House
Daily Reader

Thursday, February 14, 2002

Bills Included				
HB 1129	HB 1188	SB 36	SB 41	SB 86
SB 118	SB 124	SB 127	SB 130	

73 copies of this document were printed by the Legislative Research Council at an estimated cost of $0.025 per page.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

670H0238

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. HB 1129 - 02/08/2002

Introduced by: Representatives Madsen, Brown (Jarvis), Duenwald, Eccarius, Elliott, Flowers, Frost, Fryslie, Garnos, Gillespie, Hansen (Tom), Hargens, Hunhoff, Jaspers, Juhnke, Klaudt, Kloucek, Koistinen, Lintz, McCaulley, McCoy, Monroe, Nachtigal, Napoli, Olson (Mel), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Pummel, Rhoden, Richter, Smidt, Teupel, and Van Etten and Senators Putnam, Apa, Bogue, Cradduck, Dennert, Diedrich (Larry), Diedtrich (Elmer), Drake, Everist, Greenfield, Hutmacher, Kleven, Madden, McCracken, Moore, Olson (Ed), Sutton (Dan), Vitter, and Volesky

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding concealed pistol permits.

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

Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as follows:

The attorney general shall compare South Dakota permit issuance statutes with the permit issuance statutes in states with which reciprocity is sought or requested in order to determine whether the laws of the other state meet or exceed the requirements of this chapter for the issuance of a permit. The secretary of state may enter into reciprocity agreements with other states after the attorney general has notified the secretary of state that the other states' laws meet or exceed the provisions of this chapter.

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

Section 2. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as follows:

No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to section 1 of this Act. A violation of this section is a petty offense. However, if within twenty-four hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

Section 3. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as follows:

Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to this Act may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. A violation of this section is a Class 1 misdemeanor.

Section 4. That § 23-7-7 be amended to read as follows:

23-7-7. A permit to carry a concealed pistol shall be issued to any person by the sheriff of the county ~~or the chief of police of the municipality~~ in which the applicant resides. The permit shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. <u>Prior to issuing the permit, the sheriff shall execute a background investigation, including a criminal history check, of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the requirements of § 23-7-7.1. For the purposes of this section, a background investigation is defined as a computer check of available on-line records.</u>

Section 5. That § 23-7-7.1 be amended to read as follows:

23-7-7.1. A temporary permit to carry a concealed pistol shall be issued within five days of application to a person if the applicant:

(1) Is eighteen years of age or older;

(2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;

(3) Is not habitually in an intoxicated or drugged condition;

(4) Has no history of violence;

(5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;

(6) Has been a resident of the county or municipality where the application is being made for at least thirty days;

(7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or misdemeanor in the ~~two~~ five years preceding the date of application or is not currently charged under indictment or information for such an offense; ~~and~~

(8) Is a citizen of the United States ~~or has been in the United States legally for at least two years~~; and

(9) Is not a fugitive from justice.

A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

Section 6. That § 23-7-8 be amended to read as follows:

23-7-8. The application for a permit to carry a concealed pistol shall be in triplicate on a form prescribed by the secretary of state. The application shall require the applicant's complete name, address, occupation, place and date of birth, physical description, a statement that the applicant has never pled guilty to, nolo contendere to, or been convicted of a crime of violence, a sworn statement that the information on the application is true and correct, and the applicant's

signature. The original shall be delivered to the applicant as the temporary permit, the duplicate shall within seven days be sent by first class mail to the secretary of state who shall issue the official permit, and the triplicate shall be preserved for four years by the authority issuing the permit.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

807H0521

SENATE TAXATION COMMITTEE ENGROSSED NO. HB 1188 - 02/08/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Frost, Hennies (Thomas), Kooistra, Madsen, Pummel, and Rhoden and Senators Apa, Brosz, McCracken, Olson (Ed), Reedy, Symens, and Whiting

FOR AN ACT ENTITLED, An Act to revise certain penalties for moving or obtaining a used mobile home or manufactured home without an affidavit from the county treasurer.

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

Section 1. That § 32-5-16.6 be amended to read as follows:

32-5-16.6. If the owner of the used mobile home or manufactured home<u>, prior to moving the home,</u> fails to obtain an affidavit from the county treasurer of the county in which the used mobile home or manufactured home is registered, stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty ~~of two hundred fifty dollars to~~ <u>on</u> the owner. If a regulated lender, as defined in § 54-3-14, is repossessing a used mobile home or manufactured home and fails to obtain an affidavit<u>, prior to moving the home,</u> from the county treasurer of the county in which the used mobile home or manufactured home is registered, stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty ~~of two hundred fifty dollars to~~ <u>on</u> the lender.

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by <u>underscores</u>. Deletions from existing statutes are indicated by ~~overstrikes~~.

The court shall levy a civil penalty of two hundred fifty dollars for the first violation within a one-year period, five hundred dollars for the second violation within a one-year period, and one thousand dollars for each subsequent violation within a one-year period. All civil penalties collected pursuant to this section shall be deposited in the county general fund of the county in which the used mobile home or manufactured home is registered. The county treasurer shall notify the Department of Revenue of any violation resulting in a civil penalty assessment for failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

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

If a transporter of a used mobile home or manufactured home, prior to transporting, fails to obtain an affidavit from the county treasurer of the county in which the used mobile home or manufactured home is registered, stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty on the transport owner. If a manufacturer or licensed dealer, as defined in chapter 32-7A, is moving, repossessing, trading, purchasing, or receiving onto the manufacturer's or licensed dealer's lot a used mobile home or manufactured home and fails to obtain an affidavit from the county treasurer of the county in which the used mobile home or manufactured home is registered, stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty on the manufacturer or licensed dealer.

The court shall levy a civil penalty of two hundred fifty dollars for the first violation within a one-year period, five hundred dollars for the second violation within a one-year period, and one thousand dollars for each subsequent violation within a one-year period. All civil penalties collected pursuant to this section shall be deposited in the county general fund of the county in which the used mobile home or manufactured home is registered. The county treasurer shall

notify the Department of Revenue of any violation resulting in a civil penalty assessment for failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

Section 3. For the purposes of sections 1 and 2 of this Act, if the owner, lender, licensed dealer, or transporter are the same party the court may not assess multiple civil penalties for any one violation.

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

The department may, pursuant to chapter 1-26, revoke and cancel or suspend the commercial motor vehicle certificate which belongs to any person who the court has assessed a civil penalty pursuant to section 2 of this Act four or more times within a one-year period.

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

The department may, pursuant to chapter 1-26, revoke or suspend the transporter plate issued pursuant § 32-9-57 which belongs to any transporter who the court has assessed a civil penalty pursuant to section 2 of this Act four or more times within a one-year period. It is a Class 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its lawful demand any transporter plate which has been revoked or suspended.

Section 6. That § 32-7A-4.2 be amended to read as follows:

32-7A-4.2. The department may deny any application, or suspend or revoke any license issued under the provisions of this chapter, for a violation of any of the following provisions:

(1) Commission of fraud or willful misrepresentation in the application for or in obtaining a license;

(2) A previous manufacturer or dealer license revocation in this or any other state;

(3) Willful violation, which leads to a conviction, of any law of this state which relates to

dealing in manufactured homes or mobile homes;

(4) Willful failure to comply with any administrative rule promulgated by the department;

(5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes or mobile homes;

(6) Failure to allow department inspections, including initial and annual inspections, complaint investigations and necessary follow-up inspections;

(7) Willful misrepresentation through false, deceptive, or misleading statements with regard to the sale or financing of manufactured homes or mobile homes which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of manufactured homes or mobile homes;

(8) Refusal to comply with a licensee's responsibility under the terms of the new manufactured home or mobile home warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer;

(9) Willful failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a manufactured home or mobile home;

(10) Violation by the dealer of any applicable manufactured home building or safety code;

(11) Failure to continuously occupy a principal place of business licensed under § 32-7A-2;

(12) Willful failure to deliver the manufacturer's statement of origin to the county treasurer or the certificate of title to a person entitled to it within ~~fifteen~~ thirty days after date of delivery;

(13) Conviction within the previous ten years, of a crime that related directly to the business of the dealer or manufacturer involving fraud, misrepresentation or misuse of funds;

(14) Inability to obtain or renew a surety bond;

(15) Misuse of the dealers' metal plates and lending for use on mobile homes or manufactured homes not owned by the manufacturer or dealer;

(16) Transporting a used mobile home or manufactured home without an affidavit, four or more times within a one-year period, from the county treasurer of the county in which the mobile home or manufactured home is registered, stating that the current year's taxes are paid; or

(17) Having a used mobile home or manufactured home located on the licensed dealer's or manufacturer's lot without an affidavit, four or more times within a one-year period, from the county treasurer of the county in which the mobile home or manufactured home is registered, stating that the current year's taxes were paid when the licensed dealer acquired the home.

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

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

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

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

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

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

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

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Revenue Code and related regulations;~~

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

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

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

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

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

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

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

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

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

(1) Direct and indirect obligations of the United States government;

(2) Agencies and instrumentalities of the United States government;

(3) Direct obligations of the State of South Dakota and any of its political subdivisions;

(4) Obligations consisting of notes, bonds, debentures, and certificates which are direct obligations of a solvent corporation or trust existing under the laws of the United States or any state thereof, if such investments are rated in the four highest classifications established by at least two standard rating services; or

(5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan associations, building and loan associations, and bankers' acceptances;

(6) In addition to the investments authorized by subdivisions (1) to (5) of this section, inclusive, the investment council may also allocate a sum certain of state public funds for investment in the accounts and certificates of South Dakota banks and associations. This sum shall initially be offered to South Dakota banks and associations, and if not initially fully subscribed, the investment officer shall immediately reoffer the unsubscribed sum to other qualified public depositories defined by subdivision 4-6A-1(7).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "Account," an account established as prescribed in this chapter;

(2) "Account owner," the person who, under this chapter or rules promulgated by the council pursuant to chapter 1-26, is entitled to select or change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no such other person is designated;

(3) "Contribution," any payment directly allocated to an account for the benefit of a designated beneficiary or used to pay late fees or administrative fees associated with an account, and that portion of any rollover amount treated as a contribution under section 529 of the Internal Revenue Code and related regulations;

(4) "Contributor," any person making a contribution to an account;

(5) "Council," the South Dakota Investment Council;

(6) "Designated beneficiary," except as provided in § 13-63-25, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with § 13-63-12, 13-63-13, or 13-63-14, the replacement beneficiary;

(7) "Eligible education institution," an institution that is eligible to participate in any financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended through January 1, 2001, and that is any of the following as permitted by section 529 of the Internal Revenue Code and related regulations:

(a) An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79 stat. 1219; 20 United States Code sections 1001 through 1150);

(b) An area vocational educational school as defined in section 521(3), subparagraph (C) or (D) of the Carl D. Perkins Vocational Education Act (P.L.

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

(c) An institution accredited for private postsecondary education;

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

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

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

(b) A stepson or stepdaughter of an individual;

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

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

(e) A stepfather or stepmother of an individual;

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

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

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

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

subdivision;

(j) Any individual who meets the criteria to be a member of the family as described in this subdivision as a result of legal adoption;

(k) Any other individual who is considered a member of the family under section 529 of the Internal Revenue Code and related regulations;

(10) ~~"Nonqualified withdrawal," a withdrawal from an account other than one of the following:~~

~~(a) A qualified withdrawal;~~

~~(b) A withdrawal made as the result of the death on disability of the designated beneficiary of an account;~~

~~(c) Withdrawal that is made on the account of a scholarship, or the allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code and related regulations, and that is received by the designated beneficiary, but only to the extent of the amount of this scholarship, allowance, or payment; or~~

~~(d) A rollover or change of designated beneficiary;~~

(11) "Person," as defined in the regulations to section 529 of the Internal Revenue Code;

(12) "Program," the higher education savings program established under this chapter;

(13) "Qualified higher education expenses," tuition, fees, books, supplies, and equipment required for enrollment or attendance and room and board of a designated beneficiary at an eligible education institution, and any other expenses qualifying as qualified higher education expenses under section 529 of the Internal Revenue Code and related regulations; provided that room and board expenses qualify only if the beneficiary enrolls at least half time and only if the expenses do not exceed the minimum room and board allowance determined in calculating costs of attendance for

federal financial aid programs;

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

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

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

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

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

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

~~Internal Revenue Code and related regulations.~~

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

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

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

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

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

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

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

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

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

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

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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

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

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

643H0531

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. SB 118 - 01/28/2002

Introduced by: Senators McCracken, Diedtrich (Elmer), Ham, and McIntyre and Representatives Peterson (Bill), Frost, Glenski, and Van Etten

FOR AN ACT ENTITLED, An Act to prohibit smoking in public places.

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

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

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

~~(1) Any hospital or medical or dental clinic;~~

~~(2) Any nursing facility;~~

~~(3) Any public library, museum, indoor theater, or concert hall;~~

~~(4) Any elementary or secondary school building;~~

~~(5) Any public conveyance;~~

~~(6) Any jury room;~~

~~(7) Any elevator;~~

~~(8) Any registered or unregistered day care program, day care center, day care cooperative, or family day care home governed by chapter 26-6 during the time in~~

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

~~which children who are not family members of the day care provider are receiving care.~~

~~This section does not prohibit the smoking of tobacco or tobacco products in the places named in this section, if the smoking is confined to areas designated as smoking areas~~ any public place or place of employment.This section does not apply to any sleeping room in a lodging establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely incidental.

A violation of this section is a petty offense.

Section 2. For the purposes of this Act, a public place is any enclosed indoor area to which the public is invited or to which the public is permitted, including any hospital or medical or dental clinic; any nursing facility; any public library, museum, theater, or concert hall; any elementary or secondary school building; any public conveyance; any jury room; any elevator; any reception area; any restaurant; any retail service establishment; any retail store; and any registered or unregistered day care program, day care center, day care cooperative, or family day care home governed by chapter 26-6 during the time in which children who are not family members of the day care provider are receiving care. A private residence is not a public place unless it is used for day care.

Section 3. For the purposes of this Act, a place of employment is any enclosed indoor area under the control of a public or private employer, including work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used for day care.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

618H0411

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. SB 124 - 01/24/2002

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

Introduced by: Senators Apa, de Hueck, Dennert, Duxbury, Greenfield, Kleven, Koskan, Madden, McCracken, Olson (Ed), Reedy, and Symens and Representatives Lintz, Abdallah, Broderick, Garnos, Hennies (Thomas), Klaudt, Lange, Madsen, McCaulley, Rhoden, Slaughter, and Sutton (Duane)

FOR AN ACT ENTITLED, An Act to repeal certain provisions concerning the county highway system.

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

Section 1. That § 31-12-19 be repealed.

~~31-12-19. The board of county commissioners shall properly and adequately maintain the full maintenance roads on the county highway system within the county by contract or day labor on all or different portions of the system as the board of county commissioners deem expedient. The board shall maintain any federal-aid system highways according to any agreement made by it in consideration of federal aid received for construction and improvement of such highways. The board shall, at its first meeting each year, designate which county roads are full maintenance roads and which are minimum maintenance roads. The board of county commissioners may not designate any county road as minimum maintenance if such road is a school route or mail route.~~

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

940H0618

SENATE ENGROSSED NO. SB 127 - 01/26/2002

Introduced by: Senators Munson, McCracken, and Sutton (Dan) and Representatives Broderick, Olson (Mel), and Solum

FOR AN ACT ENTITLED, An Act to establish licensing requirements for providers of certain automated teller machine transaction routing services.

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

Section 1. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, automated teller machine transaction routing services, means the routing and processing of transactions initiated by a user of an automated teller machine, whether located at or separate and apart from a bank or branch bank and including a remote service unit or cash dispensing machine, or the operation of a facility or service where the electronic impulses or other indicia of a transaction originating at an automated teller machine are received and are routed, switched, or transmitted to a financial institution, a data processing center, or similar facility.

Section 2. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 1 to13, inclusive, of this Act, which are enacted to provide

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

additional protection for consumers of this state as permitted by 15 U.S.C. 1693, as amended to January 1, 2002, and as authorized pursuant to 15 U.S.C. 1693q, as amended to January 1, 2002, do not apply to any bank organized under this title, any national bank, any bank holding company, any savings and loan association organized under the laws of this state or the United States of America, any federal credit union, or any direct or indirect subsidiary of the foregoing.

Section 3. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

No person may provide automated teller machine transaction routing services in this state without obtaining a license from the division. A person will be deemed to provide automated teller machine transaction routing services in this state if it does so directly or if such person provides a substantial portion of the automated teller machine transaction routing services which any other person has contracted to provide in this state. A violation of this section is a Class 2 misdemeanor.

Section 4. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

Any person desiring to obtain a license to provide automated teller machine transaction routing services shall apply for a license under oath on forms supplied by the division. The application shall contain the name and address of the applicant; the name and address of all persons directly or indirectly owning, controlling, or holding a beneficial interest of five percent or more of the outstanding securities, ownership units, membership interests, or capital, or any class thereof, of the applicant; the business experience of the applicant; a balance sheet reflecting the assets, liabilities, and net worth of the applicant; and other information as required by the director by rule or order. The applicant shall pay an original license fee as set forth by rules of the commission, promulgated pursuant to chapter 1-26, not to exceed two hundred fifty dollars.

Upon receipt of an application, the director shall make an examination and investigation concerning the applicant and any relevant facts and, after review, either deny or grant a license based upon the director's findings.

Section 5. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

Any license shall be renewed on July first. To renew a license, the licensee shall file for renewal by June first. The renewal application shall include a fee not to exceed two hundred fifty dollars as set by the commission, by rule promulgated pursuant to chapter 1-26, and any other information as required by the director by rule or order.

Section 6. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

A person holding a license to provide automated teller machine transaction routing services may not directly or indirectly transfer or assign the license. A person is deemed to have indirectly transferred or assigned the license if it enters into arrangements, whether by subcontract or other means, by which it retains another person to provide all or substantially all of the automated teller machine transaction routing services which such person has agreed to provide in this state.

Section 7. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The director may, after hearing and upon ten days notice to the licensee, issue a cease and desist order from any practices that do not conform to the requirements set forth in sections 2 to 13, inclusive, of this Act or rules adopted by the commission pursuant to chapter 1-26 or any order of the director.

Section 8. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The director may revoke a license for good cause pursuant to chapter 1-26. An action may also be brought by the attorney general or the director to enjoin a licensee from engaging in, or continuing any violation, or from doing any act in furtherance thereof. In any action, an order or judgment may be entered awarding a temporary or permanent injunction.

Section 9. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The director may deny an application for a license, or may revoke the license of an existing licensee, if the director determines that the applicant or the licensee has engaged in any anti-competitive practices or practices which have the purpose or effect of preventing any other provider of automated teller machine transaction routing services from engaging in such business inside or outside of this state.

Section 10. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

A person is not deemed to be providing automated teller machine transaction routing services in this state if such services consist solely of the switching, routing, or processing of a transaction initiated at an automated teller machine in this state with respect to an account maintained at a financial institution whose principal place of business is located outside of this state.

Section 11. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

No person may provide automated teller machine transaction routing services in this state or to an automated teller machine located in this state or receive a license under this Act unless the principal place of business of such person, and the principal place of business of its ultimate parent or controlling person, if any, are located in this state or in another state whose laws allow any person with its principal place of business in this state to provide automated teller machine

transaction routing services in that state without any qualifications, conditions, or requirements which are more restrictive than those imposed by this chapter. The director may determine whether the qualifications, conditions, and requirements imposed by the laws of any other state on a person providing automated teller machine transaction routing services are more restrictive than the requirements of this chapter. A violation of this section is a Class 2 misdemeanor.

Section 12. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

A licensee is subject to examination and supervision by the director. The director may require the filing of reports by licensees. The director may charge back to the licensee any cost associated with an examination of the licensee.

Section 13. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The commission may promulgate rules, pursuant to chapter 1-26, to provide for the management and administration of licensees and to determine whether other practices or activities constitute automated teller machine transaction routing services for purposes of this chapter as a result of changes in technology or commercial practices.

Section 14. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 1 to 13, inclusive, do not apply to a person engaged in providing automated teller machine transaction routing services in this state on June 30, 2002, if the activities of such person in this state are limited to providing services required in binding contracts in force on June 30, 2002, for the benefit of the persons who are parties to such contracts on such date. Nothing in this section affects the applicability of sections 1 to 13, inclusive, of this Act, to any other activities of a person described in this section or any contracts

or agreements for automated teller machine transaction routing services entered into after June 30, 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

372H0606

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. SB 130 - 02/12/2002

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

Introduced by: Senators Bogue, Cradduck, Duxbury, Everist, Kleven, Koskan, Madden, McCracken, Putnam, and Vitter and Representatives Rhoden, Juhnke, Klaudt, Lintz, Madsen, McCaulley, Pederson (Gordon), Pummel, and Teupel

FOR AN ACT ENTITLED, An Act to provide for the implementation of certain prairie dog management plans or activities with legislative approval.

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

Section 1. The Department of Game, Fish and Parks and the Department of Agriculture are directed to develop a state prairie dog management plan. The plan shall formulate state management actions that will serve to prevent the prairie dog from being listed as a federal threatened or endangered species. If such plan or any agreement adopted pursuant to such plan contains provisions for incentive payments to private landowners for managing prairie dog habitat or restricts private landowner rights to use any means of controlling prairie dogs on their property, the plan or any agreement adopted pursuant to such plan shall be submitted to the South Dakota Legislature, in bill form, for approval, prior to it becoming effective.

Section 2. That § 40-36-1 be amended to read as follows:

40-36-1. The Department of Game, Fish and Parks shall cooperate and enter into cooperative

350 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.027 per page.

V

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

agreements with the United States Fish and Wildlife Service or any other agency in the control and disposition of coyotes, feral dogs, fox, ~~prairie dogs,~~ and other wild animals in this state that are injurious to livestock, poultry, game, land, and the public health.