

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0270

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1045** - 02/21/2001

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

1 FOR AN ACT ENTITLED, An Act to prohibit the disclosure and use of personal information
2 contained in certain motor vehicle records.

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

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

6 Terms used in this Act mean:

7 (1) "Department," the Department of Revenue;

8 (2) "Disclose," to knowingly engage in any practice or conduct to make available and
9 make known personal information contained in a motor vehicle record about a person
10 to any other person, organization, or entity, by any means of communication;

11 (3) "Express consent," consent in writing, and includes consent that is conveyed
12 electronically that bears an electronic signature;

13 (4) "Individual record," a motor vehicle record containing personal information about a
14 designated person who is the subject of the record as identified in a request;

- 1 (5) "Motor vehicle record," any record that pertains to a motor vehicle registration,
2 motor vehicle title, or document issued by the department or any other state or local
3 agency authorized to issue any such forms of credentials;
- 4 (6) "Personal information," information that identifies a person, including a social security
5 number, driver identification number, name, address (but not the five-digit zip code),
6 telephone number, and medical or disability information, but does not include
7 information on vehicular accidents, driving or equipment-related violations, or
8 registration status;
- 9 (7) "Record," includes any book, paper, photograph, photostat, card, film, tape,
10 recording, electronic data, printout, or other documentary material regardless of
11 physical form or characteristics.

12 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Notwithstanding any other provision of state law to the contrary, except as provided in
15 sections 3 to 5, inclusive, of this Act, the department and any officer, employee, agent, or
16 contractor thereof may not disclose personal information about any person obtained by the
17 department in connection with a motor vehicle record. Under no circumstances may a person's
18 social security number or medical or disability information from a motor vehicle record be
19 disclosed, except for the purposes permitted by subdivisions (1), (3), and (5) of section 5 of this
20 Act.

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

23 Personal information shall be disclosed for use in connection with matters of motor vehicle
24 or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or

1 advisories, performance monitoring of motor vehicles and dealers by motor vehicle
2 manufacturers, and removal of nonowner records from the original owner records of motor
3 vehicle manufacturers to carry out the purposes of Titles I and IV of the Anti Car Theft Act of
4 1992, 15 U.S.C. 2021 et seq., as of January 1, 2001, the Automobile Information Disclosure
5 Act, 15 U.S.C. 1231 et seq., as of January 1, 2001, and the Clean Air Act, 42 U.S.C. 7401 et
6 seq., as of January 1, 2001, chapters 301, 305, and 321-331 of Title 49, as of January 1, 2001,
7 and agency regulations enacted or adopted pursuant to the authority of, or to attain compliance
8 with, these Acts of Congress.

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

11 Personal information may be disclosed to any person who demonstrates, in such form and
12 manner as the department prescribes, that express consent of the person who is the subject of
13 the information has been obtained.

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

16 Personal information may be disclosed to any person by the department on proof of the
17 identity of the person requesting the record and representation by such person that the use of the
18 personal information will be strictly limited to the following described uses:

19 (1) For use by any government agency, including any court or law enforcement agency,
20 in carrying out its functions, or any private person or entity acting on behalf of a
21 government agency in carrying out its functions;

22 (2) For use in the normal course of business by a legitimate business or its agents,
23 employees, or contractors, but only under the following circumstances:

24 (a) To verify the accuracy of personal information submitted by the individual to

- 1 the business or its agents, employees, or contractors; and
- 2 (b) If such information as submitted is not correct or is no longer correct, to obtain
- 3 the correct information for the purposes of preventing fraud by pursuing legal
- 4 remedies against, or recovering on a debt or security interest against, the
- 5 individual;
- 6 (3) For use in connection with any civil, criminal, administrative, or arbitral proceeding
- 7 in any court or government agency or before any self-regulatory body, including the
- 8 service of process, investigation in anticipation of litigation, and the execution or
- 9 enforcement of judgments and orders, or pursuant to an order of any court;
- 10 (4) For use in research activities, and for use in producing statistical reports, so long as
- 11 the personal information is not published, redisclosed, or used to contact individuals;
- 12 (5) For use by any insurer or insurance support organization, or by a self-insured entity,
- 13 or its agents, employees, or contractors, in connection with claims investigation
- 14 activities, anti-fraud activities, rating, or underwriting;
- 15 (6) For use in providing notice to the owners or lienholders of towed or impounded
- 16 vehicles;
- 17 (7) For use by any licensed private investigative agency or licensed security service for
- 18 any purpose permitted under this section;
- 19 (8) For use in connection with the operation of private toll transportation facilities;
- 20 (9) For any other use specifically authorized under the law of the state that holds the
- 21 record, if such use is related to the operation of a motor vehicle or public safety.

22 Section 6. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as

23 follows:

24 The department may, prior to the disclosure of personal information as permitted under

1 sections 2 to 5, inclusive, of this Act, require the requesting person to meet conditions for the
2 purposes of obtaining reasonable assurance concerning the identity of such requesting person,
3 and, to the extent required, that the use will be only as authorized, or the consent of the person
4 who is the subject of the information has been obtained. Such conditions may include the making
5 and filing of a written application in such form and containing such information and certification
6 requirements as the department may prescribe.

7 Section 7. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any authorized recipient, except a recipient of an individual record under section 6 of this
10 Act, who resells or rediscloses personal information shall maintain for a period of at least five
11 years records as to the information obtained and the permitted use for which it was obtained and
12 shall make such records available for inspection by the department, upon request.

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

15 Any person who requests disclosure of personal information from department records and
16 who misrepresents his or her identity or knowingly makes a false statement to the department
17 on any application required to be submitted pursuant to this Act is guilty of a Class 1
18 misdemeanor. However, if any person uses the personal information obtained pursuant to this
19 Act to commit a crime of violence as defined in § 22-1-2, the person is guilty of a Class 5 felony.

20 Section 9. That § 32-5-90.2 be repealed.

21 ~~—32-5-90.2. The department may issue lists of motor vehicles and information relating to~~
22 ~~motor vehicles if issuance is necessary for the enforcement of this title or if the list or information~~
23 ~~is needed to protect the public safety and welfare. In addition, any motor vehicle title or~~
24 ~~registration list maintained by the department may be made available to the public for a~~

1 ~~reasonable fee. State agencies are exempt from payment of this fee for approved state use. The~~
2 ~~lists may not be resold. The secretary may promulgate rules pursuant to chapter 1-26 to establish~~
3 ~~criteria for the sale and to establish the fee for the sale of such lists.~~

4 Section 10. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purpose of license renewal, any person in possession of a motor vehicle title or
7 license renewal certificate provided by the state or the county may renew the vehicle's
8 registration on behalf of the owner. Presentation of the motor vehicle title or license renewal
9 certificate by anyone other than the owner is deemed consent of the vehicle owner. Any person
10 who knowingly misrepresents or makes any false statement for license renewal is guilty of a
11 Class 1 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0209

SENATE ENGROSSED NO. **HB 1056** - 01/31/2001

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

1 FOR AN ACT ENTITLED, An Act to increase the penalty for violation of certain fur dealer
2 license requirements.

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

4 Section 1. That § 41-6-25 be amended to read as follows:

5 41-6-25. It is a ~~Class 2~~ Class 1 misdemeanor for a person to purchase or contract to purchase
6 for a commercial purpose the raw skins of fur-bearing animals or unskinned fur-bearing animals,
7 including jackrabbits, without a fur dealer's license or in violation of the license or the rules of
8 the Game, Fish and Parks Commission. For purposes of this section, commercial purpose is the
9 purchase of or contract to purchase the property by persons who hold themselves out as
10 engaging in the business of purchasing such property and does not include the isolated or
11 occasional purchase of such property.

12 A fur dealer's license permits the licensee to purchase or contract to purchase the skins of
13 fur-bearing animals, including jackrabbits, for the purpose of resale or other commercial purpose,
14 to the extent and in the manner provided by §§ 41-14-22 to 41-14-24, inclusive. A fur dealer's
15 license is valid for a period of one year from July first to June thirtieth.

1 Any person convicted of issuing an insufficient funds check or no account check shall be
2 denied a fur dealer's license until such time as all such checks are paid.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0109 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB 1073 -
02/22/2001

Introduced by: Representative Duenwald and Senator Diedrich (Larry)

1 FOR AN ACT ENTITLED, An Act to revise certain procedures related to livestock brands,
2 proof of livestock ownership, and livestock ownership inspection.

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

4 Section 1. That § 40-18-1.2 be amended to read as follows:

5 40-18-1.2. Terms used in chapters 40-18 to 40-22, inclusive, and 40-29 mean:

- 6 (1) "Agency," any private or nonprofit corporation, or its employees, incorporated under
7 state law, designated by the board as its authorized agent to carry out the functions
8 contracted for by the board to inspect livestock for ownership identification purposes;
- 9 (2) "Approved brand," any brand accepted for registration by the board;
- 10 (3) "Authorized bill of sale," any limited use form approved by the board to transfer
11 ownership of livestock;
- 12 (4) "Board," the South Dakota State Brand Board;
- 13 (5) "Brand ownership period," the five-year time period during which brands are valid if
14 the fees are paid;

- 1 (6) "Carrier," any person in charge of a conveyance which transports livestock;
- 2 (7) "Conflicting brand," any brand which is a duplicate of, or is similar to, or may be
3 altered to resemble, a registered brand;
- 4 (8) "Conveyance," any vehicle used to transport livestock;
- 5 (9) "Estray," any unclaimed cattle, horse, mule, sheep, or buffalo the ownership of which
6 is in question;
- 7 (10) "Evidence of ownership," any authorized bill of sale, market clearance, local
8 inspection, health certificate, current registration papers, court order, or other official
9 document or in lieu thereof an affidavit of ownership;
- 10 (11) "Healed brand," a brand that has shed the scab and for which the healing process is
11 complete;
- 12 (12) "Hold," the possession of livestock or the possession of the proceeds from the sale of
13 livestock for purposes of establishing ownership;
- 14 (13) "Hot iron," a metal instrument heated and used to brand livestock;
- 15 (14) "Inspect," to examine livestock for the purpose of determining ownership;
- 16 (15) "Inspector," any person who is authorized by the board to perform ownership
17 inspection of livestock;
- 18 (16) "Investigator," any person employed by the board to enforce the ownership inspection
19 laws;
- 20 (17) "Livestock," cattle, horses, ~~and~~ mules, sheep, and buffalo;
- 21 (18) "Local ownership inspection certificate," an ownership inspection certificate of
22 livestock ownership issued by a brand inspector at any point outside the auction
23 market;
- 24 (19) "Market clearance," an inspection certificate of ownership for livestock issued by a

- 1 brand inspector at a South Dakota livestock auction market;
- 2 (20) "Open market," any livestock market or shipping point where ownership inspection
3 is conducted by written agreement with the board;
- 4 (21) "Owner," the person to whom a recorded brand is registered or who owns cattle,
5 horses, mules, sheep, or buffalo;
- 6 (22) "Producer," any person engaged in the raising of livestock;
- 7 (23) "Recordable brand," any brand acceptable for registration;
- 8 (24) "Recorded brand," any brand registered with the board;
- 9 (25) "Registered brand," any recorded brand for which the fees are currently paid;
- 10 (26) "Seller," any person offering for sale or selling livestock;
- 11 (27) "Selling agent," any person engaged in livestock commerce;
- 12 (28) "Shipper," any person making delivery of livestock to a market or shipping point;
- 13 (29) "Shipper's permit," any permit to transport livestock to a market or point approved
14 by the board;
- 15 (30) "Slaughter," the killing of livestock for processing for human consumption;
- 16 (31) "Split brands," any brand parts of which are applied on more than one location of an
17 animal;
- 18 (32) "Tally," any board-approved form used by inspectors to list and describe livestock;
- 19 (33) "Trail," to herd or drive livestock from place to place without conveyance; ~~and~~
- 20 (34) "Transport," to carry by conveyance; and
- 21 (35) "Process," to cut and wrap a livestock carcass for human consumption.

22 Section 2. That § 40-19-1 be amended to read as follows:

23 40-19-1. It is a Class 1 misdemeanor to ~~hot iron~~ brand any domestic animal or other livestock
24 or to otherwise use any recordable brand for the purpose of establishing ownership, unless the

1 brand is valid as provided by law and is registered in the name of the user with the Office of the
2 State Brand Board. The use of number freeze brands for herd identification is specifically exempt
3 from this section.

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

5 40-19-3. The branding of cattle, horses, mules, and buffalo shall be done by use of either a
6 hot iron. ~~A freeze brand may, however, be applied to horses and mules~~ or freeze brand. A single
7 letter, number, figure, bar, quarter circle, half circle, or complete circle, or a half diamond, or
8 complete diamond placed on livestock are unrecordable brands under this chapter, including new
9 split-brands. However, presently recorded brands are valid as long as fees are paid and there is
10 no conflict with board policy.

11 A single letter or figure brand is recordable for sheep. A sheep brand shall be either a hot iron
12 brand or shall be applied with branding paint. No more than two colors or one color and a hot
13 iron brand may be recorded for sheep under one application fee. Authorized paint colors are
14 yellow, blue, green, black, red, or purple. No dot, bar, slash, quarter circle, circle, or the letter
15 "Q" may be registered as a sheep brand. A brand may be recorded for the side, hip, nose, or jaw
16 on either the left or right side of sheep. No brand may be recorded as "across the back" of a
17 sheep. A brand, regardless of position, is only recordable in a different color on the same
18 location.

19 Section 4. That § 40-20-26.2 be amended to read as follows:

20 40-20-26.2. The provisions of § 40-20-26.1 notwithstanding, ownership of livestock with
21 the seller's South Dakota recorded and healed brand or the owner's unbranded livestock may be
22 transferred by means of an authorized bill of sale without a brand inspection. The bill of sale shall
23 be on a form prescribed by the board. ~~A copy of an authorized bill of sale shall be forwarded to~~
24 ~~the board or its authorized inspecting agency and shall be postmarked within ten days of such~~

1 ~~ownership transfer. A violation of the forwarding requirement is a Class 2 misdemeanor. An~~
2 authorized bill of sale does not substitute for inspection of livestock being removed from the
3 ownership inspection area of South Dakota.

4 An authorized bill of sale may transfer no more than five head of livestock to any one buyer.
5 Multiple authorized bills of sale may not be executed to subdivide numbers of livestock greater
6 than five to any one buyer. The transfer of livestock without an authorized bill of sale under this
7 section or in violation of the requirements relating to the number of livestock that may be
8 transferred to a single buyer is a Class 1 misdemeanor.

9 Section 5. That § 40-20-29 be amended to read as follows:

10 40-20-29. It is a Class 1 misdemeanor for any person ~~slaughtering or processing~~ to slaughter
11 or process livestock commercially within the livestock ownership inspection area ~~to kill any~~
12 ~~livestock~~, until the livestock have received an ownership inspection and the certificate of such
13 inspection is filed and is made a part of that person's permanent records. An ownership brand
14 inspection certificate on livestock is valid for no longer than four days from the date of issue.
15 Livestock arriving at slaughter destination later than four days from the date indicated on the
16 inspection certificate shall be inspected and the fee collected. All certificates of ownership
17 inspection shall, at any time upon demand, be displayed to any law enforcement officer or to the
18 board.

19 Section 6. That § 40-22-6 be amended to read as follows:

20 40-22-6. Any person who slaughters or processes livestock within the ownership inspection
21 area shall possess an ownership inspection certificate ~~for each carcass slaughtered or have the~~
22 ~~hides available for inspection with ears and tails attached, including all brands, tattoos, ear marks~~
23 ~~and other marks of identification of each carcass~~ or an authorized bill of sale. A violation of this
24 section is a Class 1 misdemeanor.

1 Section 7. That § 40-22-12 be amended to read as follows:

2 40-22-12. Any person slaughtering or processing livestock outside the ownership inspection
3 area which came from inside the ownership inspection area shall, ~~upon demand of any law~~
4 ~~enforcement officer or brand inspector, within a reasonable period of time produce a hide or~~
5 possess proof of ownership of the slaughtered livestock. A violation of this section is a Class 1
6 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

367E0176

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1075 - 02/07/2001

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to modify certain procedures for grand jury returns.

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

3 Section 1. That § 23A-5-18 be amended to read as follows:

4 23A-5-18. A quorum of six grand jurors must be present before any evidence or testimony
5 may be received or any other business conducted. An indictment may be found only ~~when~~ if there
6 is probable cause to believe that an offense has been committed and that the defendant
7 committed it. An indictment may be found only upon the concurrence of six or more jurors. The
8 names of only those witnesses examined before the grand jury in relation to the particular
9 indictment shall be listed on that indictment before it is ~~presented to~~ filed with the court. An
10 indictment shall be returned by the grand jury to a circuit judge in open court, or, filed with the
11 clerk of courts, endorsed a true bill.

12 If six grand jurors do not concur in finding an indictment against a defendant who is in
13 custody but who has not had a preliminary hearing, the complaint or information and the certified
14 record of the proceedings before the committing magistrate transmitted to them ~~must~~ shall be
15 returned to the court, with an endorsement thereon, signed by the foreman, that the charge is

- 1 dismissed. The dismissal of the charge does not prevent its being again submitted to a grand jury
- 2 as often as a court may direct, but without such direction it cannot again be submitted.

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

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

145E0792

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1294 - 02/22/2001

Introduced by: Representatives Teupel, Garnos, Juhnke, and McCoy and Senators Apa, Kleven, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide a financial incentive for school districts to
2 consolidate.

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

4 Section 1. If two or more school districts consolidate after July 1, 2001, the new school
5 district is entitled to three hundred dollars per average daily membership as defined in § 13-13-
6 10.1, up to a maximum of four hundred average daily membership from each school district or
7 partial school district as it existed prior to consolidation for the first year after consolidation. If
8 two or more school districts consolidate after July 1, 2001, the new school district is entitled to
9 two hundred dollars per average daily membership as defined in § 13-13-10.1, up to a maximum
10 of four hundred average daily membership from each school district or partial school district as
11 it existed prior to consolidation for the second year after consolidation. If two or more school
12 districts consolidate after July 1, 2001, the new school district is entitled to one hundred dollars
13 per average daily membership as defined in § 13-13-10.1, up to a maximum of four hundred
14 average daily membership from each school district or partial school district as it existed prior

1 to consolidation for the third year after consolidation.

2 Section 2. For the purposes of this Act, no student may be counted more than once.

3 Section 3. The entitlement provided by this Act shall be paid by the Department of Education
4 and Cultural Affairs out of any money appropriated for the purposes of this Act.

5 Section 4. The restriction on transfers imposed by § 13-16-26.2 does not apply to any money
6 received by a school district under the provisions of this Act.

7 Section 5. The Department of Education and Cultural Affairs may promulgate rules pursuant
8 to chapter 1-26 to implement the provisions of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0221 **HOUSE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 26 - 02/20/2001

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

1 FOR AN ACT ENTITLED, An Act to eliminate the South Dakota Farm Loan Mediation Board
2 and transfer program authority to the secretary of agriculture, to provide civil liability
3 immunity for certain agricultural finance counselors, and to authorize the department to
4 contract with businesses for mediation services.

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

6 Section 1. That § 54-13-1 be amended to read as follows:

7 54-13-1. Terms used in this chapter mean:

8 (1) "Agricultural land," a parcel of land larger than forty acres not located in any
9 municipality and used in farming or ranching operations carried on by the owner or
10 operator within the preceding three-year period for the production of farm products
11 as defined in subdivision 57A-9-109(3) and ~~shall include~~ includes wasteland lying
12 within or contiguous to and in common ownership with land used in farming or
13 ranching operations for the production of farming or ranching products;

14 (2) "Ag finance counselor, a person contracted by the Department of Agriculture

1 mediation program who is trained to assist in resolving agricultural loan disputes;

2 (3) "Agricultural property," agricultural land or personal property or a combination
3 thereof used in the pursuit of, or arising out of, or related to, the occupation of
4 farming or ranching;

5 ~~(3) "Board," the South Dakota Mediation Board;~~

6 (4) "Borrower," an individual, corporation, trust, cooperative, joint venture, or any other
7 entity entitled to contract who is engaged in farming or ranching and who derives
8 more than sixty percent of his total gross income from farming or ranching and who
9 has borrowed from any one creditor on any single farm related debt in excess of fifty
10 thousand dollars ~~(\$50,000);~~

11 (5) "Creditor," any individual, organization, cooperative, partnership, trust, or state or
12 federally chartered corporation to whom is owed debt in excess of fifty thousand
13 dollars by a borrower. A judgment creditor with a judgment of fifty thousand dollars
14 or more against a debtor with agricultural property is a creditor within the meaning
15 of this chapter;

16 (6) "Mediation," a process by which creditors and borrowers present, discuss, and
17 explore practical and realistic alternatives to the resolution of a borrower's debts; and

18 (7) "Mediator," anyone responsible for and engaged in the performance of mediation
19 pursuant to this chapter, who ~~shall be~~ is trained and certified by the Department of
20 Agriculture.

21 Section 2. That § 54-13-2 be amended to read as follows:

22 54-13-2. ~~There is hereby created the South Dakota Farm Loan Mediation Board. The board~~
23 ~~shall consist of seven members not all of the same political party, not less than two from the~~
24 ~~agriculture community and not less than two from the financial community, appointed by the~~

1 ~~Governor to three-year terms, with the terms staggered so that no more than three members'~~
2 ~~terms expire in any one year. The Governor shall designate the terms at the time of appointment~~
3 ~~and shall designate one of the members as chairman. Members may be appointed to successive~~
4 ~~terms. Any member appointed to fill a vacancy arising from other than the natural expiration of~~
5 ~~a term may serve only the unexpired portion of the term. A majority of the board members shall~~
6 ~~constitute a quorum. The Department of Agriculture shall administer an agriculture mediation~~
7 ~~program to provide assistance to borrowers and creditors who seek to use mediation as a method~~
8 ~~for resolving loan disputes.~~

9 The ~~board~~ secretary of the Department of Agriculture shall adopt rules pursuant to chapter
10 1-26 necessary to carry out the general purposes of this chapter, including the establishment of
11 fees, training requirements for mediators and ag finance counselors and their certification,
12 mediation request forms, and any other procedures as may be necessary for the prompt and
13 expeditious implementation of this chapter, including the receipt of funds pursuant to the
14 Agricultural Credit Act of 1987.

15 The ~~board~~ agriculture mediation program may not, as a condition to mediation, require that
16 the borrower of any creditor waive any ~~of their~~ respective legal or equitable remedies or rights.

17 Section 3. That § 54-13-3 be repealed.

18 ~~— 54-13-3. Members shall receive per diem and shall be reimbursed for necessary expenses~~
19 ~~incurred in connection with performing their duties as prescribed by this chapter.~~

20 Section 4. That § 54-13-4 be amended to read as follows:

21 54-13-4. All staff services required by the ~~board~~ agriculture mediation program shall be
22 provided by the Department of Agriculture. The ~~board~~ secretary of agriculture may employ a
23 director of mediation services and such other agents and employees as it the secretary deems
24 ~~necessary to carry out its duties and purposes subject to the approval of the secretary of~~

1 ~~agriculture~~. The director shall serve at the pleasure of the secretary of agriculture. The mediation
2 services shall be administered under the direction and supervision of the Department of
3 Agriculture. All expenses incurred in carrying on the work of the ~~board~~ agriculture mediation
4 program, including the per diem and expenses of the ~~board members and~~ staff, salaries, contract
5 payments, and any other items of expense shall be paid out of funds appropriated or otherwise
6 made available to the farm mediation operating fund.

7 Section 5. That § 54-13-5 be amended to read as follows:

8 54-13-5. Any fees provided under this chapter and by rule shall be borne equally between the
9 borrower and the creditor. Such fees and any funds received pursuant to the Agricultural Credit
10 Act of 1987 shall be deposited in the farm mediation operating fund which is hereby created. All
11 money in the farm mediation operating fund created by this section is continuously appropriated
12 for the purposes of administering the farm mediation program. All funds received by the ~~board~~
13 agriculture mediation program shall be set forth in an informational budget as described in
14 § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the farm
15 mediation operating fund shall be by authorization of the ~~chairman of the board and the~~ secretary
16 of agriculture.

17 Section 6. That § 54-13-6 be amended to read as follows:

18 54-13-6. The Department of Agriculture, in the administration of this chapter, may contract
19 with one or more established agencies of state government, nonprofit corporations, businesses,
20 or individuals to provide mediation services for borrowers and creditors and to provide financial
21 preparation assistance for borrowers involved in mediation. Any contract executed under this
22 section is exempt from chapter 5-18. The contract may include such terms and conditions as the
23 ~~board~~ secretary of agriculture deems appropriate.

24 Section 7. That § 54-13-9 be amended to read as follows:

1 54-13-9. Upon receipt of a mediation request, the ~~board~~ director of the agriculture mediation
2 program shall advise the borrower that financial preparation assistance is available and may be
3 obtained through the financial preparation assistance for borrowers provided in § 54-13-7 and
4 shall provide any other information available regarding assistance programs to borrowers.

5 Section 8. That § 54-13-10 be amended to read as follows:

6 54-13-10. A creditor desiring to commence an action or a proceeding in this state to enforce
7 a debt totaling fifty thousand dollars or greater against agricultural land or agricultural property
8 of the borrower or to foreclose a contract to sell agricultural land or agricultural property or to
9 enforce a secured interest in agricultural land or agricultural property or pursue any other action,
10 proceeding or remedy relating to agricultural land or agricultural property of the borrower shall
11 file a request for mediation with the ~~board~~ director of the agriculture mediation program. No
12 creditor may commence any such action or proceeding until the creditor receives a mediation
13 release as described in this chapter, or the debtor waives mediation or until a court determines
14 after notice and hearing, that the time delay required for mediation would cause the creditor to
15 suffer irreparable harm because there are reasonable grounds to believe that the borrower may
16 waste, dissipate or divert agricultural property or that the agricultural property is in imminent
17 danger of deterioration. Dismissal of a bankruptcy proceeding, abandonment by a bankruptcy
18 trustee, release or relief from a bankruptcy stay, or release or termination of a receivership
19 proceeding shall have the effect of a mediation release.

20 Section 9. That § 54-13-11 be amended to read as follows:

21 54-13-11. Unless the borrower waives mediation, the ~~board~~ director of the agriculture
22 mediation program shall promptly send a mediation meeting notice to the borrower and to all
23 creditors as defined in subdivision 54-13-1(5), setting a time and place for an initial mediation
24 meeting between the borrower, the creditor or creditors, and a mediator. An initial mediation

1 meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.
2 Any creditors of the borrower who are not included in the definition of creditor under
3 subdivision 54-13-1(5) are exempt from the requirements of this section. Any borrower's failure
4 to furnish timely information requested by the ~~board~~ director of the agriculture mediation
5 program constitutes a waiver of the right to mediate under this chapter. Also, the failure of the
6 borrower and the borrower's spouse, unless excused by the initiating creditor, to attend all
7 mediation meetings constitutes a waiver of the right to mediate under this chapter.

8 Any creditor subject to mandatory mediation under this chapter who receives notice pursuant
9 to this section and who participates in all mediation sessions shall be treated as an initiating
10 creditor and is be subject to the same debt collection limitations as provided in § 54-13-10.

11 Section 10. That § 54-13-12 be amended to read as follows:

12 54-13-12. The total mediation period shall be for a term of forty-two days after the date the
13 ~~board~~ director of the agriculture mediation program issues the notice to the borrower. The ~~board~~
14 director of the agriculture mediation program must issue a notice to the borrower within three
15 business days following receipt of the request for mediation from the creditor. The mediator may,
16 after the initial meeting, schedule additional mediation meetings during the mediation period.

17 Section 11. That § 54-13-13 be amended to read as follows:

18 54-13-13. A borrower may request mediation of any type or amount of indebtedness by
19 applying to the ~~board~~ director of the agriculture mediation program. The ~~board~~ director of the
20 agriculture mediation program may make the appropriate mediation request forms available for
21 such purpose. The ~~board~~ director of the agriculture mediation program may follow the same
22 procedure as for mandatory mediation. Neither the borrower nor the creditor may be required
23 to attend any mediation meetings under this section. Failure to attend mediation meetings or to
24 participate in mediation under this section does not affect the rights of a borrower or a creditor

1 in any manner. Participation in mediation under this section is not a prerequisite to or a bar to
2 the commencement of an action of legal proceedings by the borrower or the creditor. No
3 mediation release may be issued unless the borrower and creditor agree in writing.

4 Section 12. That § 54-13-15 be amended to read as follows:

5 54-13-15. If the borrower and the initiating creditor consent, mediation may continue beyond
6 the forty-two day mediation period with the same force and effect as though held within the
7 forty-two day period. If no meeting is held within the forty-two day mediation period, absent
8 a waiver thereof, extension, or further agreement between borrower and creditor, the expiration
9 of the mediation period shall conclusively constitute a mediation release. The ~~board~~ director of
10 the agriculture mediation program shall so inform the borrower and creditors and certify
11 accordingly.

12 Any agreement reached between borrower and creditors as a result of mediation shall be
13 drafted into a written agreement. If signed by borrower and creditors, the agreement shall
14 constitute a mediation release, and the mediator shall so certify on the agreement.

15 Section 13. That § 54-13-18 be amended to read as follows:

16 54-13-18. All data and information regarding the finances of borrowers and creditors which
17 is created, collected, or maintained by the ~~board~~ director of the agriculture mediation program
18 pursuant to the terms of this chapter or disclosed to the mediator are not public records and are
19 confidential and discussions with the mediators are privileged communications.

20 All mediation meetings, and all mediation activities provided by this chapter are exempt from
21 the provisions of chapter ~~1-25~~ 1-27.

22 Section 14. That § 54-13-20 be amended to read as follows:

23 54-13-20. Any person serving as a mediator or ag finance counselor pursuant to this chapter
24 is immune from civil liability in any action brought in any court in this state on the basis of any

1 act or omission resulting in damage or injury if the individual was acting in good faith, in a
2 reasonable and prudent manner, and within the scope of such individual's official functions and
3 duties as a mediator or ag finance counselor pursuant to this chapter.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0300

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 39 - 02/20/2001

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

1 FOR AN ACT ENTITLED, An Act to establish standards for disability income insurance.

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

3 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 For the purposes of this Act, the term, disability income insurance, means a policy or
6 certificate of insurance that primarily provides payment to or for the benefit of the policyholder
7 or certificate holder based, in whole or in part, upon lost wages or other earned income or
8 business or financial losses as a result of an inability to work due to sickness, injury, or a
9 combination of sickness and injury.

10 Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any disability income insurance policy may include provisions that exclude or reduce benefits
13 if the insured is collecting other benefits under a government program or is eligible to receive
14 benefits under other insurance coverage. If the insured subsequently receives other benefits for

1 a period for which the insurer paid benefits, the insurer may require reimbursement from the
2 insured for any benefits already paid that otherwise would not have been paid. If the insured fails
3 to make timely application for any other insurance coverage or governmental program for which
4 that insured may be eligible, fails to actively and in good faith pursue all appeals procedures if
5 benefits under other insurance or governmental program have been denied, or fails to produce
6 satisfactory evidence that the applications have been made and the appeals pursued, benefits may
7 be reduced or withheld.

8 Section 3. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 No disability income insurance policy may require the loss to commence less than thirty days
11 after the date of the accident.

12 Section 4. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Except for overhead expense, buy-sell coverage or other similar business disability income
15 insurance coverage, a disability income insurance policy shall meet the following minimum
16 standards:

- 17 (1) Provide that periodic payments that are payable at ages after sixty-two and reduced
18 solely on the basis of age are at least fifty percent of the amounts payable immediately
19 prior to age sixty-two or in the case of an employer group plan that has twenty or
20 more employees, that periodic payments are actuarially equivalent regardless of age;
- 21 (2) Contain an elimination period no greater than:
- 22 (a) Ninety days in the case of coverage providing a benefit of one year or less;
- 23 (b) One hundred eighty days in the case of coverage providing a benefit of more
24 than one year but not greater than two years;

- 1 (c) Three hundred sixty-five days in the case of coverage providing a benefit of
- 2 more than two years but not greater than five years; or
- 3 (d) Seven hundred thirty days in the case of coverage providing a benefit greater
- 4 than five years resulting from sickness or injury;
- 5 (3) Provide a maximum benefit period of at least six months for long-term disability
- 6 income insurance and at least twelve weeks for short-term disability income insurance.
- 7 However, in the case of a policy covering disability arising out of pregnancy,
- 8 childbirth, or miscarriage, the maximum benefit period may be one month, except if
- 9 the plan is an employer plan with fifteen or more employees, then the maximum
- 10 benefit period for pregnancy, childbirth, or miscarriage may not be less than the
- 11 maximum benefit period for other covered disabilities;
- 12 (4) Include no reduction in benefits because of any cost of living increase in social
- 13 security or similar benefits during a benefit period;
- 14 (5) Require only one elimination period if a policy provides total disability income
- 15 benefits and partial disability income benefits.

16 A long-term disability income insurance policy may have longer elimination periods if the
17 policy is issued in conjunction with or supplemental to a limited duration self-insured or other
18 short-term disability income policy. The provisions of this section do not apply to an employer
19 plan if at least fifty percent of the covered employee's disability income benefits are subject to
20 federal income taxes.

21 Section 5. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The director may promulgate rules pursuant to chapter 1-26 to protect the insurance-buying
24 public with regard to disability income policies. However, the director shall take into account the

1 effect any such rule may have on the availability of coverage. The rules may include:

2 (1) Definition of terms;

3 (2) Permissible exclusions;

4 (3) Return of premium provisions;

5 (4) Terms of renewability;

6 (5) Disclosure requirements;

7 (6) Benefit triggers, if such rules permit the use of activities of daily living as an
8 acceptable benefit trigger; and

9 (7) Limitations, exceptions, and reductions.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

762E0399

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 82** - 02/20/2001

Introduced by: Senators McCracken and Reedy and Representatives Duniphan, Bartling,
Broderick, and Hennies (Thomas)

1 FOR AN ACT ENTITLED, An Act to permit local government officials and employees to use
2 credit cards and to permit the state and its political subdivisions to accept credit and debit
3 card payments.

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

5 Section 1. Notwithstanding any other provision of law, local government officials and
6 employees may be permitted to use a credit card for the purchase of materials, supplies,
7 equipment, or other authorized transactions for the benefit of the local government entity. Before
8 authorizing the use of a credit card, the governing body shall, by resolution, establish policies
9 providing for the use and accountability of credit card purchases.

10 Section 2. Notwithstanding any other provision of law, the state and its political subdivisions
11 may accept a credit card or a debit card as payment for a transaction. The state and its political
12 subdivisions may assess and collect a fee in an amount sufficient to cover any processing fee
13 associated with a credit card or debit card transaction. The Bureau of Finance and Management
14 shall promulgate rules pursuant to chapter 1-26 relating to the establishment and collection of

1 a processing fee associated with a credit card or debit card transaction. The governing body of
2 each political subdivision may, by resolution, establish and collect a processing fee associated
3 with a credit card or debit card transaction.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

750E0076

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **SB 98** - 02/20/2001

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

Introduced by: Senator Hutmacher and Representatives Nachtigal and Bartling

1 FOR AN ACT ENTITLED, An Act to establish certain penalties for failure to control weeds and
2 pests.

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

4 Section 1. That chapter 38-22 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any owner, occupant, or other person who maintains or exercises control or management
7 over land who is issued notice pursuant to § 38-22-17 or 38-22-18 for two consecutive years is
8 guilty of a Class 2 misdemeanor. Any owner, occupant, or other person who maintains or
9 exercises control or management over land on which the secretary of agriculture has conducted
10 protective operations pursuant to §§ 38-22-17 and 38-22-21 for two consecutive years is guilty
11 of a Class 1 misdemeanor.

12 Section 2. That chapter 38-22 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any owner, occupant, or other person who maintains or exercises control or management

1 over land who is issued a resolution by the county weed and pest board pursuant to § 38-22-
2 23.13 for two consecutive years is guilty of a Class 2 misdemeanor. Any owner, occupant, or
3 other person who maintains or exercises control or management over land on which the county
4 weed and pest board has performed remedial requirements pursuant to § 38-22-23.14 for two
5 consecutive years is guilty of a Class 1 misdemeanor.

6 Section 3. That chapter 38-22 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If the county weed and pest board is requested by an individual to perform weed and pest
9 control operations on the individual's property and fails to reimburse the county by November
10 in the year in which the operations are performed, the cost of the operations shall become a lien
11 against the lands of the owner pursuant to § 38-22-23.14.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

708E0621

HOUSE ENGROSSED NO. **SB 209** - 02/22/2001

Introduced by: Senators Olson (Ed), Diedrich (Elmer), and Sutton (Dan) and
Representatives Brown (Richard), Derby, Flowers, Jaspers, and Sebert

1 FOR AN ACT ENTITLED, An Act to permit certain businesses to remit sales and use tax after
2 the machinery is under production.

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

4 Section 1. That § 10-45-27 be amended to read as follows:

5 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts
6 are subject to sales tax in this state during the periods specified by this section shall make a return
7 and remittance to the Department of Revenue on forms prescribed and furnished by the
8 department in the following manner:

9 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the
10 return and remit the tax on or before the twentieth day of the month following each
11 monthly period;

12 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the
13 return and remit the tax on or before the last day of the month following each
14 two-month period;

15 (3) Any person whose tax liability is one thousand dollars or more annually and who

1 remits the tax by electronic transfer to the state, shall file the return by electronic
2 means on or before the twenty-third day of the month following each monthly period
3 and remit the tax on or before the second to the last day of the month following each
4 monthly period.

5 The secretary of revenue may grant an extension of not more than five days for filing a return
6 and remittance. However, the secretary of revenue may grant an extension for remitting the tax
7 to a qualified business as provided in sections 2 to 10, inclusive, of this Act for six months.

8 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return
9 or remittance is not made on time.

10 Section 2. Terms used in this Act mean:

- 11 (1) "Department," the Department of Revenue;
- 12 (2) "Business," a business that has purchased and is installing tangible personal property
13 in the form of equipment or machinery for direct use in an electrical generation,
14 electrical transmission, digital television broadcast, manufacturing, fabricating, or
15 processing business, which is subject to sales or use tax pursuant to chapter 10-45 or
16 10-46;
- 17 (3) "Project," the purchase and installation of equipment or machinery;
- 18 (4) "Project cost," the amount paid in money for a project;
- 19 (5) "Secretary," the secretary of the Department of Revenue.

20 Section 3. Any electrical generation, electrical transmission, digital television broadcast,
21 manufacturing, fabricating, or processing business may apply for and obtain an extension for
22 remitting the sales and use tax imposed and due under the provisions of chapter 10-45 or 10-46
23 for equipment or machinery that will be for direct use in an electrical generation, electrical
24 transmission, digital television broadcast, manufacturing, fabricating, or processing business. The

1 extension shall end after six months.

2 Section 4. The extension pertains only to equipment and machinery purchased and installed
3 after July 1, 2001. No extension may be made unless:

4 (1) The project cost exceeds twenty thousand dollars; and

5 (2) The business applying for the extension obtains a permit from the secretary as set
6 forth in section 6 of this Act.

7 Section 5. The amount of the tax extension shall apply to one hundred percent of the
8 equipment and machinery costs and installation fees.

9 Section 6. Any business desiring an extension pursuant to this Act shall apply for a permit
10 from the secretary at least thirty days prior to commencement of the project. The application for
11 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
12 be made and submitted for each project. Upon approval of the application, the secretary shall
13 issue a permit entitling the applicant to an extension as provided by this Act. The permit or
14 extension is not assignable or transferable.

15 Section 7. Any extension shall be submitted on forms prescribed by the secretary and shall
16 be supported by such documentation as the secretary may require. The secretary may deny any
17 extension where the business has failed to provide information or documentation requested or
18 considered necessary by the secretary to determine the validity of the extension.

19 Section 8. If any extension has been fraudulently presented or supported as to any item in the
20 claim, or if the business fails to meet all the conditions of this Act, then the business may be
21 rejected in its entirety and any tax due from the business shall constitute a debt to the state and
22 a lien in favor of the state upon all property and rights to property whether real or personal
23 belonging to the business and may be recovered in an action of debt.

24 Section 9. Any business aggrieved by the denial in whole or in part of a extension requested

1 under this Act, may within thirty days after service of the notice of a denial by the secretary,
2 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be
3 conducted pursuant to chapter 1-26.

4 Section 10. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
5 procedures for filing extensions and the requirements necessary to qualify for an extension.