

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

921H0064

SENATE ENGROSSED NO. **HB 1091** - 02/11/2002

Introduced by: Representatives Adelstein, Klaudt, and Van Etten and Senators Putnam and
Apa

1 FOR AN ACT ENTITLED, An Act to make compliance with federal selective service
2 requirements a condition of obtaining certain driver licenses.

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

4 Section 1. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No male United States citizen or immigrant who is at least eighteen years of age but less than
7 twenty-six years of age and who is required to register with the United States Selective Service
8 System may apply for or be issued a driver license, renewal, or duplicate pursuant to this chapter
9 unless the applicant is registered, or consents to be registered as provided in this section, in
10 compliance with the Military Selective Service Act, 50 U.S.C. App. 453, as amended to
11 January 1, 2002.

12 The Department of Commerce and Regulation shall forward in an electronic format the
13 necessary personal information required for registration of any applicant identified in this section
14 to the United States Selective Service System. The applicant's submission of the application
15 indicates that the applicant has already registered with the Selective Service System or that he



1 is authorizing the department to forward to the Selective Service System the necessary
2 information for such registration. The department shall notify the applicant on the application
3 that his submission of the application serves as his consent to be registered with the Selective
4 Service System if so required by federal law.

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

7 No male United States citizen or immigrant who is at least eighteen years of age but less than
8 twenty-six years of age and who is required to register with the United States Selective Service
9 System may apply for or be issued a commercial driver license, renewal, or duplicate pursuant
10 to this chapter unless the applicant is registered, or consents to be registered as provided in this
11 section, in compliance with the Military Selective Service Act, 50 U.S.C. App. 453, as amended
12 to January 1, 2002.

13 The Department of Commerce and Regulation shall forward in an electronic format the
14 necessary personal information required for registration of any applicant identified in this section
15 to the United States Selective Service System. The applicant's submission of the application
16 indicates that the applicant has already registered with the Selective Service System or that he
17 is authorizing the department to forward to the Selective Service System the necessary
18 information for such registration. The department shall notify the applicant on the application
19 that his submission of the application serves as his consent to be registered with the Selective
20 Service System if so required by federal law.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

453H0137

SENATE ENGROSSED NO. **HB 1149** - 02/11/2002

Introduced by: Representatives Kloucek, Bartling, Begalka, Bradford, Davis, Elliott, Glenski, Hargens, Hennies (Thomas), Kooistra, Nachtigal, Nesselhuf, and Sigdestad and Senators Hutmacher, Cradduck, Diedrich (Elmer), Hagen, Koetzle, Moore, Sutton (Dan), Vitter, and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the awarding of high
2 school diplomas to certain veterans.

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

4 Section 1. That § 33-17-39 be amended to read as follows:

5 33-17-39. Any honorably discharged veteran as defined in § 33-17-1 may request and shall
6 receive an honorary high school diploma as provided in this section if the veteran served in the
7 armed forces of the United States during the period December 7, 1941, to September 2, 1945,
8 inclusive, or during the period June 25, 1950, to July 31, 1953, inclusive. The school district
9 selected by the eligible veteran shall award an honorary high school diploma to the veteran.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

145H0477 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
HB 1187 - 02/07/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Frost, Hennies (Thomas), Holbeck, Jaspers, Kooistra, Madsen, McCaulley, Pummel, Rhoden, and Slaughter and Senators Olson (Ed), Apa, Brosz, Koskan, McCracken, Reedy, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to allow certain school district transfers.

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

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

5 Notwithstanding any other provision of this chapter, if two or more school districts
6 consolidate, for one year after consolidation pursuant to § 13-6-61, the newly formed school
7 district may transfer any money from its general fund to its capital outlay fund. However, any
8 funds transferred pursuant to this section may only be spent for one-time costs related to the
9 consolidation. Any funds transferred to the capital outlay fund, but not lawfully obligated within
10 one year of the date of the consolidation, shall revert to the school district's general fund. The
11 Department of Education and Cultural Affairs shall promulgate rules pursuant to chapter 1-26
12 to require the necessary information and establish procedures necessary to implement this
13 section.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

627H0627

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1219 - 02/06/2002

Introduced by: Representative Hennies (Thomas) and Senator Ham

1 FOR AN ACT ENTITLED, An Act to revise the household income threshold and index factor

2 for determining certain freezes on property assessments and to declare an emergency.

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

4 Section 1. That § 10-6A-2 be amended to read as follows:

5 10-6A-2. Any person making an application under the provisions of this chapter is entitled
6 to a real property tax assessment freeze upon the person's single-family dwelling if the following
7 conditions are met:

- 8 (1) Has a household income of less than ~~fourteen thousand dollars~~ fifteen thousand forty-
9 one dollars and twenty-eight cents if the household is a single-member household; or
- 10 (2) Has a household income of less than ~~seventeen thousand five hundred dollars~~ eighteen
11 thousand eight hundred one dollars and fifty-nine cents if the household is a
12 multiple-member household; and
- 13 (3) Has owned a single-family dwelling, in fee or by contract to purchase, for at least one
14 year and has been a resident of South Dakota for at least one year; and
- 15 (4) Has resided for at least two hundred days of the previous calendar year in the



1 single-family dwelling; and

2 (5) Has established a base year.

3 Beginning on January 1, ~~1999~~ 2003, the household income listed in subdivisions (1) and (2)
4 of this section shall increase by the index factor. The index factor is the annual percentage change
5 in the consumer price index for urban wage earners and clerical workers as computed by the
6 Bureau of Labor Statistics of the United States Department of Labor for the year before the year
7 immediately preceding the year of adjustment or ~~three percent~~ the annual percentage change in
8 federal social security payments for the preceding year, whichever is ~~less~~ greater.

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0231

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 14** - 02/11/2002

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and responsibilities of the
2 administrator of the Human Services Center.

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

4 Section 1. That § 27A-4-3 be amended to read as follows:

5 27A-4-3. The secretary of human services shall appoint an administrator of the South Dakota
6 Human Services Center who shall be a skilled administrator or a South Dakota licensed physician
7 of accepted skill and ability. ~~Such person must have had experience of at least five years either~~
8 The person shall have a degree and extensive experience in public or private institutions for the
9 mentally ill administration including experience in a mental health setting and shall be of a good
10 moral character. The administrator shall be the chief executive officer of the South Dakota
11 Human Services Center. The administrator shall serve at the pleasure of the secretary of human
12 services.

13 Section 2. That § 23A-27A-22 be amended to read as follows:

14 23A-27A-22. If a defendant confined under sentence of death appears to be mentally



1 incompetent to proceed, the warden having ~~him in~~ custody of the defendant shall forthwith notify
2 the Governor, who shall appoint a commission of not less than three nor more than five
3 disinterested duly licensed physicians, one of whom shall be the ~~superintendent~~ medical director
4 of the Human Services Center or ~~his assistant~~ the director's designee, to examine the defendant
5 and report to the Governor as to ~~his~~ the defendant's mental condition at the time of the
6 examination.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0244

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 21** - 01/16/2002

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to prohibit tax stamping or payment of taxes on cigarettes
2 or roll your own tobacco products produced by certain nonparticipating manufacturers and
3 to provide for the creation of a directory for compliant nonparticipating manufacturers.

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

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

7 No distributor or wholesaler may, directly or indirectly, affix a South Dakota cigarette tax
8 stamp or imprint to a package of cigarettes, or pay South Dakota cigarette tax on roll-your-own
9 tobacco product, manufactured or sold by a tobacco product manufacturer unless:

- 10 (1) The manufacturer is a participating manufacturer as that term is defined in subdivision
11 10-50B-7(1); or
12 (2) The manufacturer is a nonparticipating manufacturer in compliance with subdivision
13 10-50B-7(2).

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



1 The secretary of revenue shall annually, no later than May fifteenth, transmit to all licensed
2 distributors and wholesalers, and post on the Department of Revenue's website, a directory of
3 nonparticipating tobacco product manufacturers determined by the secretary to be in compliance
4 with subdivision 10-50B-7(2). The secretary of revenue shall amend the directory on the
5 Department of Revenue's website, as necessary, to include any nonparticipating tobacco product
6 manufacturer determined to be in compliance with subdivision 10-50B-7(2) after May fifteenth,
7 or to remove any nonparticipating tobacco product manufacturer subsequently determined not
8 to be in compliance with subdivision 10-50B-7(2). The secretary of revenue may require
9 distributors, wholesalers, and nonparticipating tobacco product manufacturers to submit such
10 information as the secretary may determine is necessary to enable the secretary to determine
11 whether a nonparticipating tobacco product manufacturer is in compliance with subdivision 10-
12 50B-7(2).

13 Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any nonparticipating tobacco product manufacturer excluded or removed from the directory
16 may request a contested case hearing before the secretary. A request for hearing shall be made
17 within sixty days of the exclusion or removal or the date the manufacturer determined it was in
18 full compliance with this chapter and chapter 10-50B, and shall contain the evidence supporting
19 the manufacturer's compliance with subdivision 10-50B-7(2). At the hearing, the secretary shall
20 determine whether the nonparticipating tobacco product manufacturer is in compliance with
21 subdivision 10-50B-7(2), and whether the manufacturer should be listed in the directory.

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

24 Any stamped cigarettes or roll-your-own tobacco on which taxes have been paid in violation

1 of this Act are contraband goods and may be legally seized, without a warrant, by the secretary
2 of revenue, department agents or employees, or by any law enforcement officer of this state if
3 directed by the secretary to do so. Any tobacco products seized and forfeited under this section
4 shall be destroyed. The Department of Revenue may allow a credit for tax paid on contraband
5 cigarettes and roll-your-own product returned to the manufacturer or distributor from which they
6 were purchased.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0247

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 36 - 01/18/2002

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

1 FOR AN ACT ENTITLED, An Act to impose a sales and use tax on mobile telecommunications
2 services and to implement the federal uniform and simplified sourcing rules for mobile
3 telecommunications services.

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

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

7 There is hereby imposed a tax of four percent upon the gross receipts of mobile
8 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
9 originate and terminate in the same state and are billed to a customer with a place of primary use
10 in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
11 imposed by this section, the tax imposed upon mobile telecommunication services shall be
12 administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

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

15 There is hereby imposed a tax of four percent upon the privilege of the use of mobile



1 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
2 originate and terminate in the same state and are billed to a customer with a place of primary use
3 in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
4 imposed by this section, the tax imposed upon mobile telecommunication services shall be
5 administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

6 Section 3. That subdivision (7) of § 34-45-1 be amended to read as follows:

7 (7) "911 emergency surcharge," any charge set by the governing body and assessed on
8 each local exchange access line which physically terminates within the governing
9 body's designated 911 service area. For a mobile telecommunications service, any
10 charge set by the governing body and assessed per cellular telephone identified within
11 the governing body's designated 911 service area as determined by the customer's
12 place of primary use as defined in 4 U.S.C. § 124 as in effect on July 28, 2000.
13 Notwithstanding any other provision of this chapter and for purposes of the surcharge
14 imposed by this chapter, the surcharge imposed upon mobile telecommunication
15 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on
16 July 28, 2000;

17 Section 4. That § 49-31-51 be amended to read as follows:

18 49-31-51. There is hereby imposed an access fee of fifteen cents per local exchange service
19 line per month, fifteen cents per cellular telephone per month in accordance with the provisions
20 provided in subdivision 34-45-1(7), and fifteen cents per radio pager device per month to pay
21 for the program established in § 49-31-47. The access fee shall be paid by each local exchange
22 subscriber to a local exchange service, or by each cellular telephone or radio pager service
23 subscriber to the service provider, unless the subscriber is otherwise exempt from taxation. The
24 access fee shall be reported as a separate line or service and collected on the regular monthly bill

1 by each local exchange telecommunications company or other service provider operating in this
2 state. On or before the last day of the month following each two-month period, every
3 telecommunications company providing local exchange service or other service provided
4 specified in this section shall remit to the Department of Revenue on forms furnished by the
5 department the amount of the access fee collected for that two-month period. The secretary of
6 revenue may grant an extension of not more than five days for filing a remittance. The
7 Department of Revenue shall deposit ninety percent of the money received under §§ 49-31-47
8 to 49-31-56, inclusive, into the telecommunication fund for the deaf and ten percent in the
9 telecommunication fund for other disabilities.

10 Section 5. That § 10-45-6.1 be amended to read as follows:

11 10-45-6.1. ~~There~~ Except as provided in section 1 of this Act, there is hereby imposed on
12 amounts paid for local telephone services, toll telephone services, and teletypewriter services,
13 a tax of four percent of the amount so paid. The taxes imposed by this section shall be paid by
14 the person paying for the services. If a bill is rendered the taxpayer for local telephone service
15 or toll telephone service, the amount on which the tax with respect to such services shall be
16 based shall be the sum of all charges for such services included in the bill; except that if a person
17 who renders the bill groups individual items for purposes of rendering the bill and computing the
18 tax, then the amount on which the tax for each such group shall be based shall be the sum of all
19 items within that group, and the tax on the remaining items not included in any such group shall
20 be based on the charge for each item separately. If the tax imposed by this section with respect
21 to toll telephone service is paid by inserting coins in coin operated telephones, the tax shall be
22 computed to the nearest multiple of five cents, except that, where the tax is midway between
23 multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at
24 the same time as the sales tax imposed by this chapter.

1 Section 6. The provisions of this Act apply to any customer bill issued on or after August 1,
2 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0350

SENATE ENGROSSED NO. **SB 41** - 01/22/2002

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the higher education
2 savings plan and to declare an emergency.

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

4 Section 1. That § 13-63-11 be amended to read as follows:

5 13-63-11. Account owners may withdraw all or part of the balance from an account ~~on sixty~~
6 ~~days' notice, or a shorter period~~ as may be authorized by the council, by policies, guidelines, or
7 procedures, or under rules promulgated by the council pursuant to chapter 1-26. ~~These rules~~
8 ~~shall include provisions that will generally enable the council or program manager to determine~~
9 ~~if a withdrawal is a nonqualified withdrawal. The rules may require one or more of the following:~~

10 ~~— (1) — Account owners seeking to make a withdrawal other than a nonqualified withdrawal~~
11 ~~shall provide certifications, copies of bills for qualified higher education expenses, or~~
12 ~~other supporting material;~~

13 ~~— (2) — Qualified withdrawals from an account shall be made only by a check payable jointly~~
14 ~~to the designated beneficiary and a higher education institution as designated by the~~
15 ~~account owner, except as expressly otherwise permitted by section 529 of the Internal~~



1 Revenue Code and related regulations;

2 ~~(3) Withdrawals not meeting requirements established by the council shall be treated as~~
3 ~~nonqualified withdrawals by the program manager, and if these withdrawals are not~~
4 ~~nonqualified withdrawals, the account owner must seek refunds of penalties directly~~
5 ~~from the council.~~

6 Section 2. That § 13-63-18 be amended to read as follows:

7 13-63-18. No contributor to, account owner of, or designated beneficiary of, any account
8 may, directly or indirectly, direct the investment of any contributions to an account or the
9 earnings from the account, except to the extent permitted under section 529 of the Internal
10 Revenue Code and related regulations.

11 The council, as trustee, may offer participants a choice of several investment options, some
12 of which may require investment counseling prior to participation. Any investment vehicle
13 offered by the council shall be in accordance with policies of the council adopted pursuant to this
14 chapter and shall be consistent with the investments of a prudent person with similar objectives
15 and shall further be separate from, and not commingled with, other investment programs of the
16 council.

17 Section 3. That § 13-63-21 be amended to read as follows:

18 13-63-21. The council shall adopt policies, guidelines, procedures, or rules pursuant to
19 chapter 1-26 to prevent contributions on behalf of a designated beneficiary in excess of ~~those~~
20 ~~necessary to pay the qualified higher education expenses of the designated beneficiaries and to~~
21 ~~satisfy the safe harbor requirements~~ the maximum amounts permitted under section 529 of the
22 Internal Revenue Code and related regulations.

23 Section 4. That § 4-5-26 be amended to read as follows:

24 4-5-26. Money made available for investment may be invested in the following classes of

1 securities and investments and, except as provided by § 3-12-117, chapter 3-13, the South
2 Dakota Cement Plant retirement fund, chapter 13-63, and the permanent trust fund containing
3 the net proceeds from the sale of state cement enterprises, not otherwise:

- 4 (1) Direct and indirect obligations of the United States government;
- 5 (2) Agencies and instrumentalities of the United States government;
- 6 (3) Direct obligations of the State of South Dakota and any of its political subdivisions;
- 7 (4) Obligations consisting of notes, bonds, debentures, and certificates which are direct
8 obligations of a solvent corporation or trust existing under the laws of the United
9 States or any state thereof, if such investments are rated in the four highest
10 classifications established by at least two standard rating services; or
- 11 (5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan
12 associations, building and loan associations, and bankers' acceptances;
- 13 (6) In addition to the investments authorized by subdivisions (1) to (5) of this section,
14 inclusive, the investment council may also allocate a sum certain of state public funds
15 for investment in the accounts and certificates of South Dakota banks and
16 associations. This sum shall initially be offered to South Dakota banks and
17 associations, and if not initially fully subscribed, the investment officer shall
18 immediately reoffer the unsubscribed sum to other qualified public depositories
19 defined by subdivision 4-6A-1(7).

20 Section 5. That ARSD 6:01:06:01 be amended to read as follows:

21 6:01:06:01. Definitions. Words and phrases defined in SDCL chapter 13-63 have the same
22 meaning when used in this chapter. Terms used in this chapter mean:

- 23 (1) "Cash," currency, bills, and coin in circulation, or converting a negotiable instrument to
24 cash by endorsing and presenting to a financial institution for deposit. An automatic transfer,

1 cashier's check, certified check, money order, payroll deposit, traveler's check, personal check,
2 and wire transfer are cash;

3 (2) "Investment direction," specifying or attempting to specify the particular financial
4 instruments or ownership interests either individually, or within a fund family or other group of
5 financial instruments or ownership interests held as an investment group, into which the
6 contributions or earnings are invested. Investment direction does not mean selecting an initial
7 type of investment program if more than one program is offered;

8 (3) "IRC," section 529 of the Internal Revenue Code as amended on ~~August 1, 2001~~
9 January 16, 2002;

10 (4) "Program manager," any financial institution selected by the council to act as the
11 depository and manager for the higher education savings plan.

12 Section 6. That ARSD 6:01:06:04 be repealed.

13 ~~6:01:06:04. Withdrawals--Reporting of nonqualified withdrawals--Penalties. An account
14 owner may withdraw funds from an account on 30 days notice. The designated beneficiary of
15 an account does not have any authority to withdraw funds from an account unless the account
16 is structured to give the designated beneficiary such right of withdrawal upon matriculation or
17 upon incurring qualified higher education expenses.~~

18 ~~— (1) Withdrawals. Types of withdrawals include:~~

19 ~~— (a) Qualified withdrawals. In order to make a qualified withdrawal, the account holder
20 or the account holder's designee must complete a certification, on a form provided by the
21 program manager, declaring that the funds will be used for the purposes set forth in subdivision
22 SDCL 13-63-1(13). The form shall include a statement advising the designated beneficiary and
23 account owner to report, in accordance with IRC, refunds received from a higher education
24 institution. In addition to the certification, a withdrawal is deemed qualified only if:~~

1 ~~—————(i)————— The financial institution is provided with a copy of an invoice from the~~
2 ~~higher education institution or other supporting material; and~~

3 ~~—————(ii) The distribution is made only by check payable jointly to the designated~~
4 ~~beneficiary and a higher education institution as designated by the account owner, or the higher~~
5 ~~education institution only, or except as expressly permitted by IRC;~~

6 ~~—————(b) Withdrawal based on death, disability, or scholarship. A withdrawal may be made~~
7 ~~as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation~~
8 ~~is provided. Written substantiation must be from a party other than the designated beneficiary~~
9 ~~or the account owner that can independently confirm the circumstances of the withdrawal. For~~
10 ~~a scholarship, the withdrawal may not exceed the amount of the scholarship;~~

11 ~~—————(c) Nonqualified or unsubstantiated withdrawals. Any penalty that exceeds zero percent~~
12 ~~would be considered more than de minimis based on IRC, therefore the council has determined~~
13 ~~that no penalty will be imposed pursuant to SDCL 13-63-15; and~~

14 ~~——(2) Substantiation procedures. Before treating any withdrawal as qualified, the program~~
15 ~~manager shall confirm that substantiation is provided for the amount of a withdrawal that the~~
16 ~~account owner or designated beneficiary asserts is qualified; that the substantiation complies with~~
17 ~~IRC, and, in the case of a withdrawal to pay qualified higher education expenses, that the~~
18 ~~substantiated expenditures are of a nature and in amounts that can be treated as qualified higher~~
19 ~~education expenses. If the program manager determines that substantiation is inadequate, it shall~~
20 ~~notify the account owner and defer making any distribution with respect to an inadequately~~
21 ~~substantiated request until proper substantiation is provided or the account owner instructs the~~
22 ~~financial institution to make the requested distribution.~~

23 Section 7. That § 13-63-1 be amended to read as follows:

24 13-63-1. Terms used in this chapter mean:

- 1 (1) "Account," an account established as prescribed in this chapter;
- 2 (2) "Account owner," the person who, under this chapter or rules promulgated by the
3 council pursuant to chapter 1-26, is entitled to select or change the designated
4 beneficiary of an account, to designate any person other than the designated
5 beneficiary to whom funds may be paid from the account, or to receive distributions
6 from the account if no such other person is designated;
- 7 (3) "Contribution," any payment directly allocated to an account for the benefit of a
8 designated beneficiary or used to pay late fees or administrative fees associated with
9 an account, and that portion of any rollover amount treated as a contribution under
10 section 529 of the Internal Revenue Code and related regulations;
- 11 (4) "Contributor," any person making a contribution to an account;
- 12 (5) "Council," the South Dakota Investment Council;
- 13 (6) "Designated beneficiary," except as provided in § 13-63-25, the individual designated
14 at the time the account is opened as the individual whose higher education expenses
15 are expected to be paid from the account or, if this designated beneficiary is replaced
16 in accordance with § 13-63-12, 13-63-13, or 13-63-14, the replacement beneficiary;
- 17 (7) "Eligible education institution," an institution that is eligible to participate in any
18 financial assistance program authorized by Title IV of the Higher Education Act of
19 1965, as amended through January 1, 2001, and that is any of the following as
20 permitted by section 529 of the Internal Revenue Code and related regulations:
 - 21 (a) An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79
22 stat. 1219; 20 United States Code sections 1001 through 1150);
 - 23 (b) An area vocational educational school as defined in section 521(3),
24 subparagraph (C) or (D) of the Carl D. Perkins Vocational Education Act (P.L.

1 98-524; 98 stat. 2435; 20 United States Code sections 2301 through 2471);

2 (c) An institution accredited for private postsecondary education;

3 (8) "Financial institution," any bank, commercial bank, national bank, savings bank,
4 savings and loan association, credit union, an insurance company, brokerage firm, or
5 other similar entity that is authorized to do business in this state;

6 (9) "Member of the family," any of the following:

7 (a) A son or daughter of an individual or a descendant of the son or daughter of
8 the individual;

9 (b) A stepson or stepdaughter of an individual;

10 (c) A brother, sister, stepbrother, or stepsister of an individual. For purposes of
11 this subsection, the terms, brother and sister, include a brother or sister by the
12 half-blood;

13 (d) The father or mother of an individual or an ancestor of the father or mother of
14 an individual;

15 (e) A stepfather or stepmother of an individual;

16 (f) A son or daughter of an individual's brother or sister. For purposes of this
17 subsection, the terms, brother and sister, include a brother or sister by the
18 half-blood;

19 (g) A brother or sister of an individual's father or mother. For purposes of this
20 subsection, the terms, brother and sister, include a brother or sister by the
21 half-blood;

22 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law,
23 or sister-in-law of an individual;

24 (i) The spouse of an individual or the spouse of an individual described in this

- 1 subdivision;
- 2 (j) Any individual who meets the criteria to be a member of the family as described
- 3 in this subdivision as a result of legal adoption;
- 4 (k) Any other individual who is considered a member of the family under section
- 5 529 of the Internal Revenue Code and related regulations;
- 6 (10) ~~"Nonqualified withdrawal," a withdrawal from an account other than one of the~~
- 7 ~~following:~~
- 8 ~~———— (a) A qualified withdrawal;~~
- 9 ~~———— (b) A withdrawal made as the result of the death or disability of the designated~~
- 10 ~~beneficiary of an account;~~
- 11 ~~———— (c) Withdrawal that is made on the account of a scholarship, or the allowance or~~
- 12 ~~payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code~~
- 13 ~~and related regulations, and that is received by the designated beneficiary, but~~
- 14 ~~only to the extent of the amount of this scholarship, allowance, or payment; or~~
- 15 ~~———— (d) A rollover or change of designated beneficiary;~~
- 16 (11) "Person," as defined in the regulations to section 529 of the Internal Revenue Code;
- 17 (12) "Program," the higher education savings program established under this chapter;
- 18 (13) "Qualified higher education expenses," tuition, fees, books, supplies, and equipment
- 19 required for enrollment or attendance and room and board of a designated beneficiary
- 20 at an eligible education institution, and any other expenses qualifying as qualified
- 21 higher education expenses under section 529 of the Internal Revenue Code and
- 22 related regulations; provided that room and board expenses qualify only if the
- 23 beneficiary enrolls at least half time and only if the expenses do not exceed the
- 24 minimum room and board allowance determined in calculating costs of attendance for

1 federal financial aid programs;

2 (14) ~~"Qualified withdrawal," a withdrawal from an account to pay the qualified higher~~
3 ~~education expenses of the designated beneficiary of the account, but only if the~~
4 ~~withdrawal is made in accordance with this chapter;~~

5 (15) "Rollover," a disbursement or transfer from an account of a designated beneficiary
6 that is transferred to or deposited within sixty days into an account of another
7 individual who is a member of the family of the designated beneficiary, if the
8 transferee account was created under this chapter or under a qualified state tuition
9 program maintained by another state in accordance with section 529 of the Internal
10 Revenue Code and related regulations.

11 Section 8. That § 13-63-15 be repealed.

12 ~~— 13-63-15. In the case of any nonqualified withdrawal from an account, an amount equal to~~
13 ~~ten percent of the portion of the proposed withdrawal that would constitute earnings as~~
14 ~~determined in accordance with section 529 of the Internal Revenue Code and related regulations~~
15 ~~shall be withheld as a penalty and paid to the council for use in operating and marketing the~~
16 ~~program and for state student financial aid.~~

17 ~~—The council, by rule promulgated pursuant to chapter 1-26, shall increase the percentage of~~
18 ~~the penalty or change the basis of this penalty if the council determines that the amount of the~~
19 ~~penalty must be increased to constitute a penalty that is more than a de minimis penalty for~~
20 ~~purposes of qualifying the program as a qualified state tuition program under section 529 of the~~
21 ~~Internal Revenue Code and related regulations.~~

22 ~~—The council may decrease the percentage of the penalty if it determines that the penalty is~~
23 ~~greater than is required to constitute a penalty that is more than a de minimis penalty for~~
24 ~~purposes of qualifying the program as a qualified state tuition program under section 529 of the~~

1 ~~Internal Revenue Code and related regulations:~~

2 Section 9. That § 13-63-16 be repealed.

3 ~~—13-63-16. If an account owner makes a nonqualified withdrawal and no penalty amount is~~
4 ~~withheld pursuant to § 13-63-15 or the amount withheld was less than the amount required to~~
5 ~~be withheld under § 13-63-15 for nonqualified withdrawals, the account owner shall pay the~~
6 ~~unpaid portion of the penalty to the council on or before April fifteenth of the following calendar~~
7 ~~year.~~

8 Section 10. Whereas, this Act is necessary for the support of the state government and its
9 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
10 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

490H0285

SENATE ENGROSSED NO. **SB 58** - 01/25/2002

Introduced by: Senators Brown (Arnold), Albers, Craddock, Daugaard, Diedrich (Larry), Everist, Greenfield, Ham, Hutmacher, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Michels, Davis, Frost, Fryslie, Glenski, Hunhoff, McCoy, Pitts, Solum, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish a nursing workforce center under the direction
2 of the Board of Nursing and to provide funding through a fee assessed upon nursing license
3 renewal.

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

5 Section 1. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Board of Nursing shall establish a nursing workforce center. The board shall charge a
8 fee of ten dollars upon the biennial renewal of each registered nurse and practical nurse license
9 in addition to the license renewal fee for the funding of the nursing workforce center. Donations
10 and bequests from persons to further the intent of the nursing workforce center or additional
11 funds designated by the board may also be accepted and placed in the restricted fund.

12 Section 2. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as
13 follows:



1 The nursing workforce center may address issues regarding the supply, demand, and need
2 for nurses, including issues of recruitment, retention, educational preparation, and utilization of
3 nurses. In addition, the nursing workforce center may:

- 4 (1) Maintain a database on the supply, demand, and need for nurses in the state;
- 5 (2) Convene representatives of nurses, health care providers, consumers, educators,
6 government officials, and other individuals in business and industry to review and
7 comment on data analysis; make recommendations for strategic action; and evaluate
8 effectiveness of actions implemented;
- 9 (3) Provide electronic access to comprehensive information and research conducted by
10 the nursing workforce center;
- 11 (4) Evaluate the effectiveness of nursing education articulation and support for nursing
12 education mobility;
- 13 (5) Promote strategies to improve nursing workplace environments and promote nursing
14 leadership development; and
- 15 (6) Evaluate the effectiveness of state initiatives implemented to address nursing
16 workforce capacities and requirements.

1 (d) Reinstatement of certificate of authority 25.00

2 (e) Amendment or reissuance of certificate of authority 25.00

3 (f) Annual audit 500.00

4 This fee to be reduced by the total dollar amount of premium taxes remitted in

5 each calendar year. The fee is waived for all licensed insurers remitting five

6 hundred dollars or more in premium taxes in a calendar year.

7 (2) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive

8 of fees required to be paid to the secretary of state by a domestic corporation 10.00

9 (3) Filing bylaws or amendments thereto 5.00

10 (4) Filing annual statement of insurer, other than as part of application for original

11 certificate of authority 25.00

12 (5) Insurance producers and solicitors:

13 (a) Insurance producer's license, including also disability insurance when written

14 by property, casualty, or surety insurer otherwise represented by the insurance

15 producer:

16 (i) Filing application for original license, and including issuance of license,

17 if issued 25.00

18 (ii) Original appointment of insurance producer, each insurer . . . 10.00

19 (iii) Annual renewal of appointment, each insurer:

20 Domestic insurer 10.00

21 Foreign insurer 10.00

22 (iv) Temporary license 10.00

23 (b) Insurance producer's license, life or health insurance, including both life and

24 disability insurance when so licensed as to the same insurer:

1	(i)	Application for original license, including issuance of license, if issued,	
2		each insurer	25.00
3	(ii)	Original appointment of insurance producer, each insurer . . .	10.00
4	(iii)	Annual renewal of appointment, each insurer:	
5		Domestic insurer	10.00
6		Foreign insurer	10.00
7	(iv)	Temporary license	10.00
8	(c)	Limited license as insurance producer:	
9	(i)	Motor vehicle physical damage . . . Same as for insurance producer's	
10		license	
11	(ii)	Accident ticket policies, each insurer each year	10.00
12	(iii)	Baggage ticket policies, each insurer each year	10.00
13	(iv)	Credit insurance . . . Same as for insurance producer license	
14	(d)	Examination for license, each examination and each time taken	10.00
15	(e)	Nonresident insurance producer license:	
16	(i)	Original license	30.00
17	(ii)	<u>Annual renewal of license</u>	<u>25.00</u>
18	(iii)	Appointments, each insurer	20.00
19	(iii) (iv)	Annual renewal of appointments, each insurer	20.00
20	(f)	Resident insurance producer, original license	25.00
21	(i)	Annual renewal	25.00
22		<u>Biennial continuing education fee, license renewal</u>	<u>20.00</u>
23	(g)	Corporation or partnership license:	
24	(i)	Original license	25.00

1	(ii)	Appointment, each insurer	10.00
2	(iii)	Annual renewal of appointment, each insurer	10.00
3	(h)	Nonresident corporation or partnership license:	
4	(i)	Original license	30.00
5	(ii)	Appointment, each insurer	20.00
6	(iii)	Annual renewal of appointment, each insurer	20.00
7	(6)	Insurance vending machine license, each machine, each year	20.00
8	(7)	Surplus line broker's license, application for original license including issuance of	
9		license, if issued	50.00
10	(a)	Annual renewal of license	50.00
11	(8)	Rating bureau, original license	25.00
12	(a)	Annual renewal of license	35.00
13	(9)	Examination of rating bureau . . . Same fees as provided in this chapter for	
14		examination of foreign insurance companies	
15	(10)	Farm mutuals:	
16	(a)	Application for original certificate of authority: For filing application for	
17		certificate of authority, articles of incorporation, and all other documents and	
18		filings required in connection with such application, and for issuance of an	
19		original certificate of authority, if issued	25.00
20	(b)	Annual renewal of certificate of authority	10.00
21	(c)	Filing annual statement	5.00
22	(11)	Broker's license as attorney in fact of a reciprocal or interinsurance exchange	20.00
23	(12)	Miscellaneous services:	
24	(a)	For a copy of any paper filed in the insurance division, for which another price	

1 is not set by statute, each page75

2 (b) Director's sworn certificate, except when on certificates of authority or

3 licenses 10.00

4 (c) For receiving and forwarding copy of summons or other process served upon

5 the director, as process agent of an insurer or nonresident insurance producer

6 10.00

7 (13) Application for continuing education course approval 25.00.

8 Section 2. That § 58-30-121 be amended to read as follows:

9 58-30-121. The Division of Insurance shall charge each licensee an additional fee of ~~ten~~

10 twenty dollars upon renewal of the license. The fee is due on May 1, 2004, and at the beginning

11 of each succeeding twenty-four-month period. The fee shall be deposited in a separate account,

12 entitled the South Dakota insurance producer's continuing education fund, as funding for the

13 administration of the continuing education program. The director may withhold or not renew the

14 license of any licensee who fails to tender timely payment of the fee.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

527H0392

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 86** - 02/11/2002

Introduced by: Senators Volesky and Munson and Representatives Flowers, Burg, and Valandra

1 FOR AN ACT ENTITLED, An Act to provide for the use of an ignition interlock device in a
2 motor vehicle used by any person guilty of a second or subsequent violation of driving under
3 the influence.

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

5 Section 1. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 For the purposes of this Act, the term, ignition interlock device, means breath alcohol
8 ignition equipment designed to prevent a motor vehicle's ignition from being started by a person
9 whose alcohol concentration exceeds a level prescribed by a court.

10 Section 2. That § 32-23-3 be amended to read as follows:

11 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is
12 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
13 revoke the defendant's driving privilege for a period of not less than one year. However, upon
14 the successful completion of a court-approved alcohol treatment program, the court may permit



1 the person to drive for the purpose of employment and may restrict the privilege by the
2 imposition of such conditions as the court sees fit. ~~If such person is convicted of driving without~~
3 ~~a license during that period, the person shall be sentenced to the county jail for not less than three~~
4 ~~days, which sentence may not be suspended.~~ If the court permits the person to drive, the court
5 may order the person to install and to use an ignition interlock device on any motor vehicle to
6 be operated by the person during the period of revocation if the court determines that an
7 installation and service center for the device is located within the court's definition of a
8 reasonable distance. The court shall require the person to pay the reasonable cost of leasing,
9 installing, and maintaining the device. The ignition interlock device shall be a device approved
10 pursuant to section 3 of this Act.

11 Section 3. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The Department of Commerce and Regulation shall approve any ignition interlock device to
14 be used pursuant to this Act. The Secretary of the Department of Commerce and Regulation
15 shall promulgate rules, pursuant to chapter 1-26, to establish performance standards for ignition
16 interlock devices. The rules shall include standards relating to accuracy of the device, the means
17 of installing the device, and the degree of difficulty rendering the device inoperative.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

537H0127

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 95 - 01/30/2002

Introduced by: Senators Bogue, de Hueck, Koskan, and Staggers and Representatives
Duenwald, Bartling, Fryslie, Jaspers, Jensen, Klaudt, Lintz, and Monroe

1 FOR AN ACT ENTITLED, An Act to revise the total amount of revenue payable to counties
2 from taxes on real property.

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

4 Section 1. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any county may decrease the total amount of revenue payable from taxes on real property
7 below the maximum limit allowed by § 10-13-35 in any year. The decrease may not affect the
8 amount of revenue payable that may be raised in accordance with sections 2 and 3 of this Act.

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

11 For taxes payable in the year 2003 and each year thereafter, the county auditor shall calculate
12 what the maximum amount of revenue payable the county may request based on growth and the
13 index factor pursuant to § 10-13-35. The calculation shall also show any accumulative percent
14 of the index factor not used by the county. This calculation shall exclude the levy pursuant to



1 § 10-13-36.

2 Section 3. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The county may increase the total amount of revenue payable from taxes on real property
5 in any year up to the maximum amount calculated in accordance with section 2 of this Act
6 utilizing any unused index factor from the prior three years. However, such an amount may not
7 exceed the prior three year index factor total or ten percent, whichever is less.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

381H0648 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 146 - 01/29/2002

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

Introduced by: Senators Dennert, Greenfield, Koskan, and Symens and Representatives Fryslie, Hanson (Gary), Juhnke, Koistinen, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to revise the issuance and validity of certain fall three-day
2 temporary nonresident waterfowl licenses.

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

4 Section 1. That section 3 of chapter 205 of the 2000 Session Laws be amended to read as
5 follows:

6 Section 3. That § 41-6-18.4 be amended to read as follows:

7 41-6-18.4. The Game, Fish and Parks Commission may promulgate rules in accordance with
8 chapter 1-26 to authorize the department to issue up to two thousand fall three-day temporary
9 nonresident waterfowl licenses, up to two thousand early fall Canada goose temporary
10 nonresident licenses, and a number of spring snow goose temporary nonresident licenses to be
11 determined by the department, and to establish the fee therefor, validity of the licenses issued,
12 types of waterfowl to be hunted, and areas in which hunting is permitted. ~~The~~ Up to five hundred
13 of the fall three-day temporary nonresident waterfowl licenses shall be made available for use in
14 the counties of Brown, Marshall, Roberts, Day, Grant, Clark, Codington, Deuel, and Hamlin.



1 The commission, in rules promulgated pursuant to chapter 1-26, may establish a process and
2 criteria to allow the issuance of a portion of the five hundred licenses in counties other than those
3 specified if the department determines that such licenses are otherwise likely to remain unsold.
4 Except for the fall three-day temporary nonresident waterfowl licenses issued in Brown,
5 Marshall, Roberts, Day, Grant, Clark, Codington, Deuel, and Hamlin counties, the fall three-day
6 temporary nonresident waterfowl licenses are valid only on private property, but are not valid
7 on private property leased by the department for public hunting or on highways or other public
8 rights-of-way within this state that otherwise meet the requirements of § 41-9-1.3. Revenue from
9 the sale of fall three-day temporary nonresident waterfowl licenses shall be deposited in the
10 department's land acquisition and development fund to be used to acquire, by lease, permit, or
11 otherwise, interests in real property to be used for providing waterfowl hunting public access in
12 the counties adjacent to the Missouri River. Revenue from the sale of early fall Canada goose
13 temporary nonresident licenses shall be deposited in the department's land acquisition and
14 development fund to be used to acquire by lease, permit, or otherwise, interests in real property
15 to be used for providing waterfowl hunting public access. Before promulgating rules which
16 permit the issuance of fall three-day temporary nonresident waterfowl licenses, the commission
17 shall determine that adequate waterfowl hunting public access has been provided through the
18 department's land acquisition and development fund or through other means.

19 Section 2. The amendment under this Act to section 3 of chapter 205 of the 2000 Session
20 Laws is repealed on June 30, 2003.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

592H0680

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 169 - 01/28/2002

Introduced by: Senators Daugaard and Volesky and Representatives Michels and McCaulley

1 FOR AN ACT ENTITLED, An Act to amend the Uniform Limited Partnership Act to provide
2 limited liability limited partnerships.

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

4 Section 1. That chapter 48-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 48-7-1106. (a) A limited partnership may become a limited liability limited partnership by:

7 (1) Obtaining approval of the terms and conditions of the limited partnership becoming
8 a limited liability limited partnership by the vote necessary to amend the limited
9 partnership agreement except, in the case of a limited partnership agreement that
10 expressly considers contribution obligations, the vote necessary to amend those
11 provisions;

12 (2) Filing a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership
13 Act; and

14 (3) Having as the last words or letters of its name the words "Registered Limited Liability
15 Limited Partnership," or the abbreviation "L.L.L.P.," or the designation "LLL.P."



1 (b) A limited liability limited partnership continues to be the same entity that existed before
2 the filing of a statement of qualification under § 48-7A-1001(c) of the Uniform Partnership Act.

3 (c) Sections 48-7A-306(c) and 48-7A-307(b) of the Uniform Partnership Act apply to both
4 general and limited partners of a limited liability limited partnership. Section 48-7-303 also
5 applies to limited partners.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 177** - 02/08/2002

Introduced by: Senators Hutmacher and Koskan and Representatives Juhnke and Jensen

1 FOR AN ACT ENTITLED, An Act to revise and modify certain provisions relating to the award
2 of child custody and to declare an emergency.

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

4 Section 1. That § 25-5-7 be amended to read as follows:

5 25-5-7. The father and mother of an unmarried minor child are equally entitled to the child's
6 custody, service, and earnings. If either the father or mother is dead, or refuses to ~~take the~~
7 assume custody, or ~~has abandoned~~ abandons the family, the other is entitled to the child's
8 custody, service, and earnings. If a sole surviving parent or both parents abandons the child, the
9 court may award custody of the child to a third person pursuant to section 4 of this Act.

10 Section 2. A parent's presumptive right to custody of his or her child may be rebutted by
11 clear and convincing proof that the parent is unfit, has abandoned the child, or has forfeited or
12 otherwise surrendered his or her custodial rights over the child to a third person who stands,
13 constructively or legally, in loco parentis.

14 Section 3. Nothing in section 2 of this Act creates any right on behalf of a stepparent to seek
15 custody or visitation with a stepchild who has lived with that stepparent merely because the



1 stepparent was married to or living with the child's biological parent.

2 Section 4. Any person other than the parent of the child may intervene or petition a court of
3 competent jurisdiction for custody or visitation of any child in his or her immediate care if the
4 petitioner has had the child in his or her care and control for a year or more. To prevail, the
5 petitioner must establish that the sole surviving parent or both parents:

- 6 (1) Abandoned his or her parental rights over the child during the time the child was in
7 the care and control of the petitioner; or
- 8 (2) Forfeited or surrendered his or her parental rights over the child to any third party
9 during the time the child was in the care and control of the petitioner; or
- 10 (3) Failed to persistently assert and exercise his or her parental rights over the child and
11 made good faith efforts to fulfill his or her parental duties and obligations to the child
12 during the time the child was in the care and control of the petitioner; or
- 13 (4) That awarding custody to the biological parent would cause serious detriment to the
14 child.

15 Section 5. Serious detriment to a child exists whenever there is proof of one or more of the
16 following extraordinary circumstances:

- 17 (1) The abandonment or persistent neglect of the child by the parent;
- 18 (2) The likelihood of serious physical or emotional harm to the child if placed in the
19 parent's custody;
- 20 (3) The extended, unjustifiable absence of parental custody;
- 21 (4) The abdication of parental responsibilities;
- 22 (5) The provision of the child's physical, emotional, and other needs by persons other than
23 the parent over a significant period of time;
- 24 (6) The existence of a bonded relationship between the child and the person other than

1 the parent sufficient to cause significant emotional harm to the child in the event of
2 a change in custody;

3 (7) The substantial enhancement of the child's well-being while under the care of the
4 person other than the parent;

5 (8) The extent of the parent's delay in seeking to reacquire custody of the child;

6 (9) The demonstrated quality of the parent's commitment to raising the child;

7 (10) The likely degree of stability and security in the child's future with the parent;

8 (11) The extent to which the child's right to an education would be impaired while in the
9 custody of the parent; or

10 (12) Any other circumstances that would substantially and adversely impact the welfare of
11 the child.

12 Section 6. If a court determines that a petitioner pursuant to section 4 of this Act should be
13 awarded custody or visitation, the court need not terminate either biological parent's parental
14 rights over the child. A judgment awarding the petitioner custodial rights may award the
15 biological parent with visitation rights with the child.

16 Section 7. If a court awards a third party custodial rights to a child, the court may set child
17 support in whatever amount it deems appropriate, and notwithstanding the provisions of any
18 other statute to the contrary, may waive the biological parent's duty to provide monetary or other
19 support for their child.

20 Section 8. Whereas, this Act is necessary for the immediate preservation of the public peace,
21 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
22 effect from and after its passage and approval.