1 offered. The rules shall require the budget to include all operating costs of programs,
2 including those costs ineligible for reimbursement from federal and state funds, shall
3 state the procedure for amending and filing it with the division of education services
4 and resources and shall provide that failure to comply with the rules may result in
5 withholding of payments from federal and state funds;

6 (7) The submission of plans of LEAs for new construction or major renovation of
7 facilities eligible for reimbursement. The rules regarding these plans shall provide a
8 requirement that the LEA, by a written resolution, declare the LEA committed to
9 begin construction if the budget of the ~~state~~ board provides the matching funds;

10 (8) The promotion and coordination of vocational education; and

11 (9) The duplication of programs.

12 Section 25. That § 13-39-38 be amended to read as follows:

13 13-39-38. The ~~secretary of education and cultural affairs~~ executive director of postsecondary
14 vocational education shall apportion and distribute funds made available for postsecondary
15 technical institutes through a formula approved by the ~~South Dakota Board of Education~~ Board
16 of Postsecondary Vocational Education to the LEAs having jurisdiction over postsecondary
17 technical institutes to assist in maintaining and operating those schools. The use of the funds are
18 subject to rules adopted by the ~~state~~ board pursuant to subdivision 13-39-37(3) and in
19 accordance with the approved state plan for vocational education.

20 Section 26. That § 13-39-39 be amended to read as follows:

21 13-39-39. The ~~division~~ executive director of postsecondary vocational education shall
22 distribute funds to the postsecondary technical institutes under the provisions of § 13-39-38 from
23 money appropriated ~~to the division~~ for that purpose, and from federal funds allotted to the State
24 of South Dakota for that purpose.

1 Section 27. That § 13-39-41 be amended to read as follows:

2 13-39-41. The school boards of two or more school districts may submit to the South
3 Dakota Board of Education a proposed plan to establish a multidistrict center. The proposal shall
4 be consistent with the state plan for secondary vocational education and shall meet the rules as
5 adopted by the ~~state~~ board pursuant to chapter 1-26.

6 Section 28. That § 13-39-45 be amended to read as follows:

7 13-39-45. If four or less school districts comprise a multidistrict center and if enrollment
8 within the school districts is insufficient to provide five members in accordance with § 13-39-44,
9 the boards of the school districts shall agree upon the number and manner of selection of
10 members of the center board and shall submit their plan of selection for approval or disapproval
11 to the ~~state board~~ South Dakota Board of Education pursuant to § 13-39-41.

12 Section 29. That § 13-39-48 be amended to read as follows:

13 13-39-48. The director of secondary vocational education shall call and conduct the initial
14 organizational meeting of a center board. A center board shall meet at least monthly. At each
15 July meeting, the center board shall select officers for the current school year.

16 Section 30. That § 13-39-53 be amended to read as follows:

17 13-39-53. Multidistrict centers are subject to the rules adopted by the ~~state board~~ South
18 Dakota Board of Education pursuant to chapter 1-26 and to applicable statutory requirements
19 of school districts. A center board has the same power, authority, responsibility, and obligations
20 as a school board, except for the authority to levy taxes and to issue bonds. South Dakota
21 statutes relating to educational financial activities and other educational activities apply to
22 multidistrict centers unless otherwise prohibited by §§ 13-39-41 to 13-39-64, inclusive.

23 Section 31. That § 13-39-60 be amended to read as follows:

24 13-39-60. A school board by resolution may request that the center board approve the school

1 district as a participating district in an established multidistrict center. A center board may
2 require, as a condition of participation, payment of a fee not exceeding the applying school
3 district's pro rata share of all capital outlay expenditures, excluding state and federal
4 reimbursement from the ~~state board~~ South Dakota Board of Education, made by the center board
5 prior to the application for membership by the applying district. The school board shall publish
6 the resolution once in the official newspaper of that district.

7 Section 32. That § 13-39-66 be amended to read as follows:

8 13-39-66. Any LEA may enter into lease-purchase agreements with the Health and
9 Educational Facilities Authority or the ~~secretary of education and cultural affairs~~ executive
10 director of postsecondary vocational education for capital improvements for the design,
11 acquisition, construction, equipping or improvement of facilities the LEA considers necessary
12 or appropriate. In addition, the ~~secretary~~ executive director may enter into any lease-purchase
13 agreement of such facilities either with an LEA or the health and educational facilities authority.

14 Such lease-purchase agreements shall include such terms as the Health and Educational
15 Facilities Authority considers necessary, including without limitation, terms of default, remedies,
16 representations, and covenants of the lessee.

17 No such lease-purchase agreements are effective until approved by the ~~secretary of education~~
18 ~~and cultural affairs~~ executive director. The term lease-purchase agreements as used in this section
19 includes any sublease.

20 Section 33. That § 13-39-67 be amended to read as follows:

21 13-39-67. A lease-purchase agreement authorized by § 13-39-66 may be for a term of no
22 more than thirty years, shall be approved by the LEA board on behalf of the LEA, may provide
23 for the simultaneous conveyance of existing facilities to be leased-back with the improvements
24 and other property being financed, may provide for all right, title, and interest of the authority

1 to be conveyed to the LEA or the ~~secretary of education and cultural affairs~~ executive director
2 of postsecondary vocational education upon payment or other discharge of the bonds issued
3 therefor, and may contain such other provisions as the authority and the ~~state board~~ Board of
4 Postsecondary Vocational Education determine necessary or appropriate to secure payment of
5 amounts due under such agreements. No other statute may limit or otherwise restrict the power
6 and authority of an LEA or the ~~secretary~~ executive director to enter into such a lease-purchase
7 agreement or govern the procedure by which such agreement is authorized.

8 Section 34. That § 13-39-68 be amended to read as follows:

9 13-39-68. The ~~secretary of education and cultural affairs~~ executive director of postsecondary
10 vocational education may contract with or enter into other agreements with the South Dakota
11 Health and Educational Facilities Authority, one or more LEAs, the state treasurer or others in
12 order to pledge or otherwise transfer all or any portion of tuition and other student fees subject
13 to deposit in the tuition subaccount in order to secure payments by any LEA or the ~~secretary~~
14 executive director under a lease-purchase agreement with the authority. Any such contract or
15 other agreement may also provide for the release from such pledge and lien of such amounts as
16 are deemed not to be necessary for payment of amounts currently due and owing under
17 lease-purchase agreements. Any such pledge of such tuition and other student fees shall be valid
18 and binding from the time when the pledge is made. The amount of tuition and other fees so
19 pledged and thereafter received shall immediately be subject to the lien of such pledge without
20 any physical delivery thereof or further act, and the lien of any such pledge shall be valid and
21 binding as against the LEAs and any other persons having claims of any kind in tort, contract,
22 or otherwise against the LEA, the ~~secretary~~ executive director, the authority, the state treasurer
23 or any other person, irrespective of whether such persons have notice thereof. Neither the
24 contract nor any other agreement or instrument by which a pledge is created need to be

1 recorded.

2 Section 35. That § 13-39-69 be amended to read as follows:

3 13-39-69. There is created in the state treasury a separate trust fund on behalf of the
4 ~~secretary of education and cultural affairs to be on deposit with the state treasurer, such fund~~
5 executive director of postsecondary vocational education to be designated the vocational
6 education facilities fund. The fund ~~established hereby~~ shall consist of all appropriations by the
7 ~~state~~ Legislature specifically designated for deposit therein and any other moneys designated for
8 deposit therein, including any investment earnings thereon. The treasurer may create subfunds
9 or accounts within the trust fund created under this section as the treasurer considers necessary.
10 Any earnings from the investment of such fund may be transferred annually by the state treasurer
11 to the tuition subaccount established by § 13-39-70.

12 Section 36. That § 13-39-70 be amended to read as follows:

13 13-39-70. There is hereby created within the vocational education facilities fund ~~of the~~
14 ~~secretary of education and cultural affairs~~ a tuition subaccount. The ~~secretary~~ executive director
15 of postsecondary vocational education may determine and require that all or any portion of the
16 tuition and other student fees payable to an LEA shall be deposited in the subaccount. No
17 moneys may be disbursed from the tuition subaccount for any purpose other than to pay lease
18 rentals or other amounts due and owing in connection with any lease-purchase agreement
19 authorized under §§ 13-39-66 and 13-39-67 unless and until the Health and Educational
20 Facilities Authority files with the state treasurer a certification that it has on deposit or there has
21 otherwise been appropriated sufficient moneys to pay all amounts due or to become due within
22 the next three months on all such lease-purchase agreements. Thereafter, the state treasurer shall
23 retain in the vocational education facilities fund for future repair and improvement as authorized
24 by the Legislature such amounts, not to exceed ten percent thereof, as the ~~secretary~~ executive

1 director shall direct.

2 Section 37. That § 13-39-71 be amended to read as follows:

3 13-39-71. All or any portion of the lease-purchase obligations under or in connection with
4 any lease-purchase agreement authorized under §§ 13-39-66 and 13-39-67 may be paid or
5 discharged out of moneys available from the investment earnings on the vocational education
6 trust fund or from any amounts on deposit in the tuition subaccount of such fund upon the
7 determination by the ~~secretary of education and cultural affairs~~ executive director of
8 postsecondary vocational education to pledge or otherwise transfer such amounts to the Health
9 and Educational Facilities Authority.

10 Section 38. That § 13-39-72 be amended to read as follows:

11 13-39-72. An LEA operating an approved postsecondary vocational school may award an
12 associate in applied sciences degree. The ~~state board~~ Board of Postsecondary Vocational
13 Education may promulgate rules pursuant to chapter 1-26 providing for approval of programs
14 in postsecondary vocational education schools leading to an associate in applied science degree.
15 In approving any program, the ~~state~~ board shall consider curriculum, required hours, quality of
16 instruction, minimum standards for entry into the programs and standards for program
17 completion.

18 Section 39. That § 13-39-17.1 be amended to read as follows:

19 13-39-17.1. The ~~division~~ Department of Education and Cultural Affairs, on behalf of the
20 Board of Postsecondary Vocational Education, may collect fees for credentialing postsecondary
21 ~~technical vocational~~ technical vocational teachers. The ~~division shall credit all~~ funds generated by these fees shall be
22 deposited to a fund known as the postsecondary ~~technical vocational~~ technical vocational credentialing fund to be
23 administered by the state treasurer. ~~Any payment from this fund is~~ may only be by voucher
24 submitted to the state treasurer and is limited to promulgation of rules, forms, and incidental

1 administrative costs associated with the credentialing of postsecondary ~~technical~~ vocational
2 teachers.

3 Section 40. That § 33-6-6 be amended to read as follows:

4 33-6-6. Any member of the National Guard of the State of South Dakota, who is a resident
5 of the State of South Dakota and who possesses the entrance requirements for admission to any
6 postsecondary vocational program, is entitled to complete one program of study approved by
7 the ~~state Board of Education~~ Board of Postsecondary Vocational Education in any state
8 postsecondary vocational education institution upon payment of fifty percent of the tuition
9 charges. The remaining tuition shall be paid by the Department of Military and Veterans Affairs
10 out of funds appropriated for the purpose of paying fifty percent of the tuition.

11 Section 41. That § 13-53-44 be amended to read as follows:

12 13-53-44. ~~Commencing July 1, 1999, technical~~ Technical institutes governed by the Board
13 of Postsecondary Vocational Education and accredited by the North Central Association of
14 Colleges and Secondary Schools and universities governed by the Board of Regents and
15 accredited by the North Central Association of Colleges and Secondary Schools shall ~~have~~
16 continue articulation agreements in place to transfer sixty-four credit hours in the General
17 Studies Baccalaureate Degree program and up to sixty-four credit hours in compatible programs
18 offered by the respective institutions under the control of the Board of Regents. ~~By December 1,~~
19 ~~1998, the Board of Education and the Board of Regents shall report to the Executive Board of~~
20 ~~the Legislative Research Council on the progress of articulation agreements and the~~
21 ~~implementation of §§ 13-53-43 and 13-53-44.~~ The Board of Regents and the Board of
22 Postsecondary Vocational Education shall, by agreement, set the criteria and requirements for
23 the transfer of any credits. Criteria shall provide that any course recognized by a standardized
24 test shall transfer.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

226E0738 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1271 - 02/15/2001

Introduced by: Representatives Sutton (Duane), Bradford, Frost, Madsen, Teupel, and
Van Norman and Senators Apa, de Hueck, Dennert, Ham, Kleven, and
Volesky

1 FOR AN ACT ENTITLED, An Act to provide grants to certain court-appointed special
2 advocate programs and to make an appropriation therefor.

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

4 Section 1. There is hereby appropriated from the general fund the sum of four hundred
5 thousand dollars (\$400,000), or so much thereof as may be necessary, to the Department of
6 Education and Cultural Affairs to provide grants for the establishment or support of court-
7 appointed special advocate programs.

8 Section 2. The secretary of the Department of Education and Cultural Affairs shall approve
9 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

10 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
11 June 30, 2002, shall revert in accordance with § 4-8-21.

12 Section 4. The maximum annual grant to a single court-appointed special advocate program
13 is fifty thousand dollars.

14 Section 5. The Department of Education and Cultural Affairs may promulgate rules pursuant

1 to chapter 1-26 to develop criteria to award grants to court special advocate programs.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0809

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1278** - 02/15/2001

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

1 FOR AN ACT ENTITLED, An Act to revise the definition of barratry.

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

3 Section 1. That § 20-9-6.1 be amended to read as follows:

4 20-9-6.1. Barratry is the assertion of a frivolous or malicious claim or defense or the filing
5 of any document with malice or in bad faith by a party in a civil action ~~under Title 15~~. Barratry
6 constitutes a cause of action which may be asserted by filing a pleading in the same civil action
7 in which the claim of barratry arises or in a subsequent action. A claim of barratry shall be
8 determined in the same manner as any other substantive cause of action asserted in that civil
9 action.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0801

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1279** - 02/15/2001

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

1 FOR AN ACT ENTITLED, An Act to authorize the expenditure of tobacco proceeds for
2 tobacco prevention and cessation programs and for tobacco prevention and cessation
3 programs and for tobacco cessation aids.

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

5 Section 1. That § 10-50B-11 be amended to read as follows:

6 10-50B-11. The people's trust fund is established in the state treasury. Any money received
7 from the Master Settlement Agreement signed on November 23, 1998, by attorneys general from
8 several states and various tobacco companies shall be deposited in the people's trust fund. The
9 principal in the trust fund may not be expended, except for funds transferred to the general fund
10 and appropriated by the Legislature to fund tobacco prevention and cessation programs and to
11 purchase tobacco cessation aids. The fund shall be invested according to §§ 4-5-23 and 4-5-26.
12 Interest earned on money in the fund shall be deposited in the people's interest fund created in
13 § 10-50B-12.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

444E0782

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1295 - 02/15/2001

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

Introduced by: Representatives Derby and Brown (Richard) and Senator Hutmacher

1 FOR AN ACT ENTITLED, An Act to allow certain interstate shipments of wine.

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

3 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one
4 years of age may purchase and receive wine from another state as provided in this section if a
5 reciprocal agreement exists between this state and the state from which the wine is sent. The
6 person shall place an order with a package dealer as defined in § 35-1-1 on a form prescribed by
7 the Department of Revenue. The package dealer shall inform the purchaser of the cost of the
8 wine, the amount of any tax that would apply to the purchase pursuant to § 35-5-3, the amount
9 of sales tax that would apply to the purchase, and the amount of any charges for freight and
10 handling. The package dealer may order the wine and shall provide the wine to the purchaser on
11 receipt of payment for the cost of the wine and the taxes and freight and handling charges
12 associated with the purchase. Wine purchased pursuant to this Act may only be delivered and
13 received by the purchaser from a package dealer as defined in § 35-1-1. No registration fee
14 pursuant to chapter 39-13 may be imposed on any purchase of wine made pursuant to this

1 section. No person may receive more than twelve cases of wine, containing no more than nine
2 liters per case, in any calendar year for personal use from another state under this Act. No person
3 who receives wine under this Act may resell any of the wine. The Department of Revenue shall
4 promulgate rules pursuant to chapter 1-26 to provide for the reporting and tracking of
5 information related to the sale of wine under this Act and to prescribe forms for the
6 implementation of this Act.

7 Section 2. Any licensee who holds a license for the retail sale of wine for consumption off
8 the licensed premises may ship no more than twelve cases of wine per shipment. A case may
9 contain no more than nine liters per case in any one shipment. Any wine sold may only be for
10 personal use and not for resale. The wine may only be sold directly to a resident of another state
11 if the state to which the wine is sent allows residents of the state to receive wine sent from
12 outside that state. The sale is considered to have occurred in this state.

13 Section 3. Any container of wine being shipped into or out of this state shall be clearly
14 labeled to indicate that it contains alcoholic beverages and that it may not be delivered to a
15 person who is not at least twenty-one years of age or to a person who is visibly intoxicated.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

489E0788 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1296 - 02/15/2001

Introduced by: Representatives Derby, Duniphan, and Van Etten and Senator Whiting

1 FOR AN ACT ENTITLED, An Act to appropriate money to the West River Foundation to
2 assist the City of Box Elder.

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

4 Section 1. There is hereby appropriated from community development block grant or
5 economic development funds available the sum of one million eight hundred thousand dollars
6 (\$1,800,000), or so much thereof as may be necessary, to the West River Foundation for
7 extending infrastructure to Interstate Highway 90, Exit 67 and aiding in relocation of existing
8 business and property interests effected by the closure of Interstate Highway 90, Exit 66.

9 Section 2. The commissioner of the Governor's Office of Economic Development shall
10 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by
11 this Act. All funds expended for such projects shall be in compliance with the currently published
12 Ellsworth Air Force Base Air Installation Compatible Use Zone Study.

13 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
14 June 30, 2002, shall revert in accordance with § 4-8-21.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

535E0031

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 3 - 01/23/2001

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

Introduced by: Senators Ham and Madden and Representatives McCoy, Monroe, and Slaughter at the request of Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to provide the director of insurance with rule-making
2 authority regarding personal nonpublic financial information.

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

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

6 The director shall promulgate rules pursuant to chapter 1-26 relating to the privacy of
7 personal nonpublic financial information. The rules must be designed to provide privacy to the
8 public of the personal nonpublic financial information that is shared or obtained in connection
9 with insurance transactions. The director shall design the rules to protect the public's personal
10 nonpublic financial information but also consider the impact of any rules on the cost and
11 availability of insurance in this state. In promulgating the rules required by this Act the director
12 shall give substantial consideration to the privacy standards contained in the NAIC Privacy of
13 Consumer Financial and Health Information Regulation as in effect as of January 1, 2001, and
14 otherwise design the rules to achieve uniformity, to the degree reasonably possible, in the

1 standards for personal nonpublic financial information. The rules may include the following as
2 they relate to financial privacy:

- 3 (1) Definition of terms;
- 4 (2) Permitting the disclosure and use of personal nonpublic financial information between
5 affiliates;
- 6 (3) Opt out procedures for the disclosure and use of personal nonpublic financial
7 information with nonaffiliates;
- 8 (4) Notice and disclosure requirements and formats;
- 9 (5) Limits on disclosure of personal nonpublic financial information;
- 10 (6) Limits on redisclosure and reuse of personal nonpublic financial information;
- 11 (7) Limits on sharing account number information for marketing purposes;
- 12 (8) Exceptions for opt out and notice requirements; and
- 13 (9) Nondiscrimination requirements as they relate to persons who opt out or who do not
14 grant an authorization.

15 Nothing in this Act applies to any rules that may be promulgated pursuant to § 58-2-40.

16 Nothing in this Act may be construed to impair or conflict with the Fair Credit Reporting Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

645E0062

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 7** - 01/18/2001

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

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

1 FOR AN ACT ENTITLED, An Act to revise the dates for filing certain certificates of
2 nomination.

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

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office, except as provided in section 2 of this
6 Act, who is not nominated by a primary election may be nominated by filing with the secretary
7 of state or county auditor as prescribed by § 12-6-4, not prior to January first at eight a.m. and
8 not later than the third Tuesday in June at five p.m. prior to the election, a certificate of
9 nomination which shall be executed as provided in chapter 12-6. If the certificate of nomination
10 is mailed by registered mail by the third Tuesday in June at five p.m. prior to the election, it is
11 timely submitted. The certificate shall specify that an independent candidate for nonjudicial public
12 office shall designate the name of any national political party, or political party organized
13 pursuant to chapter 12-5, with which the candidate has an affiliation. If no affiliation exists, the
14 candidate shall be designated by the term, no party. It shall be signed by registered voters within

1 the district or political subdivision in and for which the officers are to be elected. The number
2 of signatures required may not be less than one percent of the total combined vote cast for
3 Governor at the last certified gubernatorial election within the district or political subdivision.
4 An independent candidate for Governor shall certify the candidate's selection for lieutenant
5 governor to the secretary of state prior to circulation of the candidate's nominating petition. ~~An~~
6 ~~independent candidate for President shall file a declaration of candidacy and a certification of the~~
7 ~~candidate's selection for vice president with the secretary of state prior to circulation of the~~
8 ~~candidate's nominating petitions.~~ The candidate and the candidate's selection for lieutenant
9 governor or vice president shall sign the certification before it is filed. The State Board of
10 Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the certificate
11 of nomination and the certification for lieutenant governor ~~and vice president.~~

12 Section 2. That chapter 12-7 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any candidate for President or Vice President of the United States who is not nominated by
15 a primary election may be nominated by filing with the secretary of state or county auditor as
16 prescribed by § 12-6-4, not prior to January twentieth at eight a.m. and not later than the first
17 Tuesday in August at five p.m. prior to the election, a certificate of nomination which shall be
18 executed as provided in chapter 12-6. If the certificate of nomination is mailed by registered mail
19 by the first Tuesday in August at five p.m. prior to the election, it is timely submitted. The
20 certificate shall specify that an independent candidate for President or Vice President shall
21 designate the name of any national political party, or political party organized pursuant to chapter
22 12-5, with which the candidate has an affiliation. If no affiliation exists, the candidate shall be
23 designated by the term, no party. The number of signatures required may not be less than one
24 percent of the total combined vote cast for Governor at the last certified gubernatorial election

1 within the state. An independent candidate for President shall file a declaration of candidacy and
2 a certification of the candidate's selection for Vice President with the secretary of state prior to
3 circulation of the candidate's nominating petitions. The candidate and the candidate's selection
4 for Vice President shall sign the certification before it is filed. The State Board of Elections shall
5 promulgate rules pursuant to chapter 1-26 prescribing the forms for the certificate of nomination
6 and the certification for Vice President.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

376E0049 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 8 - 01/19/2001

Introduced by: Senators Symens, Diedtrich (Elmer), and Vitter and Representatives Fryslie and Hanson (Gary) at the request of the Interim Agriculture and Natural Resources Committee

1 FOR AN ACT ENTITLED, An Act to establish a public policy of protecting cropland and
2 pasture in county drainage plans.

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

4 Section 1. That § 46A-10A-17 be amended to read as follows:

5 46A-10A-17. A drainage plan shall be for the purpose of enhancing and promoting physical,
6 economic, and environmental management of the county; protecting the tax base; encouraging
7 land utilization that will facilitate economical and adequate productivity of all types of land;
8 lessening governmental expenditure; and conserving and developing natural resources. The plan
9 may incorporate appropriate contingencies for the protection of private cropland and pasture.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0310

SENATE ENGROSSED NO. **SB 38** - 01/25/2001

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

1 FOR AN ACT ENTITLED, An Act to revise health plan coverage requirements for newborns
2 and newly adopted children.

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

4 Section 1. That § 58-17-30.3 be amended to read as follows:

5 58-17-30.3. The coverage for a newly born child from the moment of birth or for a newly
6 adopted child, from the beginning of the six-month adoption bonding period, shall consist of
7 coverage of injury or sickness including the necessary care and treatment of premature birth and
8 medically diagnosed congenital defects and birth abnormalities. The coverage required by this
9 section applies to any subsequent health benefit plan that is purchased providing coverage for
10 that newly born or newly adopted child if application for the subsequent coverage is made within
11 sixty-three days of the termination of the prior coverage and if the coverage is issued pursuant
12 to § 58-17-85. The provisions of §§ 58-17-30.2 to 58-17-30.4, inclusive, apply to any
13 individually written health benefit plan issued or renewed by any health insurer, health carrier,
14 health maintenance organization, fraternal benefit society, nonprofit medical and surgical plan,
15 nonprofit hospital service plan, or other entity providing coverage through a health benefit plan

1 subject to the provisions of this title.

2 Section 2. That § 58-18-33 be amended to read as follows:

3 58-18-33. The coverage for a newly born child from the moment of birth or for a newly
4 adopted child, from the beginning of the six-month adoption bonding period, shall consist of
5 coverage of injury or sickness including the necessary care and treatment of premature birth and
6 medically diagnosed congenital defects and birth abnormalities. The coverage required by this
7 section applies to any subsequent health benefit plan that is purchased providing coverage for
8 that newly born or newly adopted child if application for the subsequent coverage is made within
9 sixty-three days of the termination of the prior coverage. The provisions of §§ 58-18-32 to 58-
10 18-34, inclusive, apply to any group health benefit plan issued or renewed by any health insurer,
11 health carrier, health maintenance organization, fraternal benefit society, nonprofit medical and
12 surgical plan, nonprofit hospital service plan, or other entity providing coverage through a health
13 benefit plan subject to the provisions of this title.

14 Section 3. That § 58-33-85 be amended to read as follows:

15 58-33-85. Any insurer subject to this chapter, including any group health plan, as defined in
16 section 607(1) of the Employee Retirement Income Security Act of 1974, as amended to
17 January 1, 1994, who are engaged in the business of health insurance is prohibited from denying
18 enrollment of a dependent child, ~~as defined by subdivision 25-7A-1(7),~~ under the health insurance
19 coverage of either the child's natural, adoptive, or stepparents for any of the following reasons:

- 20 (1) The child was born out of wedlock; or
21 (2) The child is not claimed as a dependent on the parent's federal income tax return; or
22 (3) The child does not reside with the parent or in the insurer's service area.

23 Section 4. That § 58-38-11.7 be repealed.

24 ~~58-38-11.7. Any health insurance policy or indemnity type contract issued by a nonprofit~~

1 ~~medical and surgical service plan corporation which offers coverage for a family member of an~~
2 ~~insured or subscriber shall provide that the health insurance benefits applicable for children are~~
3 ~~payable with respect to a newly born child of the insured or subscriber from the moment of birth~~
4 ~~or to a newly adopted child of the insured or subscriber from the beginning of the six-month~~
5 ~~adoption bonding period. The newly born or newly adopted child shall be added to the policy~~
6 ~~without underwriting and without the imposition of any preexisting waiting period. Any policy~~
7 ~~or contract issued before July 1, 1984, shall, upon its next anniversary date, also provide that the~~
8 ~~health insurance benefits applicable for children are payable with respect to a newly born child~~
9 ~~of the insured or subscriber from the moment of birth or to a newly adopted child of the insured~~
10 ~~or subscriber from the beginning of the six-month adoption bonding period.~~

11 Section 5. That § 58-38-11.8 be repealed.

12 ~~—58-38-11.8. The coverage for a newly born child from the moment of birth or for a newly~~
13 ~~adopted child, from the beginning of the six-month adoption bonding period, shall consist of~~
14 ~~coverage of injury or sickness including the necessary care and treatment of premature birth and~~
15 ~~medically diagnosed congenital defects and birth abnormalities.~~

16 Section 6. That § 58-38-11.9 be repealed.

17 ~~—58-38-11.9. An insurer may require notice that a newly born or newly adopted child is to be~~
18 ~~added to the policy or that coverage is to be changed from single or spousal coverage to family~~
19 ~~coverage. However, the insurer may not require notification sooner than the birth of the child~~
20 ~~or the start of the adoption bonding period. If the child is added or coverage changed to family~~
21 ~~coverage before the birth of the child or the start of the adoption bonding period, no additional~~
22 ~~premium may be charged by the insurer until the birth of the child or the start of the adoption~~
23 ~~bonding period. The insurer shall take reasonable steps to provide adequate notice to insureds~~
24 ~~of the need to alter coverage to ensure newborn or adopted children are covered and of the lack~~

1 of premium adjustment until the birth of the child or the start of the adoption bonding period. An
2 insurer is considered to have taken reasonable steps if prominent disclosure of the requirements
3 of this section are included in a certificate, subscriber contract, evidence of coverage, or
4 employee handbook if such are provided to all insureds.

5 — If payment of a specific premium or subscription fee is required to provide coverage for a
6 child, the policy or contract may require that notification of birth of a newly born child or
7 notification of the start of the six-month adoption bonding period for an adopted child and
8 payment of the required premium or fees be furnished to the nonprofit medical and surgical
9 service plan corporation within thirty-one days after the date of birth or start of the bonding
10 period in order to have the coverage continued beyond the thirty-one day period.

11 Section 7. That § 58-40-10.7 be repealed.

12 — 58-40-10.7. Any health insurance policy or indemnity type contract issued by a nonprofit
13 hospital service plan corporation which offers coverage for a family member of an insured or
14 subscriber shall provide that the health insurance benefits applicable for children are payable with
15 respect to a newly born child of the insured or subscriber from the moment of birth or to a newly
16 adopted child of the insured or subscriber from the beginning of the six-month adoption bonding
17 period. The newly born or newly adopted child shall be added to the policy without underwriting
18 and without the imposition of any preexisting waiting period. Any policy or contract issued
19 before July 1, 1984, shall, upon its next anniversary date, also provide that the health insurance
20 benefits applicable for children are payable with respect to a newly born child of the insured or
21 subscriber from the moment of birth or to a newly adopted child of the insured or subscriber
22 from the beginning of the six-month adoption bonding period.

23 Section 8. That § 58-40-10.8 be repealed.

24 — 58-40-10.8. The coverage for a newly born child from the moment of birth or for a newly

1 ~~adopted child, from the beginning of the six-month adoption bonding period, shall consist of~~
2 ~~coverage of injury or sickness including the necessary care and treatment of premature birth and~~
3 ~~medically diagnosed congenital defects and birth abnormalities.~~

4 Section 9. That § 58-40-10.9 be repealed.

5 ~~—58-40-10.9. An insurer may require notice that a newly born or newly adopted child is to be~~
6 ~~added to the policy or that coverage is to be changed from single or spousal coverage to family~~
7 ~~coverage. However, the insurer may not require notification sooner than the birth of the child~~
8 ~~or the start of the adoption bonding period. If the child is added or coverage changed to family~~
9 ~~coverage before the birth of the child or the start of the adoption bonding period, no additional~~
10 ~~premium may be charged by the insurer until the birth of the child or the start of the adoption~~
11 ~~bonding period. The insurer shall take reasonable steps to provide adequate notice to insureds~~
12 ~~of the need to alter coverage to ensure newborn or adopted children are covered and of the lack~~
13 ~~of premium adjustment until the birth of the child or the start of the adoption bonding period. An~~
14 ~~insurer is considered to have taken reasonable steps if prominent disclosure of the requirements~~
15 ~~of this section are included in a certificate, subscriber contract, evidence of coverage, or~~
16 ~~employee handbook if such are provided to all insureds.~~

17 ~~—If payment of a specific premium or subscription fee is required to provide coverage for a~~
18 ~~child, the policy or contract may require that notification of birth of a newly born child or~~
19 ~~notification of the start of the six-month adoption bonding period for an adopted child and~~
20 ~~payment of the required premium or fees be furnished to the nonprofit medical and surgical~~
21 ~~service plan corporation within thirty-one days after the date of birth or start of the bonding~~
22 ~~period in order to have the coverage continued beyond the thirty-one day period.~~

23 Section 10. That § 58-41-35.2 be repealed.

24 ~~—58-41-35.2. Any health insurance policy or indemnity type contract issued by a health~~

1 maintenance organization which offers coverage for a family member of an insured or subscriber
2 shall provide that the health insurance benefits applicable for children are payable with respect
3 to a newly born child of the insured or subscriber from the moment of birth or to a newly
4 adopted child of the insured or subscriber from the beginning of the six-month adoption bonding
5 period. The newly born or newly adopted child shall be added to the policy without underwriting
6 and without the imposition of any preexisting waiting period. Any policy or contract issued
7 before July 1, 1984, shall, upon its next anniversary date, also provide that the health insurance
8 benefits applicable for children are payable with respect to a newly born child of the insured or
9 subscriber from the moment of birth or to a newly adopted child of the insured or subscriber
10 from the beginning of the six-month adoption bonding period.

11 Section 11. That § 58-41-35.3 be repealed.

12 ~~— 58-41-35.3. The coverage for a newly born child from the moment of birth or for a newly~~
13 ~~adopted child, from the beginning of the six-month adoption bonding period, shall consist of~~
14 ~~coverage of injury or sickness including the necessary care and treatment of premature birth and~~
15 ~~medically diagnosed congenital defects and birth abnormalities.~~

16 Section 12. That § 58-41-35.4 be repealed.

17 ~~— 58-41-35.4. An insurer may require notice that a newly born or newly adopted child is to be~~
18 ~~added to the policy or that coverage is to be changed from single or spousal coverage to family~~
19 ~~coverage. However, the insurer may not require notification sooner than the birth of the child~~
20 ~~or the start of the adoption bonding period. If the child is added or coverage changed to family~~
21 ~~coverage before the birth of the child or the start of the adoption bonding period, no additional~~
22 ~~premium may be charged by the insurer until the birth of the child or the start of the adoption~~
23 ~~bonding period. The insurer shall take reasonable steps to provide adequate notice to insureds~~
24 ~~of the need to alter coverage to ensure newborn or adopted children are covered and of the lack~~

1 ~~of premium adjustment until the birth of the child or the start of the adoption bonding period. An~~
2 ~~insurer is considered to have taken reasonable steps if prominent disclosure of the requirements~~
3 ~~of this section are included in a certificate, subscriber contract, evidence of coverage, or~~
4 ~~employee handbook if such are provided to all insureds.~~

5 ~~— If payment of a specific premium or subscription fee is required to provide coverage for a~~
6 ~~child, the policy or contract may require that notification of birth of a newly born child or~~
7 ~~notification of the start of the six-month adoption bonding period for an adopted child and~~
8 ~~payment of the required premium or fees be furnished to the nonprofit medical and surgical~~
9 ~~service plan corporation within thirty-one days after the date of birth or start of the bonding~~
10 ~~period in order to have the coverage continued beyond the thirty-one day period.~~

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

781E0395

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 74 - 01/23/2001**

Introduced by: Senator Munson and Representative Konold

1 FOR AN ACT ENTITLED, An Act to add the Student Loan Marketing Association to certain
2 existing permitted investments of insurers.

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

4 Section 1. That § 58-27-57 be amended to read as follows:

5 58-27-57. Except with the director's consent, no insurer may have invested at any one time
6 more than forty percent of its assets in the class of securities described in subdivisions
7 58-27-17(1), (2), (3), and (4) and in § 58-27-28, exclusive of obligations of the Student Loan
8 Marketing Association, public utilities and securities described in §§ 58-27-103 and 58-27-104
9 and obligations guaranteed or insured by the United States Government or any instrumentality
10 or subdivision thereof, or any state as defined in subdivision 58-1-2(16). For purposes of
11 determining compliance with this section, the investments under subdivision 58-27-17(4) are
12 limited to those mutual funds that are investing at least ninety percent in bonds defined in
13 subdivisions 58-27-17(1), (2), and (3) and §§ 58-27-9 to 58-27-13, inclusive.

14 Section 2. That § 58-27-51 be amended to read as follows:

15 58-27-51. Notwithstanding the aggregate limitations set forth in chapter 58-27, an insurer

1 may exceed such limitations if it does not invest, in the aggregate, an amount in excess of fifty
2 percent of its capital and surplus in excess of four hundred thousand dollars, if such investment
3 otherwise complies with chapter 58-27. The provisions of this section do not apply to the
4 exceptions set forth in § 58-27-53 or 58-27-57.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

552E0462

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 94** - 01/25/2001

Introduced by: Senators Bogue, Duxbury, Koetzle, McCracken, Moore, Reedy, and Sutton (Dan) and Representatives Jaspers, Bartling, Hennies (Thomas), Jensen, Kloucek, McCaulley, Michels, Monroe, Nachtigal, Rhoden, Sebert, and Slaughter

1 FOR AN ACT ENTITLED, An Act to establish a statute of limitations for veterinary services.

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

3 Section 1. An action against a veterinarian or any member of a veterinarian's staff for
4 malpractice, error, mistake, or failure to cure, whether based upon contract or tort, may be
5 commenced only within three years after the alleged malpractice, error, mistake, or failure to
6 cure has occurred. However, the provisions of this section do not prohibit any counterclaim for
7 malpractice, error, mistake, or failure to cure, as a defense to any action for services brought by
8 a veterinarian.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

762E0409

SENATE ENGROSSED NO. **SB 100** - 01/31/2001

Introduced by: Senators Hainje and Koetzle and Representatives Murschel and Hennies
(Thomas)

1 FOR AN ACT ENTITLED, An Act to update the references to the building codes.

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

3 Section 1. That § 9-33-4.1 be amended to read as follows:

4 9-33-4.1. ~~Municipalities are hereby authorized to~~ Each municipality may adopt by ordinance
5 ~~those certain~~ building codes ~~known as the Uniform Codes adopted and proposed by the~~
6 ~~International Conference of Building Officials and the whole thereof, except such portions as the~~
7 ~~municipality may delete, modify, or amend, and as so deleted, modified, or amended it shall be~~
8 ~~filed in the office of the city auditor, city finance officer, or town clerk. Additional deletions,~~
9 ~~modifications, and amendments may, from time to time, be made by the governing body, and~~
10 ~~shall be effective upon their adoption and filing with the city auditor, city finance officer, or town~~
11 ~~clerk pursuant to § 11-10-5.~~

12 Section 2. That subdivision (17) of § 7-8-20 be amended to read as follows:

13 (17) To enact by ordinance, for any portion of the county which is zoned, ~~the 1997 Edition~~
14 ~~of the Uniform Building Code as published by the International Conference of~~
15 ~~Building Officials and to amend, modify, or delete any portion of the Uniform~~

1 ~~Building Code before enacting such an ordinance. Such ordinance may not apply to~~
2 ~~mobile or manufactured homes as defined in chapter 32-7A which are constructed in~~
3 ~~compliance with the applicable prevailing standards of the United States Department~~
4 ~~of Housing and Urban Development at the time of construction. The ordinance and~~
5 ~~any further amendments, modifications, or deletions shall be filed with the county~~
6 ~~auditor and shall become effective upon such filing certain building codes pursuant to~~
7 ~~§ 11-10-5.~~

8 Section 3. That § 11-10-5 be amended to read as follows:

9 11-10-5. If the governing body of any local unit of government adopts any ordinance
10 prescribing standards for new construction, such ~~ordinances~~ ordinance shall comply with the
11 1997 Edition of the Uniform Building Code as published by the International Conference of
12 Building Officials or the 2000 edition of the International Building Code as published by the
13 International Code Council, Incorporated. The governing body may amend, modify, or delete
14 any portion of the Uniform or International Building Code before enacting such an ordinance.
15 Additional deletions, modifications, and amendments to the municipal ordinance may, from time
16 to time, be made by the governing body and are effective upon their adoption and filing with the
17 municipal finance officer. Additional deletions, modifications, and amendments to the county
18 ordinance may, from time to time, be made by the governing body, and are effective upon their
19 adoption and filing with the county auditor. The ordinance may not apply to mobile or
20 manufactured homes as defined in chapter 32-7A which are constructed in compliance with the
21 applicable prevailing standards of the United States Department of Housing and Urban
22 Development at the time of construction.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

535E0385

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 123 - 02/14/2001

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

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Partnership Act and to repeal
2 conflicting provisions.

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

4 Section 101. In this Act:

5 (1) "Business" includes every trade, occupation, and profession.

6 (2) "Debtor in bankruptcy" means a person who is the subject of:

7 (i) An order for relief under Title 11 of the United States Code or a comparable
8 order under a successor statute of general application; or

9 (ii) A comparable order under federal, state, or foreign law governing insolvency.

10 (3) "Distribution" means a transfer of money or other property from a partnership to a
11 partner in the partner's capacity as a partner or to the partner's transferee.

12 (4) "Foreign limited liability partnership" means a partnership that:

13 (i) Is formed under laws other than the laws of this state; and

14 (ii) Has the status of a limited liability partnership under those laws.

- 1 (5) "Limited liability partnership" means a partnership that has filed a statement of
2 qualification under Section 1001 and does not have a similar statement in effect in any
3 other jurisdiction.
- 4 (6) "Partnership" means an association of two or more persons to carry on as co-owners
5 a business for profit formed under Section 202, predecessor law, or comparable law
6 of another jurisdiction.
- 7 (7) "Partnership agreement" means the agreement, whether written, oral, or implied,
8 among the partners concerning the partnership, including amendments to the
9 partnership agreement.
- 10 (8) "Partnership at will" means a partnership in which the partners have not agreed to
11 remain partners until the expiration of a definite term or the completion of a particular
12 undertaking.
- 13 (9) "Partnership interest" or "partner's interest in the partnership" means all of a partner's
14 interests in the partnership, including the partner's transferable interest and all
15 management and other rights.
- 16 (10) "Person" means an individual, corporation, business trust, estate, trust, partnership,
17 association, joint venture, government, governmental subdivision, agency, or
18 instrumentality, or any other legal or commercial entity.
- 19 (11) "Property" means all property, real, personal, or mixed, tangible or intangible, or any
20 interest therein.
- 21 (12) "State" means a state of the United States, the District of Columbia, the
22 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
23 jurisdiction of the United States.
- 24 (13) "Statement" means a statement of partnership authority under Section 303, a

1 statement of denial under Section 304, a statement of dissociation under Section 704,
2 a statement of dissolution under Section 805, a statement of merger under Section
3 907, a statement of qualification under Section 1001, a statement of foreign
4 qualification under Section 1102, or an amendment or cancellation of any of the
5 foregoing.

6 (14) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
7 encumbrance.

8 Section 102. (a) A person knows a fact if the person has actual knowledge of it.

9 (b) A person has notice of a fact if the person:

10 (1) Knows of it;

11 (2) Has received a notification of it; or

12 (3) Has reason to know it exists from all of the facts known to the person at the time in
13 question.

14 (c) A person notifies or gives a notification to another by taking steps reasonably required
15 to inform the other person in ordinary course, whether or not the other person learns of it.

16 (d) A person receives a notification when the notification:

17 (1) Comes to the person's attention; or

18 (2) Is duly delivered at the person's place of business or at any other place held out by the
19 person as a place for receiving communications.

20 (e) Except as otherwise provided in subsection (f), a person other than an individual knows,
21 has notice, or receives a notification of a fact for purposes of a particular transaction when the
22 individual conducting the transaction knows, has notice, or receives a notification of the fact, or
23 in any event when the fact would have been brought to the individual's attention if the person had
24 exercised reasonable diligence. The person exercises reasonable diligence if it maintains

1 reasonable routines for communicating significant information to the individual conducting the
2 transaction and there is reasonable compliance with the routines. Reasonable diligence does not
3 require an individual acting for the person to communicate information unless the communication
4 is part of the individual's regular duties or the individual has reason to know of the transaction
5 and that the transaction would be materially affected by the information.

6 (f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the
7 partnership is effective immediately as knowledge by, notice to, or receipt of a notification by
8 the partnership, except in the case of a fraud on the partnership committed by or with the consent
9 of that partner.

10 Section 103. (a) Except as otherwise provided in subsection (b), relations among the partners
11 and between the partners and the partnership are governed by the partnership agreement. To the
12 extent the partnership agreement does not otherwise provide, this Act governs relations among
13 the partners and between the partners and the partnership.

14 (b) The partnership agreement may not:

15 (1) Vary the rights and duties under Section 105 except to eliminate the duty to provide
16 copies of statements to all of the partners;

17 (2) Unreasonably restrict the right of access to books and records under Section 403(b);

18 (3) Eliminate the duty of loyalty under Section 404(b) or 603(b)(3), but:

19 (i) The partnership agreement may identify specific types or categories of
20 activities that do not violate the duty of loyalty, if not manifestly unreasonable;

21 or

22 (ii) All of the partners or a number or percentage specified in the partnership
23 agreement may authorize or ratify, after full disclosure of all material facts, a
24 specific act or transaction that otherwise would violate the duty of loyalty;

- 1 (4) Unreasonably reduce the duty of care under Section 404(c) or 603(b)(3);
- 2 (5) Eliminate the obligation of good faith and fair dealing under Section 404(d), but the
- 3 partnership agreement may prescribe the standards by which the performance of the
- 4 obligation is to be measured, if the standards are not manifestly unreasonable;
- 5 (6) Vary the power to dissociate as a partner under Section 602(a), except to require the
- 6 notice under Section 601(1) to be in writing;
- 7 (7) Vary the right of a court to expel a partner in the events specified in Section 601(5);
- 8 (8) Vary the requirement to wind up the partnership business in cases specified in Section
- 9 801(4), (5), or (6);
- 10 (9) Vary the law applicable to a limited liability partnership under Section 106(b); or
- 11 (10) Restrict rights of third parties under this Act.

12 Section 104. (a) Unless displaced by particular provisions of this Act, the principles of law
13 and equity supplement this Act.

14 (b) If an obligation to pay interest arises under this Act and the rate is not specified, the rate
15 is that specified in Category B of subdivision 54-3-16(2).

16 Section 105. (a) A statement may be filed in the Office of the Secretary of State. A certified
17 copy of a statement that is filed in an office in another state may be filed in the Office of the
18 Secretary of State. Either filing has the effect provided in this Act with respect to partnership
19 property located in or transactions that occur in this state.

20 (b) A certified copy of a statement that has been filed in the Office of the Secretary of State
21 and recorded in the office of the register of deeds has the effect provided for recorded statements
22 in this Act. A recorded statement that is not a certified copy of a statement filed in the Office of
23 the Secretary of State does not have the effect provided for recorded statements in this Act.

24 (c) A statement filed by a partnership must be executed by at least two partners. Other

1 statements must be executed by a partner or other person authorized by this Act. An individual
2 who executes a statement as, or on behalf of, a partner or other person named as a partner in a
3 statement shall personally declare under penalty of perjury that the contents of the statement are
4 accurate.

5 (d) A person authorized by this Act to file a statement may amend or cancel the statement
6 by filing an amendment or cancellation that names the partnership, identifies the statement, and
7 states the substance of the amendment or cancellation.

8 (e) A person who files a statement pursuant to this section shall promptly send a copy of the
9 statement to every nonfiling partner and to any other person named as a partner in the statement.
10 Failure to send a copy of a statement to a partner or other person does not limit the effectiveness
11 of the statement as to a person not a partner.

12 The secretary of state may collect a fee for filing or providing a certified copy of a statement.
13 The register of deeds may collect a fee, not to exceed ten dollars, for recording a statement.

14 Section 106. (a) Except as otherwise provided in subsection (b), the law of the jurisdiction
15 in which a partnership has its chief executive office governs relations among the partners and
16 between the partners and the partnership.

17 (b) The law of this state governs relations among the partners and between the partners and
18 the partnership and the liability of partners for an obligation of a limited liability partnership.

19 Section 107. A partnership governed by this Act is subject to any amendment to or repeal
20 of this Act.

21 Section 201. (a) A partnership is an entity distinct from its partners.

22 (b) A limited liability partnership continues to be the same entity that existed before the filing
23 of a statement of qualification under Section 1001.

24 Section 202. (a) Except as otherwise provided in subsection (b), the association of two or

1 more persons to carry on as co-owners a business for profit forms a partnership, whether or not
2 the persons intend to form a partnership.

3 (b) An association formed under a statute other than this Act, a predecessor statute, or a
4 comparable statute of another jurisdiction is not a partnership under this Act.

5 (c) In determining whether a partnership is formed, the following rules apply:

6 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common
7 property, or part ownership does not by itself establish a partnership, even if the co-
8 owners share profits made by the use of the property.

9 (2) The sharing of gross returns does not by itself establish a partnership, even if the
10 persons sharing them have a joint or common right or interest in property from which
11 the returns are derived.

12 (3) A person who receives a share of the profits of a business is presumed to be a partner
13 in the business, unless the profits were received in payment:

14 (i) Of a debt by installments or otherwise;

15 (ii) For services as an independent contractor or of wages or other compensation
16 to an employee;

17 (iii) Of rent;

18 (iv) Of an annuity or other retirement or health benefit to a beneficiary,
19 representative, or designee of a deceased or retired partner;

20 (v) Of interest or other charge on a loan, even if the amount of payment varies
21 with the profits of the business, including a direct or indirect present or future
22 ownership of the collateral, or rights to income, proceeds, or increase in value
23 derived from the collateral; or

24 (vi) For the sale of the goodwill of a business or other property by installments or

1 otherwise.

2 Section 203. Property acquired by a partnership is property of the partnership and not of the
3 partners individually.

4 Section 204. (a) Property is partnership property if acquired in the name of:

5 (1) The partnership; or

6 (2) One or more partners with an indication in the instrument transferring title to the
7 property of the person's capacity as a partner or of the existence of a partnership but
8 without an indication of the name of the partnership.

9 (b) Property is acquired in the name of the partnership by a transfer to:

10 (1) The partnership in its name; or

11 (2) One or more partners in their capacity as partners in the partnership, if the name of
12 the partnership is indicated in the instrument transferring title to the property.

13 (c) Property is presumed to be partnership property if purchased with partnership assets,
14 even if not acquired in the name of the partnership or of one or more partners with an indication
15 in the instrument transferring title to the property of the person's capacity as a partner or of the
16 existence of a partnership.

17 (d) Property acquired in the name of one or more of the partners, without an indication in
18 the instrument transferring title to the property of the person's capacity as a partner or of the
19 existence of a partnership and without use of partnership assets, is presumed to be separate
20 property, even if used for partnership purposes.

21 Section 301. Subject to the effect of a statement of partnership authority under Section 303:

22 (1) Each partner is an agent of the partnership for the purpose of its business. An act of
23 a partner, including the execution of an instrument in the partnership name, for
24 apparently carrying on in the ordinary course the partnership business or business of

1 the kind carried on by the partnership binds the partnership, unless the partner had no
2 authority to act for the partnership in the particular matter and the person with whom
3 the partner was dealing knew or had received a notification that the partner lacked
4 authority.

5 (2) An act of a partner which is not apparently for carrying on in the ordinary course the
6 partnership business or business of the kind carried on by the partnership binds the
7 partnership only if the act was authorized by the other partners.

8 Section 302. (a) Partnership property may be transferred as follows:

9 (1) Subject to the effect of a statement of partnership authority under Section 303,
10 partnership property held in the name of the partnership may be transferred by an
11 instrument of transfer executed by a partner in the partnership name.

12 (2) Partnership property held in the name of one or more partners with an indication in
13 the instrument transferring the property to them of their capacity as partners or of the
14 existence of a partnership, but without an indication of the name of the partnership,
15 may be transferred by an instrument of transfer executed by the persons in whose
16 name the property is held.

17 (3) Partnership property held in the name of one or more persons other than the
18 partnership, without an indication in the instrument transferring the property to them
19 of their capacity as partners or of the existence of a partnership, may be transferred
20 by an instrument of transfer executed by the persons in whose name the property is
21 held.

22 (b) A partnership may recover partnership property from a transferee only if it proves that
23 execution of the instrument of initial transfer did not bind the partnership under Section 301 and:

24 (1) As to a subsequent transferee who gave value for property transferred under

1 subsection (a)(1) and (2), proves that the subsequent transferee knew or had received
2 a notification that the person who executed the instrument of initial transfer lacked
3 authority to bind the partnership; or

4 (2) As to a transferee who gave value for property transferred under subsection (a)(3),
5 proves that the transferee knew or had received a notification that the property was
6 partnership property and that the person who executed the instrument of initial
7 transfer lacked authority to bind the partnership.

8 (c) A partnership may not recover partnership property from a subsequent transferee if the
9 partnership would not have been entitled to recover the property, under subsection (b), from any
10 earlier transferee of the property.

11 (d) If a person holds all of the partners' interests in the partnership, all of the partnership
12 property vests in that person. The person may execute a document in the name of the partnership
13 to evidence vesting of the property in that person and may file or record the document.

14 Section 303. (a) A partnership may file a statement of partnership authority in the Office of
15 the Secretary of State, which:

16 (1) Must include:

17 (i) The name of the partnership;

18 (ii) The street address of its chief executive office and of one office in this state,
19 if there is one;

20 (iii) The names and mailing addresses of all of the partners or of an agent appointed
21 and maintained by the partnership for the purpose of subsection (b); and

22 (iv) The names of the partners authorized to execute an instrument transferring real
23 property held in the name of the partnership; and

24 (2) May state the authority, or limitations on the authority, of some or all of the partners

1 to enter into other transactions on behalf of the partnership and any other matter.

2 (b) If a statement of partnership authority names an agent, the agent shall maintain a list of
3 the names and mailing addresses of all of the partners and make it available to any person on
4 request for good cause shown.

5 (c) If a filed statement of partnership authority is executed pursuant to Section 105(c) and
6 states the name of the partnership but does not contain all of the other information required by
7 subsection (a), the statement nevertheless operates with respect to a person not a partner as
8 provided in subsections (d) and (e).

9 (d) Except as otherwise provided in subsection (g), a filed statement of partnership authority
10 supplements the authority of a partner to enter into transactions on behalf of the partnership as
11 follows:

12 (1) Except for transfers of real property, a grant of authority contained in a filed
13 statement of partnership authority is conclusive in favor of a person who gives value
14 without knowledge to the contrary, so long as and to the extent that a limitation on
15 that authority is not then contained in another filed statement. A filed cancellation of
16 a limitation on authority revives the previous grant of authority.

17 (2) A grant of authority to transfer real property held in the name of the partnership
18 contained in a certified copy of a filed statement of partnership authority recorded in
19 the office for recording transfers of that real property is conclusive in favor of a
20 person who gives value without knowledge to the contrary, so long as and to the
21 extent that a certified copy of a filed statement containing a limitation on that
22 authority is not then of record in the office for recording transfers of that real
23 property. The recording in the office for recording transfers of that real property of
24 a certified copy of a filed cancellation of a limitation on authority revives the previous

1 grant of authority.

2 (e) A person not a partner is deemed to know of a limitation on the authority of a partner to
3 transfer real property held in the name of the partnership if a certified copy of the filed statement
4 containing the limitation on authority is of record in the office for recording transfers of that real
5 property.

6 (f) Except as otherwise provided in subsections (d) and (e) and Sections 704 and 805, a
7 person not a partner is not deemed to know of a limitation on the authority of a partner merely
8 because the limitation is contained in a filed statement.

9 (g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation
10 of law five years after the date on which the statement, or the most recent amendment, was filed
11 with the secretary of state.

12 Section 304. A partner or other person named as a partner in a filed statement of partnership
13 authority or in a list maintained by an agent pursuant to Section 303(b) may file a statement of
14 denial in the Office of the Secretary of State stating the name of the partnership and the fact that
15 is being denied, which may include denial of a person's authority or status as a partner. A
16 statement of denial is a limitation on authority as provided in Section 303(d) and (e).

17 Section 305. (a) A partnership is liable for loss or injury caused to a person, or for a penalty
18 incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner
19 acting in the ordinary course of business of the partnership or with authority of the partnership.

20 (b) If, in the course of the partnership's business or while acting with authority of the
21 partnership, a partner receives or causes the partnership to receive money or property of a person
22 not a partner, and the money or property is misapplied by a partner, the partnership is liable for
23 the loss.

24 Section 306. (a) Except as otherwise provided in subsections (b) and (c), all partners are

1 liable jointly and severally for all obligations of the partnership unless otherwise agreed by the
2 claimant or provided by law.

3 (b) A person admitted as a partner into an existing partnership is not personally liable for any
4 partnership obligation incurred before the person's admission as a partner.

5 (c) An obligation of a partnership incurred while the partnership is a limited liability
6 partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the
7 partnership. A partner is not personally liable, directly or indirectly, by way of contribution or
8 otherwise, for such an obligation solely by reason of being or so acting as a partner. This
9 subsection applies notwithstanding anything inconsistent in the partnership agreement that
10 existed immediately before the vote required to become a limited liability partnership under
11 Section 1001(b).

12 Section 307. (a) A partnership may sue and be sued in the name of the partnership.

13 (b) An action may be brought against the partnership and, to the extent not inconsistent with
14 Section 306, any or all of the partners in the same action or in separate actions.

15 (c) A judgment against a partnership is not by itself a judgment against a partner. A judgment
16 against a partnership may not be satisfied from a partner's assets unless there is also a judgment
17 against the partner.

18 (d) A judgment creditor of a partner may not levy execution against the assets of the partner
19 to satisfy a judgment based on a claim against the partnership unless the partner is personally
20 liable for the claim under Section 306 and:

21 (1) A judgment based on the same claim has been obtained against the partnership and a
22 writ of execution on the judgment has been returned unsatisfied in whole or in part;

23 (2) The partnership is a debtor in bankruptcy;

24 (3) The partner has agreed that the creditor need not exhaust partnership assets;

1 (4) A court grants permission to the judgment creditor to levy execution against the
2 assets of a partner based on a finding that partnership assets subject to execution are
3 clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is
4 excessively burdensome, or that the grant of permission is an appropriate exercise of
5 the court's equitable powers; or

6 (5) Liability is imposed on the partner by law or contract independent of the existence of
7 the partnership.

8 (e) This section applies to any partnership liability or obligation resulting from a
9 representation by a partner or purported partner under Section 308.

10 Section 308. (a) If a person, by words or conduct, purports to be a partner, or consents to
11 being represented by another as a partner, in a partnership or with one or more persons not
12 partners, the purported partner is liable to a person to whom the representation is made, if that
13 person, relying on the representation, enters into a transaction with the actual or purported
14 partnership. If the representation, either by the purported partner or by a person with the
15 purported partner's consent, is made in a public manner, the purported partner is liable to a
16 person who relies upon the purported partnership even if the purported partner is not aware of
17 being held out as a partner to the claimant. If partnership liability results, the purported partner
18 is liable with respect to that liability as if the purported partner were a partner. If no partnership
19 liability results, the purported partner is liable with respect to that liability jointly and severally
20 with any other person consenting to the representation.

21 (b) If a person is thus represented to be a partner in an existing partnership, or with one or
22 more persons not partners, the purported partner is an agent of persons consenting to the
23 representation to bind them to the same extent and in the same manner as if the purported
24 partner were a partner, with respect to persons who enter into transactions in reliance upon the

1 representation. If all of the partners of the existing partnership consent to the representation, a
2 partnership act or obligation results. If fewer than all of the partners of the existing partnership
3 consent to the representation, the person acting and the partners consenting to the representation
4 are jointly and severally liable.

5 (c) A person is not liable as a partner merely because the person is named by another in a
6 statement of partnership authority.

7 (d) A person does not continue to be liable as a partner merely because of a failure to file a
8 statement of dissociation or to amend a statement of partnership authority to indicate the
9 partner's dissociation from the partnership.

10 (e) Except as otherwise provided in subsections (a) and (b), persons who are not partners
11 as to each other are not liable as partners to other persons.

12 Section 401. (a) Each partner is deemed to have an account that is:

13 (1) Credited with an amount equal to the money plus the value of any other property, net
14 of the amount of any liabilities, the partner contributes to the partnership and the
15 partner's share of the partnership profits; and

16 (2) Charged with an amount equal to the money plus the value of any other property, net
17 of the amount of any liabilities, distributed by the partnership to the partner and the
18 partner's share of the partnership losses.

19 (b) Each partner is entitled to an equal share of the partnership profits and is chargeable with
20 a share of the partnership losses in proportion to the partner's share of the profits.

21 (c) A partnership shall reimburse a partner for payments made and indemnify a partner for
22 liabilities incurred by the partner in the ordinary course of the business of the partnership or for
23 the preservation of its business or property.

24 (d) A partnership shall reimburse a partner for an advance to the partnership beyond the

1 amount of capital the partner agreed to contribute.

2 (e) A payment or advance made by a partner which gives rise to a partnership obligation
3 under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the
4 date of the payment or advance.

5 (f) Each partner has equal rights in the management and conduct of the partnership business.

6 (g) A partner may use or possess partnership property only on behalf of the partnership.

7 (h) A partner is not entitled to remuneration for services performed for the partnership,
8 except for reasonable compensation for services rendered in winding up the business of the
9 partnership.

10 (i) A person may become a partner only with the consent of all of the partners.

11 (j) A difference arising as to a matter in the ordinary course of business of a partnership may
12 be decided by a majority of the partners. An act outside the ordinary course of business of a
13 partnership and an amendment to the partnership agreement may be undertaken only with the
14 consent of all of the partners.

15 (k) This section does not affect the obligations of a partnership to other persons under
16 Section 301.

17 Section 402. A partner has no right to receive, and may not be required to accept, a
18 distribution in kind.

19 Section 403. (a) A partnership shall keep its books and records, if any, at its chief executive
20 office.

21 (b) A partnership shall provide partners and their agents and attorneys access to its books
22 and records. It shall provide former partners and their agents and attorneys access to books and
23 records pertaining to the period during which they were partners. The right of access provides
24 the opportunity to inspect and copy books and records during ordinary business hours. A

1 partnership may impose a reasonable charge, covering the costs of labor and material, for copies
2 of documents furnished.

3 (c) Each partner and the partnership shall furnish to a partner, and to the legal representative
4 of a deceased partner or partner under legal disability:

5 (1) Without demand, any information concerning the partnership's business and affairs
6 reasonably required for the proper exercise of the partner's rights and duties under the
7 partnership agreement or this Act; and

8 (2) On demand, any other information concerning the partnership's business and affairs,
9 except to the extent the demand or the information demanded is unreasonable or
10 otherwise improper under the circumstances.

11 Section 404. (a) The only fiduciary duties a partner owes to the partnership and the other
12 partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

13 (b) A partner's duty of loyalty to the partnership and the other partners is limited to the
14 following:

15 (1) To account to the partnership and hold as trustee for it any property, profit, or benefit
16 derived by the partner in the conduct and winding up of the partnership business or
17 derived from a use by the partner of partnership property, including the appropriation
18 of a partnership opportunity;

19 (2) To refrain from dealing with the partnership in the conduct or winding up of the
20 partnership business as or on behalf of a party having an interest adverse to the
21 partnership; and

22 (3) To refrain from competing with the partnership in the conduct of the partnership
23 business before the dissolution of the partnership.

24 (c) A partner's duty of care to the partnership and the other partners in the conduct and

1 winding up of the partnership business is limited to refraining from engaging in grossly negligent
2 or reckless conduct, intentional misconduct, or a knowing violation of law.

3 (d) A partner shall discharge the duties to the partnership and the other partners under this
4 Act or under the partnership agreement and exercise any rights consistently with the obligation
5 of good faith and fair dealing.

6 (e) A partner does not violate a duty or obligation under this Act or under the partnership
7 agreement merely because the partner's conduct furthers the partner's own interest.

8 (f) A partner may lend money to and transact other business with the partnership, and as to
9 each loan or transaction the rights and obligations of the partner are the same as those of a
10 person who is not a partner, subject to other applicable law.

11 (g) This section applies to a person winding up the partnership business as the personal or
12 legal representative of the last surviving partner as if the person were a partner.

13 Section 405. (a) A partnership may maintain an action against a partner for a breach of the
14 partnership agreement, or for the violation of a duty to the partnership, causing harm to the
15 partnership.

16 (b) A partner may maintain an action against the partnership or another partner for legal or
17 equitable relief, with or without an accounting as to partnership business, to:

18 (1) Enforce the partner's rights under the partnership agreement;

19 (2) Enforce the partner's rights under this Act, including:

20 (i) The partner's rights under Section 401, 403, or 404;

21 (ii) The partner's right on dissociation to have the partner's interest in the
22 partnership purchased pursuant to Section 701 or enforce any other right under
23 Article 6 or 7; or

24 (iii) The partner's right to compel a dissolution and winding up of the partnership

1 business under Section 801 or enforce any other right under Article 8; or

2 (3) Enforce the rights and otherwise protect the interests of the partner, including rights
3 and interests arising independently of the partnership relationship.

4 (c) The accrual of, and any time limitation on, a right of action for a remedy under this
5 section is governed by other law. A right to an accounting upon a dissolution and winding up
6 does not revive a claim barred by law.

7 Section 406. (a) If a partnership for a definite term or particular undertaking is continued,
8 without an express agreement, after the expiration of the term or completion of the undertaking,
9 the rights and duties of the partners remain the same as they were at the expiration or
10 completion, so far as is consistent with a partnership at will.

11 (b) If the partners, or those of them who habitually acted in the business during the term or
12 undertaking, continue the business without any settlement or liquidation of the partnership, they
13 are presumed to have agreed that the partnership will continue.

14 Section 501. A partner is not a co-owner of partnership property and has no interest in
15 partnership property which can be transferred, either voluntarily or involuntarily.

16 Section 502. The only transferable interest of a partner in the partnership is the partner's
17 share of the profits and losses of the partnership and the partner's right to receive distributions.
18 The interest is personal property.

19 Section 503. (a) A transfer, in whole or in part, of a partner's transferable interest in the
20 partnership:

21 (1) Is permissible;

22 (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of
23 the partnership business; and

24 (3) Does not, as against the other partners or the partnership, entitle the transferee, during

1 the continuance of the partnership, to participate in the management or conduct of the
2 partnership business, to require access to information concerning partnership
3 transactions, or to inspect or copy the partnership books or records.

4 (b) A transferee of a partner's transferable interest in the partnership has a right:

5 (1) To receive, in accordance with the transfer, distributions to which the transferor
6 would otherwise be entitled;

7 (2) To receive upon the dissolution and winding up of the partnership business, in
8 accordance with the transfer, the net amount otherwise distributable to the transferor;
9 and

10 (3) To seek under Section 801(6) a judicial determination that it is equitable to wind up
11 the partnership business.

12 (c) In a dissolution and winding up, a transferee is entitled to an account of partnership
13 transactions only from the date of the latest account agreed to by all of the partners.

14 (d) Upon transfer, the transferor retains the rights and duties of a partner other than the
15 interest in distributions transferred.

16 (e) A partnership need not give effect to a transferee's rights under this section until it has
17 notice of the transfer.

18 (f) A transfer of a partner's transferable interest in the partnership in violation of a restriction
19 on transfer contained in the partnership agreement is ineffective as to a person having notice of
20 the restriction at the time of transfer.

21 Section 504. (a) On application by a judgment creditor of a partner or of a partner's
22 transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor
23 to satisfy the judgment. The court may appoint a receiver of the share of the distributions due
24 or to become due to the judgment debtor in respect of the partnership and make all other orders,

1 directions, accounts, and inquiries the judgment debtor might have made or which the
2 circumstances of the case may require.

3 (b) A charging order constitutes a lien on the judgment debtor's transferable interest in the
4 partnership. The court may order a foreclosure of the interest subject to the charging order at
5 any time. The purchaser at the foreclosure sale has the rights of a transferee.

6 (c) At any time before foreclosure, an interest charged may be redeemed:

7 (1) By the judgment debtor;

8 (2) With property other than partnership property, by one or more of the other partners;

9 or

10 (3) With partnership property, by one or more of the other partners with the consent of
11 all of the partners whose interests are not so charged.

12 (d) This Act does not deprive a partner of a right under exemption laws with respect to the
13 partner's interest in the partnership.

14 (e) This section provides the exclusive remedy by which a judgment creditor of a partner or
15 partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in
16 the partnership.

17 Section 601. A partner is dissociated from a partnership upon the occurrence of any of the
18 following events:

19 (1) The partnership's having notice of the partner's express will to withdraw as a partner
20 or on a later date specified by the partner;

21 (2) An event agreed to in the partnership agreement as causing the partner's dissociation;

22 (3) The partner's expulsion pursuant to the partnership agreement;

23 (4) The partner's expulsion by the unanimous vote of the other partners if:

24 (i) It is unlawful to carry on the partnership business with that partner;

- 1 (ii) There has been a transfer of all or substantially all of that partner's transferable
- 2 interest in the partnership, other than a transfer for security purposes, or a
- 3 court order charging the partner's interest, which has not been foreclosed;
- 4 (iii) Within ninety days after the partnership notifies a corporate partner that it will
- 5 be expelled because it has filed a certificate of dissolution or the equivalent, its
- 6 charter has been revoked, or its right to conduct business has been suspended
- 7 by the jurisdiction of its incorporation, there is no revocation of the certificate
- 8 of dissolution or no reinstatement of its charter or its right to conduct business;
- 9 or
- 10 (iv) A partnership that is a partner has been dissolved and its business is being
- 11 wound up;
- 12 (5) On application by the partnership or another partner, the partner's expulsion by
- 13 judicial determination because:
 - 14 (i) The partner engaged in wrongful conduct that adversely and materially affected
 - 15 the partnership business;
 - 16 (ii) The partner willfully or persistently committed a material breach of the
 - 17 partnership agreement or of a duty owed to the partnership or the other
 - 18 partners under Section 404; or
 - 19 (iii) The partner engaged in conduct relating to the partnership business which
 - 20 makes it not reasonably practicable to carry on the business in partnership with
 - 21 the partner;
- 22 (6) The partner's:
 - 23 (i) Becoming a debtor in bankruptcy;
 - 24 (ii) Executing an assignment for the benefit of creditors;

- 1 (iii) Seeking, consenting to, or acquiescing in the appointment of a trustee,
2 receiver, or liquidator of that partner or of all or substantially all of that
3 partner's property; or
- 4 (iv) Failing, within ninety days after the appointment, to have vacated or stayed the
5 appointment of a trustee, receiver, or liquidator of the partner or of all or
6 substantially all of the partner's property obtained without the partner's consent
7 or acquiescence, or failing within ninety days after the expiration of a stay to
8 have the appointment vacated;
- 9 (7) In the case of a partner who is an individual:
 - 10 (i) The partner's death;
 - 11 (ii) The appointment of a guardian or general conservator for the partner; or
 - 12 (iii) A judicial determination that the partner has otherwise become incapable of
13 performing the partner's duties under the partnership agreement;
- 14 (8) In the case of a partner that is a trust or is acting as a partner by virtue of being a
15 trustee of a trust, distribution of the trust's entire transferable interest in the
16 partnership, but not merely by reason of the substitution of a successor trustee;
- 17 (9) In the case of a partner that is an estate or is acting as a partner by virtue of being a
18 personal representative of an estate, distribution of the estate's entire transferable
19 interest in the partnership, but not merely by reason of the substitution of a successor
20 personal representative; or
- 21 (10) Termination of a partner who is not an individual, partnership, corporation, trust, or
22 estate.

23 Section 602. (a) A partner has the power to dissociate at any time, rightfully or wrongfully,
24 by express will pursuant to Section 601(1).

1 (b) A partner's dissociation is wrongful only if:

2 (1) It is in breach of an express provision of the partnership agreement; or

3 (2) In the case of a partnership for a definite term or particular undertaking, before the
4 expiration of the term or the completion of the undertaking:

5 (i) The partner withdraws by express will, unless the withdrawal follows within
6 ninety days after another partner's dissociation by death or otherwise under
7 Section 601(6) to (10), inclusive, or wrongful dissociation under this
8 subsection;

9 (ii) The partner is expelled by judicial determination under Section 601(5);

10 (iii) The partner is dissociated by becoming a debtor in bankruptcy; or

11 (iv) In the case of a partner who is not an individual, trust other than a business
12 trust, or estate, the partner is expelled or otherwise dissociated because it
13 willfully dissolved or terminated.

14 (c) A partner who wrongfully dissociates is liable to the partnership and to the other partners
15 for damages caused by the dissociation. The liability is in addition to any other obligation of the
16 partner to the partnership or to the other partners.

17 Section 603. (a) If a partner's dissociation results in a dissolution and winding up of the
18 partnership business, Article 8 applies; otherwise, Article 7 applies.

19 (b) Upon a partner's dissociation:

20 (1) The partner's right to participate in the management and conduct of the partnership
21 business terminates, except as otherwise provided in Section 803;

22 (2) The partner's duty of loyalty under Section 404(b)(3) terminates; and

23 (3) The partner's duty of loyalty under Section 404(b)(1) and (2) and duty of care under
24 Section 404(c) continue only with regard to matters arising and events occurring

1 before the partner's dissociation, unless the partner participates in winding up the
2 partnership's business pursuant to Section 803.

3 Section 701. (a) If a partner is dissociated from a partnership without resulting in a
4 dissolution and winding up of the partnership business under Section 801, the partnership shall
5 cause the dissociated partner's interest in the partnership to be purchased for a buyout price
6 determined pursuant to subsection (b).

7 (b) The buyout price of a dissociated partner's interest is the amount that would have been
8 distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the
9 assets of the partnership were sold at a price equal to the greater of the liquidation value or the
10 value based on a sale of the entire business as a going concern without the dissociated partner
11 and the partnership were wound up as of that date. Interest must be paid from the date of
12 dissociation to the date of payment.

13 (c) Damages for wrongful dissociation under Section 602(b), and all other amounts owing,
14 whether or not presently due, from the dissociated partner to the partnership, must be offset
15 against the buyout price. Interest must be paid from the date the amount owed becomes due to
16 the date of payment.

17 (d) A partnership shall indemnify a dissociated partner whose interest is being purchased
18 against all partnership liabilities, whether incurred before or after the dissociation, except
19 liabilities incurred by an act of the dissociated partner under Section 702.

20 (e) If no agreement for the purchase of a dissociated partner's interest is reached within one
21 hundred twenty days after a written demand for payment, the partnership shall pay, or cause to
22 be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout
23 price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

24 (f) If a deferred payment is authorized under subsection (h), the partnership may tender a

1 written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced
2 by any offsets under subsection (c), stating the time of payment, the amount and type of security
3 for payment, and the other terms and conditions of the obligation.

4 (g) The payment or tender required by subsection (e) or (f) must be accompanied by the
5 following:

6 (1) A statement of partnership assets and liabilities as of the date of dissociation;

7 (2) The latest available partnership balance sheet and income statement, if any;

8 (3) An explanation of how the estimated amount of the payment was calculated; and

9 (4) Written notice that the payment is in full satisfaction of the obligation to purchase
10 unless, within one hundred twenty days after the written notice, the dissociated
11 partner commences an action to determine the buyout price, any offsets under
12 subsection (c), or other terms of the obligation to purchase.

13 (h) A partner who wrongfully dissociates before the expiration of a definite term or the
14 completion of a particular undertaking is not entitled to payment of any portion of the buyout
15 price until the expiration of the term or completion of the undertaking, unless the partner
16 establishes to the satisfaction of the court that earlier payment will not cause undue hardship to
17 the business of the partnership. A deferred payment must be adequately secured and bear
18 interest.

19 (i) A dissociated partner may maintain an action against the partnership, pursuant to Section
20 405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection
21 (c), or other terms of the obligation to purchase. The action must be commenced within one
22 hundred twenty days after the partnership has tendered payment or an offer to pay or within one
23 year after written demand for payment if no payment or offer to pay is tendered. The court shall
24 determine the buyout price of the dissociated partner's interest, any offset due under subsection

1 (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred
2 payment is authorized under subsection (h), the court shall also determine the security for
3 payment and other terms of the obligation to purchase. The court may assess reasonable
4 attorney's fees and the fees and expenses of appraisers or other experts for a party to the action,
5 in amounts the court finds equitable, against a party that the court finds acted arbitrarily,
6 vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender
7 payment or an offer to pay or to comply with subsection (g).

8 Section 702. (a) For two years after a partner dissociates without resulting in a dissolution
9 and winding up of the partnership business, the partnership, including a surviving partnership
10 under Article 9, is bound by an act of the dissociated partner which would have bound the
11 partnership under Section 301 before dissociation only if at the time of entering into the
12 transaction the other party:

- 13 (1) Reasonably believed that the dissociated partner was then a partner;
- 14 (2) Did not have notice of the partner's dissociation; and
- 15 (3) Is not deemed to have had knowledge under Section 303(e) or notice under Section
16 704(c).

17 (b) A dissociated partner is liable to the partnership for any damage caused to the partnership
18 arising from an obligation incurred by the dissociated partner after dissociation for which the
19 partnership is liable under subsection (a).

20 Section 703. (a) A partner's dissociation does not of itself discharge the partner's liability for
21 a partnership obligation incurred before dissociation. A dissociated partner is not liable for a
22 partnership obligation incurred after dissociation, except as otherwise provided in subsection (b).

23 (b) A partner who dissociates without resulting in a dissolution and winding up of the
24 partnership business is liable as a partner to the other party in a transaction entered into by the

1 partnership, or a surviving partnership under Article 9, within two years after the partner's
2 dissociation, only if the partner is liable for the obligation under Section 306 and at the time of
3 entering into the transaction the other party:

- 4 (1) Reasonably believed that the dissociated partner was then a partner;
- 5 (2) Did not have notice of the partners dissociation; and
- 6 (3) Is not deemed to have had knowledge under Section 303(e) or notice under Section
7 704(c).

8 (c) By agreement with the partnership creditor and the partners continuing the business, a
9 dissociated partner may be released from liability for a partnership obligation.

10 (d) A dissociated partner is released from liability for a partnership obligation if a partnership
11 creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a
12 material alteration in the nature or time of payment of a partnership obligation.

13 Section 704. (a) A dissociated partner or the partnership may file a statement of dissociation
14 in the Office of the Secretary of State stating the name of the partnership and that the partner is
15 dissociated from the partnership.

16 (b) A statement of dissociation is a limitation on the authority of a dissociated partner for the
17 purposes of Section 303(d) and (e).

18 (c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner is deemed
19 to have notice of the dissociation ninety days after the statement of dissociation is filed.

20 Section 705. Continued use of a partnership name, or a dissociated partner's name as part
21 thereof, by partners continuing the business does not of itself make the dissociated partner liable
22 for an obligation of the partners or the partnership continuing the business.

23 Section 801. A partnership is dissolved, and its business must be wound up, only upon the
24 occurrence of any of the following events:

- 1 (1) In a partnership at will, the partnership's having notice from a partner, other than a
2 partner who is dissociated under Section 601(2) to (10), inclusive, of that partner's
3 express will to withdraw as a partner, or on a later date specified by the partner;
- 4 (2) In a partnership for a definite term or particular undertaking:
 - 5 (i) Within ninety days after a partner's dissociation by death or otherwise under
6 Section 601(6) to (10), inclusive, or wrongful dissociation under Section
7 602(b), the express will of at least half of the remaining partners to wind up the
8 partnership business, for which purpose a partner's rightful dissociation
9 pursuant to Section 602(b)(2)(i) constitutes the expression of that partner's will
10 to wind up the partnership business;
 - 11 (ii) The express will of all of the partners to wind up the partnership business; or
 - 12 (iii) The expiration of the term or the completion of the undertaking;
- 13 (3) An event agreed to in the partnership agreement resulting in the winding up of the
14 partnership business;
- 15 (4) An event that makes it unlawful for all or substantially all of the business of the
16 partnership to be continued, but a cure of illegality within ninety days after notice to
17 the partnership of the event is effective retroactively to the date of the event for
18 purposes of this section;
- 19 (5) On application by a partner, a judicial determination that:
 - 20 (i) The economic purpose of the partnership is likely to be unreasonably
21 frustrated;
 - 22 (ii) Another partner has engaged in conduct relating to the partnership business
23 which makes it not reasonably practicable to carry on the business in
24 partnership with that partner; or

1 (iii) It is not otherwise reasonably practicable to carry on the partnership business
2 in conformity with the partnership agreement; or

3 (6) On application by a transferee of a partner's transferable interest, a judicial
4 determination that it is equitable to wind up the partnership business:

5 (i) After the expiration of the term or completion of the undertaking, if the
6 partnership was for a definite term or particular undertaking at the time of the
7 transfer or entry of the charging order that gave rise to the transfer; or

8 (ii) At any time, if the partnership was a partnership at will at the time of the
9 transfer or entry of the charging order that gave rise to the transfer.

10 Section 802. (a) Subject to subsection (b), a partnership continues after dissolution only for
11 the purpose of winding up its business. The partnership is terminated when the winding up of its
12 business is completed.

13 (b) At any time after the dissolution of a partnership and before the winding up of its business
14 is completed, all of the partners, including any dissociating partner other than a wrongfully
15 dissociating partner, may waive the right to have the partnership's business wound up and the
16 partnership terminated. In that event:

17 (1) The partnership resumes carrying on its business as if dissolution had never occurred,
18 and any liability incurred by the partnership or a partner after the dissolution and
19 before the waiver is determined as if dissolution had never occurred; and

20 (2) The rights of a third party accruing under Section 804(1) or arising out of conduct in
21 reliance on the dissolution before the third party knew or received a notification of the
22 waiver may not be adversely affected.

23 Section 803. (a) After dissolution, a partner who has not wrongfully dissociated may
24 participate in winding up the partnership's business, but on application of any partner, partner's

1 legal representative, or transferee, the circuit court, for good cause shown, may order judicial
2 supervision of the winding up.

3 (b) The legal representative of the last surviving partner may wind up a partnership's
4 business.

5 (c) A person winding up a partnership's business may preserve the partnership business or
6 property as a going concern for a reasonable time, prosecute and defend actions and
7 proceedings, whether civil, criminal, or administrative, settle and close the partnership's business,
8 dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute
9 the assets of the partnership pursuant to Section 807, settle disputes by mediation or arbitration,
10 and perform other necessary acts.

11 Section 804. Subject to Section 805, a partnership is bound by a partner's act after
12 dissolution that:

- 13 (1) Is appropriate for winding up the partnership business; or
14 (2) Would have bound the partnership under Section 301 before dissolution, if the other
15 party to the transaction did not have notice of the dissolution.

16 Section 805. (a) After dissolution, a partner who has not wrongfully dissociated may file a
17 statement of dissolution in the Office of the Secretary of State stating the name of the partnership
18 and that the partnership has dissolved and is winding up its business.

19 (b) A statement of dissolution cancels a filed statement of partnership authority for the
20 purposes of Section 303(d) and is a limitation on authority for the purposes of Section 303(e).

21 (c) For the purposes of Sections 301 and 804, a person not a partner is deemed to have
22 notice of the dissolution and the limitation on the partners' authority as a result of the statement
23 of dissolution ninety days after it is filed.

24 (d) After filing and, if appropriate, recording a statement of dissolution, a dissolved

1 partnership may file and, if appropriate, record a statement of partnership authority which will
2 operate with respect to a person not a partner as provided in Section 303(d) and (e) in any
3 transaction, whether or not the transaction is appropriate for winding up the partnership business.

4 Section 806. (a) Except as otherwise provided in subsection (b) and Section 306, after
5 dissolution a partner is liable to the other partners for the partner's share of any partnership
6 liability incurred under Section 804.

7 (b) A partner who, with knowledge of the dissolution, incurs a partnership liability under
8 Section 804(2) by an act that is not appropriate for winding up the partnership business is liable
9 to the partnership for any damage caused to the partnership arising from the liability.

10 Section 807. (a) In winding up a partnership's business, the assets of the partnership,
11 including the contributions of the partners required by this section, must be applied to discharge
12 its obligations to creditors, including, to the extent permitted by law, partners who are creditors.
13 Any surplus must be applied to pay in cash the net amount distributable to partners in accordance
14 with their right to distributions under subsection (b).

15 (b) Each partner is entitled to a settlement of all partnership accounts upon winding up the
16 partnership business. In settling accounts among the partners, profits and losses that result from
17 the liquidation of the partnership assets must be credited and charged to the partners' accounts.
18 The partnership shall make a distribution to a partner in an amount equal to any excess of the
19 credits over the charges in the partner's account. A partner shall contribute to the partnership an
20 amount equal to any excess of the charges over the credits in the partner's account but excluding
21 from the calculation charges attributable to an obligation for which the partner is not personally
22 liable under Section 306.

23 (c) If a partner fails to contribute the full amount required under subsection (b), all of the
24 other partners shall contribute, in the proportions in which those partners share partnership

1 losses, the additional amount necessary to satisfy the partnership obligations for which they are
2 personally liable under Section 306. A partner or partner's legal representative may recover from
3 the other partners any contributions the partner makes to the extent the amount contributed
4 exceeds that partner's share of the partnership obligations for which the partner is personally
5 liable under Section 306.

6 (d) After the settlement of accounts, each partner shall contribute, in the proportion in which
7 the partner shares partnership losses, the amount necessary to satisfy partnership obligations that
8 were not known at the time of the settlement and for which the partner is personally liable under
9 Section 306.

10 (e) The estate of a deceased partner is liable for the partner's obligation to contribute to the
11 partnership.

12 (f) An assignee for the benefit of creditors of a partnership or a partner, or a person
13 appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's
14 obligation to contribute to the partnership.

15 Section 901. In this article:

16 (1) "General Partner" means a partner in a partnership and a general partner in a limited
17 partnership.

18 (2) "Limited Partner" means a limited partner in a limited partnership.

19 (3) "Limited Partnership" means a limited partnership created under the chapter 48-7, the
20 Uniform Limited Partnership Act, predecessor law, or comparable law of another
21 jurisdiction.

22 (4) "Partner" includes both a general partner and a limited partner.

23 Section 902. (a) A partnership may be converted to a limited partnership pursuant to this
24 section.

1 (b) The terms and conditions of a conversion of a partnership to a limited partnership must
2 be approved by all of the partners or by a number or percentage specified for conversion in the
3 partnership agreement.

4 (c) After the conversion is approved by the partners, the partnership shall file a certificate of
5 limited partnership in the jurisdiction in which the limited partnership is to be formed. The
6 certificate must include:

7 (1) A statement that the partnership was converted to a limited partnership from a
8 partnership;

9 (2) Its former name; and

10 (3) A statement of the number of votes cast by the partners for and against the conversion
11 and, if the vote is less than unanimous, the number or percentage required to approve
12 the conversion under the partnership agreement.

13 (d) The conversion takes effect when the certificate of limited partnership is filed or at any
14 later date specified in the certificate.

15 (e) A general partner who becomes a limited partner as a result of the conversion remains
16 liable as a general partner for an obligation incurred by the partnership before the conversion
17 takes effect. If the other party to a transaction with the limited partnership reasonably believes
18 when entering the transaction that the limited partner is a general partner, the limited partner is
19 liable for an obligation incurred by the limited partnership within ninety days after the conversion
20 takes effect. The limited partner's liability for all other obligations of the limited partnership
21 incurred after the conversion takes effect is that of a limited partner as provided in the chapter
22 48-7, the Uniform Limited Partnership Act.

23 Section 903. (a) A limited partnership may be converted to a partnership pursuant to this
24 section.

1 (b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms
2 and conditions of a conversion of a limited partnership to a partnership must be approved by all
3 of the partners.

4 (c) After the conversion is approved by the partners, the limited partnership shall cancel its
5 certificate of limited partnership.

6 (d) The conversion takes effect when the certificate of limited partnership is canceled.

7 (e) A limited partner who becomes a general partner as a result of the conversion remains
8 liable only as a limited partner for an obligation incurred by the limited partnership before the
9 conversion takes effect. Except as otherwise provided in Section 306, the partner is liable as a
10 general partner for an obligation of the partnership incurred after the conversion takes effect.

11 Section 904. (a) A partnership or limited partnership that has been converted pursuant to this
12 Article is for all purposes the same entity that existed before the conversion.

13 (b) When a conversion takes effect:

14 (1) All property owned by the converting partnership or limited partnership remains
15 vested in the converted entity;

16 (2) All obligations of the converting partnership or limited partnership continue as
17 obligations of the converted entity; and

18 (3) An action or proceeding pending against the converting partnership or limited
19 partnership may be continued as if the conversion had not occurred.

20 Section 905. (a) Pursuant to a plan of merger approved as provided in subsection (c), a
21 partnership may be merged with one or more partnerships or limited partnerships.

22 (b) The plan of merger must set forth:

23 (1) The name of each partnership or limited partnership that is a party to the merger;

24 (2) The name of the surviving entity into which the other partnerships or limited

1 partnerships will merge;

2 (3) Whether the surviving entity is a partnership or a limited partnership and the status of
3 each partner;

4 (4) The terms and conditions of the merger;

5 (5) The manner and basis of converting the interests of each party to the merger into
6 interests or obligations of the surviving entity, or into money or other property in
7 whole or part; and

8 (6) The street address of the surviving entity's chief executive office.

9 (c) The plan of merger must be approved:

10 (1) In the case of a partnership that is a party to the merger, by all of the partners, or a
11 number or percentage specified for merger in the partnership agreement; and

12 (2) In the case of a limited partnership that is a party to the merger, by the vote required
13 for approval of a merger by the law of the state or foreign jurisdiction in which the
14 limited partnership is organized and, in the absence of such a specifically applicable
15 law, by all of the partners, notwithstanding a provision to the contrary in the
16 partnership agreement.

17 (d) After a plan of merger is approved and before the merger takes effect, the plan may be
18 amended or abandoned as provided in the plan.

19 (e) The merger takes effect on the later of:

20 (1) The approval of the plan of merger by all parties to the merger, as provided in
21 subsection (c);

22 (2) The filing of all documents required by law to be filed as a condition to the
23 effectiveness of the merger; or

24 (3) Any effective date specified in the plan of merger.

1 Section 906. (a) When a merger takes effect:

2 (1) The separate existence of every partnership or limited partnership that is a party to the
3 merger, other than the surviving entity, ceases;

4 (2) All property owned by each of the merged partnerships or limited partnerships vests
5 in the surviving entity;

6 (3) All obligations of every partnership or limited partnership that is a party to the merger
7 become the obligations of the surviving entity; and

8 (4) An action or proceeding pending against a partnership or limited partnership that is
9 a party to the merger may be continued as if the merger had not occurred, or the
10 surviving entity may be substituted as a party to the action or proceeding.

11 (b) The secretary of state of this state is the agent for service of process in an action or
12 proceeding against a surviving foreign partnership or limited partnership to enforce an obligation
13 of a domestic partnership or limited partnership that is a party to a merger. The surviving entity
14 shall promptly notify the secretary of state of the mailing address of its chief executive office and
15 of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the
16 process to the surviving foreign partnership or limited partnership.

17 (c) A partner of the surviving partnership or limited partnership is liable for:

18 (1) All obligations of a party to the merger for which the partner was personally liable
19 before the merger;

20 (2) All other obligations of the surviving entity incurred before the merger by a party to
21 the merger, but those obligations may be satisfied only out of property of the entity;
22 and

23 (3) Except as otherwise provided in Section 306, all obligations of the surviving entity
24 incurred after the merger takes effect, but those obligations may be satisfied only out

1 of property of the entity if the partner is a limited partner.

2 (d) If the obligations incurred before the merger by a party to the merger are not satisfied out
3 of the property of the surviving partnership or limited partnership, the general partners of that
4 party immediately before the effective date of the merger shall contribute the amount necessary
5 to satisfy that party's obligations to the surviving entity, in the manner provided in Section 807
6 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case
7 may be, as if the merged party were dissolved.

8 (e) A partner of a party to a merger who does not become a partner of the surviving
9 partnership or limited partnership is dissociated from the entity, of which that partner was a
10 partner, as of the date the merger takes effect. The surviving entity shall cause the partner's
11 interest in the entity to be purchased under Section 701 or another statute specifically applicable
12 to that partner's interest with respect to a merger. The surviving entity is bound under Section
13 702 by an act of a general partner dissociated under this subsection, and the partner is liable
14 under Section 703 for transactions entered into by the surviving entity after the merger takes
15 effect.

16 Section 907. (a) After a merger, the surviving partnership or limited partnership may file in
17 the Office of the Secretary of State a statement that one or more partnerships or limited
18 partnerships have merged into the surviving entity.

19 (b) A statement of merger must contain:

- 20 (1) The name of each partnership or limited partnership that is a party to the merger;
21 (2) The name of the surviving entity into which the other partnerships or limited
22 partnership were merged;
23 (3) The street address of the surviving entity's chief executive office and of an office in
24 this state, if any; and

1 (4) Whether the surviving entity is a partnership or a limited partnership.

2 (c) Except as otherwise provided in subsection (d), for the purposes of Section 302, property
3 of the surviving partnership or limited partnership which before the merger was held in the name
4 of another party to the merger is property held in the name of the surviving entity upon filing a
5 statement of merger.

6 (d) For the purposes of Section 302, real property of the surviving partnership or limited
7 partnership which before the merger was held in the name of another party to the merger is
8 property held in the name of the surviving entity upon recording a certified copy of the statement
9 of merger in the office for recording transfers of that real property.

10 (e) A filed and, if appropriate, recorded statement of merger, executed and declared to be
11 accurate pursuant to Section 105(c), stating the name of a partnership or limited partnership that
12 is a party to the merger in whose name property was held before the merger and the name of the
13 surviving entity, but not containing all of the other information required by subsection (b),
14 operates with respect to the partnerships or limited partnerships named to the extent provided
15 in subsections (c) and (d).

16 Section 908. This Article is not exclusive. Partnerships or limited partnerships may be
17 converted or merged in any other manner provided by law.

18 Section 1001. (a) A partnership may become a limited liability partnership pursuant to this
19 section.

20 (b) The terms and conditions on which a partnership becomes a limited liability partnership
21 must be approved by the vote necessary to amend the partnership agreement except, in the case
22 of a partnership agreement that expressly considers obligations to contribute to the partnership,
23 the vote necessary to amend those provisions.

24 (c) After the approval required by subsection (b), a partnership may become a limited liability

1 partnership by filing a statement of qualification in the Office of the Secretary of State. The
2 statement must contain:

- 3 (1) The name of the partnership;
- 4 (2) The street address of the partnership's chief executive office and, if different, the street
5 address of an office in this state, if any;
- 6 (3) If the partnership does not have an office in this state, the name and street address of
7 the partnership's agent for service of process;
- 8 (4) A statement that the partnership elects to be a limited liability partnership; and
- 9 (5) A deferred effective date, if any.

10 (d) The agent of a limited liability partnership for service of process must be an individual
11 who is a resident of this state or other person authorized to do business in this state.

12 (1) Any registered agent of a limited liability partnership may resign upon written notice
13 to the limited liability partnership. The registered agent shall file a copy of the
14 resignation with the secretary of state;

15 (2) Upon an agent's resignation, the secretary of state is appointed the agent of the limited
16 liability partnership for service of process until a new agent is appointed.

17 (e) The status of a partnership as a limited liability partnership is effective on the later of the
18 filing of the statement or a date specified in the statement. The status remains effective,
19 regardless of changes in the partnership, until it is canceled pursuant to Section 105(d) or
20 revoked pursuant to Section 1003.

21 (f) The status of a partnership as a limited liability partnership and the liability of its partners
22 is not affected by errors or later changes in the information required to be contained in the
23 statement of qualification under subsection (c).

24 (g) The filing of a statement of qualification under this Act or, before July 1, 2001,

1 registering as a registered limited liability partnership under prior law establishes that a
2 partnership has satisfied all conditions precedent to the qualification of the partnership as a
3 limited liability partnership.

4 (h) An amendment or cancellation of a statement of qualification is effective when it is filed
5 or on a deferred effective date specified in the amendment or cancellation.

6 Section 1002. The name of a limited liability partnership must end with "Registered Limited
7 Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."
8 if the limited liability partnership is also a limited partnership its name shall also comply with the
9 name provisions in chapter 48-7.

10 Section 1003. (a) A limited liability partnership, and a foreign limited liability partnership
11 authorized to transact business in this state, shall file an annual report in the Office of the
12 Secretary of State which contains:

- 13 (1) The name of the limited liability partnership and the state or other jurisdiction under
14 whose laws the foreign limited liability partnership is formed;
- 15 (2) The street address of the partnership's chief executive office and, if different, the street
16 address of an office of the partnership in this state, if any; and
- 17 (3) If the partnership does not have an office in this state, the name and street address of
18 the partnership's current agent for service of process.

19 (b) An annual report must be filed with the secretary of state by the date specified by the
20 secretary of state in each year following the calendar year in which a partnership files a statement
21 of qualification or a foreign partnership becomes authorized to transact business in this state.

22 (c) The secretary of state may revoke the statement of qualification of a partnership that fails
23 to file an annual report when due or pay the required filing fee. To do so, the secretary of state
24 shall provide the partnership at least sixty days' written notice of intent to revoke the statement.

1 The notice must be mailed to the partnership at its chief executive office set forth in the last filed
2 statement of qualification or annual report. The notice must specify the annual report that has
3 not been filed, the fee that has not been paid, and the effective date of the revocation. The
4 revocation is not effective if the annual report is filed and the fee is paid before the effective date
5 of the revocation.

6 (d) A revocation under subsection (c) only affects a partnership's status as a limited liability
7 partnership and is not an event of dissolution of the partnership.

8 (e) A partnership whose statement of qualification has been revoked may apply to the
9 secretary of state for reinstatement within two years after the effective date of the revocation.

10 The application must state:

11 (1) The name of the partnership and the effective date of the revocation; and

12 (2) That the ground for revocation either did not exist or has been corrected.

13 (f) A reinstatement under subsection (e) relates back to and takes effect as of the effective
14 date of the revocation, and the partnership's status as a limited liability partnership continues as
15 if the revocation had never occurred.

16 Section 1004. Any person registered, certified, or licensed pursuant to chapter 16-16, 36-4,
17 36-4A, 36-5, 36-6A, 36-7, 36-8, 36-9, 36-9A, 36-10, 36-12, or 36-20A may practice in a limited
18 liability partnership.

19 Section 1101. (a) The law under which a foreign limited liability partnership is formed
20 governs relations among the partners and between the partners and the partnership and the
21 liability of partners for obligations of the partnership.

22 (b) A foreign limited liability partnership may not be denied a statement of foreign
23 qualification by reason of any difference between the law under which the partnership was
24 formed and the law of this state.

1 (c) A statement of foreign qualification does not authorize a foreign limited liability
2 partnership to engage in any business or exercise any power that a partnership may not engage
3 in or exercise in this state as a limited liability partnership.

4 Section 1102. (a) Before transacting business in this state, a foreign limited liability
5 partnership must file a statement of foreign qualification in the Office of the Secretary of State.
6 The statement must contain:

7 (1) The name of the foreign limited liability partnership which satisfies the requirements
8 of the state or other jurisdiction under whose law it is formed and ends with
9 "Registered Limited Liability Partnership," "Limited Liability Partnership,"
10 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

11 (2) The street address of the partnership's chief executive office and, if different, the street
12 address of an office of the partnership in this state, if any;

13 (3) If there is no office of the partnership in this state, the name and street address of the
14 partnership's agent for service of process; and

15 (4) A deferred effective date, if any.

16 (b) The agent of a foreign limited liability company for service of process must be an
17 individual who is a resident of this state or other person authorized to do business in this state.

18 (c) The status of a partnership as a foreign limited liability partnership is effective on the later
19 of the filing of the statement of foreign qualification or a date specified in the statement. The
20 status remains effective, regardless of changes in the partnership, until it is canceled pursuant to
21 Section 105(d) or revoked pursuant to Section 1003.

22 (d) An amendment or cancellation of a statement of foreign qualification is effective when
23 it is filed or on a deferred effective date specified in the amendment or cancellation.

24 Section 1103. (a) A foreign limited liability partnership transacting business in this state may

1 not maintain an action or proceeding in this state unless it has in effect a statement of foreign
2 qualification.

3 (b) The failure of a foreign limited liability partnership to have in effect a statement of foreign
4 qualification does not impair the validity of a contract or act of the foreign limited liability
5 partnership or preclude it from defending an action or proceeding in this state.

6 (c) A limitation on personal liability of a partner is not waived solely by transacting business
7 in this state without a statement of foreign qualification.

8 (d) If a foreign limited liability partnership transacts business in this state without a statement
9 of foreign qualification, the secretary of state is its agent for service of process with respect to
10 a right of action arising out of the transaction of business in this state.

11 Section 1104. (a) Activities of a foreign limited liability partnership which do not constitute
12 transacting business for the purpose of this article include:

- 13 (1) Maintaining, defending, or settling an action or proceeding;
- 14 (2) Holding meetings of its partners or carrying on any other activity concerning its
15 internal affairs;
- 16 (3) Maintaining bank accounts;
- 17 (4) Maintaining offices or agencies for the transfer, exchange, and registration of the
18 partnership's own securities or maintaining trustees or depositories with respect to
19 those securities;
- 20 (5) Selling through independent contractors;
- 21 (6) Soliciting or obtaining orders, whether by mail or through employees or agents or
22 otherwise, if the orders require acceptance outside this state before they become
23 contracts;
- 24 (7) Creating or acquiring indebtedness, with or without a mortgage, or other security

1 interest in property;

2 (8) Collecting debts or foreclosing mortgages or other security interests in property
3 securing the debts, and holding, protecting, and maintaining property so acquired;

4 (9) Conducting an isolated transaction that is completed within thirty days and is not one
5 in the course of similar transactions; and

6 (10) Transacting business in interstate commerce.

7 (b) For purposes of this article, the ownership in this state of income-producing real property
8 or tangible personal property, other than property excluded under subsection (a), constitutes
9 transacting business in this state.

10 (c) This section does not apply in determining the contacts or activities that may subject a
11 foreign limited liability partnership to service of process, taxation, or regulation under any other
12 law of this state.

13 Section 1105. The attorney general may maintain an action to restrain a foreign limited
14 liability partnership from transacting business in this state in violation of this article.

15 Section 1201. This Act shall be applied and construed to effectuate its general purpose to
16 make uniform the law with respect to the subject of this Act among states enacting it.

17 Section 1202. This Act may be cited as the Uniform Partnership Act (1997).

18 Section 1203. If any provision of this Act or its application to any person or circumstance
19 is held invalid, the invalidity does not affect other provisions or applications of this Act which
20 can be given effect without the invalid provision or application, and to this end the provisions
21 of this Act are severable.

22 Section 1204. This Act takes effect July 1, 2001.

23 Section 1205. That §§ 48-1-1 to 48-1-18, inclusive, 48-2-1 to 48-2-19, inclusive, 48-3-1 to
24 48-3-16, inclusive, 48-4-1 to 48-4-22, inclusive, 48-5-1 to 48-5-56, inclusive, and 48-7-108 to

1 48-7-111, inclusive, be repealed.

2 Section 1206. (a) Before July 1, 2001, this Act governs only a partnership or limited liability
3 partnership formed before the effective date of this Act, that elects, as provided by subsection
4 (c), to be governed by this Act.

5 (b) On and after July 1, 2001, this Act governs all partnerships and limited liability
6 partnerships.

7 (c) Before July 1, 2001, a partnership voluntarily may elect, in the manner provided in its
8 partnership or limited liability partnership agreement or by law for amending the partnership
9 agreement, to be governed by this Act. The provisions of this Act relating to the liability of the
10 partnership's partners or limited liability partnership's partners to third parties apply to limit those
11 partners' liability to a third party who had done business with the partnership within one year
12 before the partnership's election to be governed by this Act, or under prior law, only if the third
13 party knows or has received a notification of the partnership's election to be governed by this
14 Act.

15 Section 1207. This Act does not affect an action or proceeding commenced or right accrued
16 before this Act takes effect.

17 Section 1208. The provisions of § 1-8-10 notwithstanding, the fee for filing the statements
18 and reports provided for in the following sections with the secretary of state is as follows:

- 19 (1) Section 303, Statement of Authority, ninety dollars;
- 20 (2) Section 304, Statement of Denial, ten dollars;
- 21 (3) Section 704, Statement of Dissociation, ten dollars;
- 22 (4) Section 805, Statement of Dissolution, ten dollars;
- 23 (5) Section 907, Statement of Merger, ten dollars;
- 24 (6) Section 1001, Statement of Qualification, ninety dollars;

- 1 (7) Section 1003, Annual Report, twenty-five dollars; and
- 2 (8) Section 1102, Statement of Foreign Qualification, ninety dollars.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

935E0499

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 126** - 01/31/2001

Introduced by: Senators Kleven, Apa, Dennert, Staggers, and Whiting and Representatives
Van Etten, Brown (Richard), McCoy, Napoli, and Pummel

1 FOR AN ACT ENTITLED, An Act to clarify the survey requirements for sanitary districts.

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

3 Section 1. That § 34A-5-3 be amended to read as follows:

4 34A-5-3. ~~Persons~~ Any person making application for the organization of a sanitary district
5 shall first cause an accurate ~~survey and~~ map to be made of the territory intended to be embraced
6 within the limits of such sanitary district, showing the boundaries and area thereof, and the
7 accuracy thereof shall be verified by the affidavit of ~~the~~ a surveyor. The map may be completed
8 by reviewing records and legal descriptions at a county register of deeds office.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

770E0577

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 137** - 02/01/2001

Introduced by: Senators Diedtrich (Elmer) and Dennert and Representatives Sutton
(Duane) and Frost

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the delivery of the
2 certificate of title upon the sale of a secondhand vehicle.

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

4 Section 1. That § 32-3-7 be amended to read as follows:

5 32-3-7. ~~Every~~ Any person, firm, or corporation, upon the sale and delivery of any used or
6 secondhand motor vehicle, shall within thirty days thereof deliver to the purchaser a certificate
7 of title, endorsed according to law, and issued for the vehicle by the department. However,
8 notwithstanding any other provision of law, if the purchaser defaults on the terms of the sale
9 within the thirty-day period, the seller does not have to deliver the certificate of title to the
10 purchaser. The seller shall notify the department in writing of the seller's refusal to deliver title
11 to the purchaser within fourteen days of the purchaser's default on the terms of the sale. A
12 violation of this section is a Class 2 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

169E0486

SENATE ENGROSSED NO. **SB 154** - 02/08/2001

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 increase the penalty for practicing law without a license.

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

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

4 16-16-1. No person, ~~excepting~~ except as provided in § 16-18-2, ~~shall be permitted to~~ may
5 practice as an attorney and counselor at law in any court of record within this state, either by
6 using or subscribing his or her own name or the name of any other person ~~or persons~~, without
7 having previously obtained a license for that purpose from the Supreme Court of this state and
8 having become an active member in good standing of the State Bar of South Dakota. A violation
9 of this section is a ~~Class 2~~ Class 1 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

474E0620

SENATE ENGROSSED NO. **SB 199** - 02/01/2001

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

Introduced by: Senator Kleven and Representatives Pummel and Hansen (Tom)

1 FOR AN ACT ENTITLED, An Act to revise municipal authority to license, tax, and regulate
2 certain transient merchants.

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

4 Section 1. That § 9-34-7 be amended to read as follows:

5 9-34-7. ~~Every~~ Each municipality ~~shall have power to~~ may license, tax, and regulate transient
6 merchants, auctioneers, transient, bankrupt, and auction stores, and stores of like nature, gift
7 enterprises, and ~~every~~ any business or vocation of like character, ~~except when carried on by a~~
8 ~~person retailing merchandise or products of his own manufacture or production, and except,~~
9 However, the municipality may exempt from any such licensure, taxation, or regulation a
10 transient merchant who is retailing merchandise or products that the municipality determines to
11 be of the person's own manufacture or production. This section does not apply to the distribution
12 of any commodity from a railroad car by a cooperative association purchased in car lot for the
13 personal use of its members.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0755

SENATE ENGROSSED NO. **SB 250** - 02/07/2001

Introduced by: Senators Bogue, Duxbury, Greenfield, and Moore and Representatives
Jaspers, Broderick, Brown (Jarvis), Brown (Richard), Flowers, Michels,
and Pederson (Gordon)

1 FOR AN ACT ENTITLED, An Act to provide that taking money or property from patients or
2 inmates by certain institution employees constitutes theft.

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

4 Section 1. Any employee of the Department of Corrections or Department of Human
5 Services who, for personal benefit, takes, borrows, or steals anything with a value of five dollars
6 or more in property or money, from a patient, juvenile, or inmate who is under the care or
7 supervision of the Department of Corrections or the Department of Human Services, is guilty
8 of a Class 1 misdemeanor theft.

9 Section 2. For purposes of this Act, an employee of the Department of Corrections or the
10 Department of Human Services means any person employed by the department, full or part time,
11 including an individual under contract assigned to the department, an employee of another state
12 agency assigned to the department, or a volunteer working in a department facility or for a
13 department agency or program.