



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0320

## HOUSE RETIREMENT LAWS COMMITTEE ENGROSSED NO. **HB 1032** - 01/25/2002

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 FOR AN ACT ENTITLED, An Act to revise certain retirement system provisions to comply  
2 with the Economic Growth and Tax Relief Reconciliation Act of 2001, to authorize members  
3 to acquire credited service by transferring certain retirement funds, to protect the  
4 confidentiality of member information, and to declare an emergency.

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

6 Section 1. That subsection (c) of subdivision 3-12-47(20) be amended to read as follows:

7 (c) Any "compensation" in excess of the limits established in § 401(a)(17) of the  
8 Internal Revenue Code as in effect on ~~January 1, 1996~~ January 1, 2002, shall  
9 be disregarded for purposes of contributions or for benefit calculations under  
10 the system. However, the limit does not apply to compensation earned by a  
11 member if the member was employed by a participating unit on or before  
12 June 30, 1996;

13 Section 2. That subdivision (28) of § 3-12-47 be amended to read as follows:

14 (28) "Eligible retirement plan," the term eligible retirement plan includes those plans



1 described in section 402(c)(8)(B) of the Internal Revenue Code of 1986, as amended;  
2 as in effect on January 1, 2002;

3 Section 3. That § 3-12-89.1 be amended to read as follows:

4 3-12-89.1. Pursuant to chapter 1-26, the board shall adopt rules regulating the maximum  
5 annual benefit which may be paid to a member. The rules shall conform to the provisions of  
6 § 415 of the Internal Revenue Code of 1954, as amended and as in effect on January 1, 1997,  
7 and as clarified in Revenue Ruling 95-29 January 1, 2002.

8 Section 4. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 A contributing member may acquire credited service by utilizing a trustee to trustee transfer  
11 of funds, excluding any after tax employee contributions, from a member's individual retirement  
12 plan that meets the requirements of sections 403(b) or 457 of the Internal Revenue Code as in  
13 effect on January 1, 2002, to pay the cost of purchase pursuant to §§ 3-12-83 or 3-12-84 or the  
14 amount of a redeposit pursuant to § 3-12-80.

15 Section 5. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Any information contained in any record pertaining to a member of the system is confidential  
18 and shall be used for the sole purpose of carrying into effect the provisions of this chapter. Any  
19 record containing the information is not open to inspection by any person or entity except the  
20 member, the board, the employees of the system, or the member's employer. The information and  
21 records may be released to the member or with the member's consent. The information and  
22 records may also be released pursuant to a court order or subpoena.

23 Section 6. Whereas, this Act is necessary for the support of the state government and its  
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0213

## HOUSE ENGROSSED NO. **HB 1034** - 01/25/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle  
2 drivers and boat operators.

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

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

- 6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as  
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily  
8 substance;
- 9 (2) Under the influence of an alcoholic beverage;
- 10 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
11 which renders ~~him~~ the person incapable of safely driving; or
- 12 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
14 safely driving.

15 Section 2. That § 32-23-7 be amended to read as follows:



1        32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle  
2 while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of  
3 § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by  
4 chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives  
5 to the following presumptions:

6        (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
7 defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the  
8 influence of intoxicating liquor;

9        (2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
10 hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does  
11 not give rise to any presumption that the defendant was or was not under the  
12 influence of intoxicating liquor, but such fact may be considered with other competent  
13 evidence in determining the guilt or innocence of the defendant;

14        (3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
15 in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
16 influence of intoxicating liquor.

17        Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
18 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

19        Section 3. That § 32-23-1.3 be amended to read as follows:

20        32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle  
21 while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater,  
22 shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if  
23 the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record  
24 and files the reasons with the clerk of courts.

1 Section 4. That § 32-12A-44 be amended to read as follows:

2 32-12A-44. No person may drive or be in actual physical control of a commercial motor  
3 vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that  
4 person's blood as shown by chemical analysis of that person's breath, blood, or other body  
5 substance. Any violation of this section is a Class 2 misdemeanor.

6 Section 5. That § 42-8-45 be amended to read as follows:

7 42-8-45. No person may operate a boat while underway on the public waters of the state  
8 while:

- 9 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in his blood as shown by  
10 chemical analysis of ~~his~~ that person's breath, blood, or other bodily substance;
- 11 (2) Under the influence of an alcoholic beverage;
- 12 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
13 which renders ~~him~~ the person incapable of safely driving or operating such boat; or
- 14 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
15 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
16 safely driving or operating such boat.

17 Any violation of this section is a Class 1 misdemeanor.

18 Section 6. That § 42-8-45.4 be amended to read as follows:

19 42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol  
20 in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's  
21 blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

- 22 (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
23 defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the  
24 influence of intoxicating liquor;

1       (2)    If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
2            hundredths percent by weight of alcohol in the defendant's blood, such fact does not  
3            give rise to any presumption that the defendant was or was not under the influence of  
4            intoxicating liquor, but such fact may be considered with other competent evidence  
5            in determining the guilt or innocence of the defendant;

6       (3)    If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
7            in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
8            influence of intoxicating liquor.

9            Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
10          cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

872H0466

## HOUSE ENGROSSED NO. **HB 1131** - 01/24/2002

Introduced by: Representatives Michels, Abdallah, Flowers, Juhnke, Monroe, Olson (Mel),  
and Sutton (Duane) and Senators McCracken, Bogue, Daugaard, and Moore

1 FOR AN ACT ENTITLED, An Act to provide for civil recovery of unpaid property and  
2 services.

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

4 Section 1. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 The owner of a motor vehicle that receives motor fuel that was not paid for is liable to the  
7 motor fuel retailer for the cost of the motor fuel received. In addition, the motor fuel retailer may  
8 impose a maximum service charge of thirty dollars for collection costs if the service charge was  
9 conspicuously displayed on the premises where the motor fuel was received.

10 Section 2. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 If a motor fuel retailer records the license plate number of the motor vehicle that receives  
13 motor fuel that was not paid for, the retailer may contact any law enforcement officer and  
14 provide the license plate number in writing and the law enforcement officer shall provide the  
15 motor vehicle owner's address, recorded pursuant to § 32-5-3, in order for the retailer to mail



1 a notice and demand of payment for motor fuel.

2 Section 3. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 The notice and demand of payment for motor fuel shall include the name, address, and license  
5 plate number of the motor vehicle owner; the date the act occurred; the unpaid dollar amount;  
6 the service charge; the type of motor fuel; a citation of sections 1 and 4 of this Act; and the  
7 employee's signature. An affidavit of service by mailing shall be retained by the motor fuel  
8 retailer.

9 Section 4. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 If the motor fuel retailer does not receive payment within thirty-three days after mailing the  
12 notice and demand for payment for motor fuel, the vehicle owner is also liable for a civil penalty  
13 of one hundred dollars, or the price of the unpaid motor fuel, whichever is greater.

14 Section 5. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 The motor vehicle owner may dispute the motor fuel retailer's claim by sending written notice  
17 to the retailer during the thirty-three day period in section 4 of this Act. The retailer shall cease  
18 all collection efforts upon receipt of the notice. The retailer may collect the price of the motor  
19 fuel, the service charge, and the civil penalty only pursuant to a judgement from a court of law.

20 Section 6. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 Any person who obtains property or services from a hotel or restaurant without paying for  
23 it is liable to the retailer for the cost of the property or service. In addition, the retailer may  
24 impose a maximum service charge of thirty dollars for collection costs if the service charge was

1 conspicuously displayed on the premises.

2 Section 7. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 If the retailer records the motor vehicle license plate number of the person who obtained  
5 property or services without paying, the retailer may contact any law enforcement officer and  
6 provide the license plate number in writing and the law enforcement officer shall provide the  
7 motor vehicle owner's address, recorded pursuant to § 32-5-3, in order for the retailer to mail  
8 a notice and demand of payment for property or services.

9 Section 8. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 The notice and demand of payment for property or services shall include the name, address,  
12 and license plate number of the motor vehicle owner; the date the act occurred; the unpaid dollar  
13 amount; the service charge; a citation of sections 6 and 9 of this Act; and the employee's  
14 signature. An affidavit of service by mailing shall be retained by the retailer.

15 Section 9. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 If the retailer does not receive payment within thirty-three days after mailing the notice and  
18 demand for payment for property or services, the vehicle owner is also liable for a civil penalty  
19 of one hundred dollars, or the price of the unpaid property or services, whichever is greater.

20 Section 10. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 Any person may dispute the retailer's claim by sending written notice to the retailer during  
23 the thirty-three day period in section 9 of this Act. The retailer shall cease all collection efforts  
24 upon receipt of the notice. The retailer may collect the price of the property or service, the

1 service charge, and the civil penalty only pursuant to a judgment from a court of law.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

169H0481

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1138** - 02/01/2002

Introduced by: Representatives Olson (Mel), Abdallah, Burg, Hargens, Madsen, Michels, Peterson (Bill), and Sebert and Senators Olson (Ed), Daugaard, de Hueck, Hutmacher, and Moore

1 FOR AN ACT ENTITLED, An Act to increase the penalty for the stalking of certain children.

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

3 Section 1. That § 22-19A-7 be amended to read as follows:

4 22-19A-7. Any person who willfully, maliciously, and repeatedly follows or harasses a child  
5 twelve years of age or younger or who makes a credible threat to a child twelve years of age or  
6 younger with the intent to place that child in reasonable fear of death or great bodily injury or  
7 with the intent to cause the child to reasonably fear for the child's safety is guilty of the crime of  
8 felony stalking. ~~Stalking~~ Felonious stalking is a ~~Class 1 misdemeanor~~ Class 6 felony.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

876H0401

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1170** - 02/04/2002

Introduced by: Representatives McCoy, Abdallah, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, Olson (Mel), and Van Gerpen and Senators Staggers, Volesky, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding assaults against law  
2 enforcement personnel and to provide a criminal penalty therefor.

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

4 Section 1. Any person who, with the intent to assault, throws, smears, or causes human  
5 blood, emesis, mucus, semen, excrement, or human waste to come in contact with a law  
6 enforcement officer as defined in subdivision 22-1-2(22), while performing official duties or  
7 actions, is guilty of a Class 1 misdemeanor.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

528H0299

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1180** - 02/04/2002

Introduced by: Representatives Monroe, Bartling, Madsen, and Napoli and Senator Apa

1 FOR AN ACT ENTITLED, An Act to increase the amount of the lien that is permitted on the  
2 parents of a minor child for whom legal counsel has been provided.

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

4 Section 1. That § 23A-40-11 be amended to read as follows:

5 23A-40-11. A lien, enforceable as provided by this chapter, upon all the property, both real  
6 and personal, of any person, including the parents of a minor child, for whom legal counsel or  
7 a public defender has been appointed under the provisions of § 23A-40-6, subdivisions  
8 23A-40-7(2) and (3), or § 26-7A-31 may be filed. The services rendered and expenses incurred  
9 are a claim against the person and that person's estate, enforceable according to law in an amount  
10 to be determined by a judge of the circuit court or a magistrate judge and paid by the county or  
11 municipality chargeable for them. A lien on the parents of a minor child pursuant to this section  
12 may not exceed one thousand five hundred dollars plus an amount equal to any taxable court  
13 costs.

14 Section 2. That § 26-7A-32 be amended to read as follows:

15 26-7A-32. There is hereby created a lien, enforceable as provided in chapter 23A-40, upon



1 all the property, both real and personal, of the parents, jointly or severally, of any child involved  
2 in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C to repay funds paid by the  
3 county for a court-appointed attorney for the child's parents or by the county or the state for the  
4 child. The county, on behalf of the county or the state, shall have a claim against the parents and  
5 their estates, jointly or severally, as provided in chapter 23A-40.

6 However, except in the case of informal adjustment or suspended imposition of adjudication,  
7 no lien or claim against the parents of a child may be created or may arise if the child is not  
8 adjudicated to be an abused or neglected child, a child in need of supervision or a delinquent  
9 child at the completion of the adjudicatory hearing and the proceedings are terminated.

10 The lien and claim on the property of the parents of a child pursuant to this section may not  
11 exceed one thousand five hundred dollars plus an amount equal to any taxable court costs. This  
12 limit does not apply to any claim or lien against the parents of a child adjudicated to be an abused  
13 or neglected child.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

673H0456

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1189** - 02/04/2002

Introduced by: Representatives Wick, Abdallah, Adelstein, Brown (Richard), Duniphan, Hennies (Thomas), Holbeck, Hundstad, Jensen, McCaulley, Peterson (Bill), and Smidt and Senators Munson, Greenfield, Koetzle, Koskan, Olson (Ed), and Staggers

1 FOR AN ACT ENTITLED, An Act to establish the crime of air piracy.

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

3 Section 1. That chapter 22-30 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person who obtains physical control of any aircraft registered pursuant to the provisions  
6 of chapter 50-11 by means of inflicting or threatening to inflict serious bodily harm or death on  
7 any person is guilty of air piracy.

8 A violation of this section that results in the death of any person is a Class B felony. Any  
9 other violation of this section is a Class 1 felony.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

453H0098

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1222** - 02/04/2002

Introduced by: Representative Holbeck and Senators Diedtrich (Elmer), Daugaard, Dennert,  
Olson (Ed), and Reedy

1 FOR AN ACT ENTITLED, An Act to provide for the compensation of librarians and library  
2 employees.

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

4 Section 1. That § 14-2-40 be amended to read as follows:

5 14-2-40. Each board of public library trustees shall:

- 6 (1) Appoint a librarian to serve at the pleasure of the board. Any paid librarian shall  
7 receive any employee benefits provided all other employees of the local governmental  
8 unit and shall be compensated at rates determined by the governing body's  
9 compensation schedule, if such schedule exists. If no such schedule exists, the salary  
10 shall be set by the local governing body;
- 11 (2) Adopt bylaws for the conduct of their business and adopt policies for the selection of  
12 public library materials, the governance of the library, and the use of public library  
13 services and materials;
- 14 (3) Prepare and submit an annual budget request to its governing body;



- 1 (4) Adopt a final annual budget within those funds certified to it as being appropriated in
- 2 the annual budget of its governing body;
- 3 (5) Meet at least once during each quarter of the year;
- 4 (6) Prepare and submit an annual report to its governing body and to the South Dakota
- 5 State Library on such forms as may be provided by the State Library.

6 Section 2. That § 14-2-42 be amended to read as follows:

7 14-2-42. Each librarian shall:

- 8 (1) Serve as secretary to the board of public library trustees and keep all its records;
- 9 (2) Prepare such reports, budgets, and other documents as are required by the board of
- 10 public library trustees or are required of ~~said~~ the board by its governing body;
- 11 (3) Appoint such staff as are necessary to operate the public library within its budgetary
- 12 limitations. Library employees shall receive any employee benefits provided all other
- 13 employees of the local-governing governmental unit and shall be compensated at rates
- 14 determined by the governing body's compensation schedule. If no such schedule
- 15 exists, the salary shall be set by the library board;
- 16 (4) Select and purchase all public library materials for use by the library in its provision
- 17 of public library services within policies established by the board of public library
- 18 trustees;
- 19 (5) Publish and enforce the policies of the board of public library trustees;
- 20 (6) Execute all contracts and agreements approved by the board of public library trustees;
- 21 (7) Keep an accurate account of the financial transactions of the public library; and
- 22 (8) Carry out any other activities authorized by law that the board of public library
- 23 trustees consider appropriate in the development, improvement, and provision of
- 24 public library services.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

184H0609

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1224** - 01/26/2002

Introduced by: Representatives Hunhoff, Abdallah, Murschel, and Pitts and Senators Daugaard, Craddock, Hutmacher, Madden, and Moore

1 FOR AN ACT ENTITLED, An Act to prohibit interference with the use of communication  
2 devices to summon aid to an emergency.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Communication device," any device, including a telephone, cellular telephone,  
6 computer, or radio which may be used in an attempt to summon law enforcement, fire  
7 department, medical, or other emergency personnel;

8 (2) "Emergency," any situation in which human health or safety is in imminent danger.

9 Section 2. If a person is attempting to summon aid to an emergency or has communicated  
10 a desire to summon aid to an emergency, no person may prohibit or interrupt, or attempt to  
11 prohibit or interrupt, another person's use of a communication device by either of the following:

12 (1) Using or threatening to use physical force, intimidation, interference, or any other  
13 form of violence; or

14 (2) Destroying, disabling, or damaging a communication device.



1 A violation of this section is a Class 1 misdemeanor.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

816H0035

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 83** - 02/04/2002

Introduced by: Senators Dennert and Symens and Representatives Hundstad, Begalka, Elliott, Frost, Lange, Sigdestad, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to reduce the capitalization rate for determining  
2 nonagricultural acreage.

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

4 Section 1. That § 10-6-33.15 be amended to read as follows:

5 10-6-33.15. For the purposes of § 10-6-33.14, the agricultural income value shall be  
6 determined using capitalized actual annual cash rent. The actual annual cash rent is the actual  
7 annual cash rent, excluding the actual per acre tax on agricultural land, determined through an  
8 analysis of actual arm's length rental agreements collected within the county in the year prior to  
9 the year for which the income value is being determined. The annual cash rent shall be capitalized  
10 at ~~eight~~ six and one-half percent.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

439H0615

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 141** - 02/04/2002

Introduced by: Senator Whiting and Representative Brown (Jarvis)

1 FOR AN ACT ENTITLED, An Act to authorize total return unitrusts.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Disinterested person," any person who is not a related or subordinate party, as  
5 defined in section 672(c) of the Internal Revenue Code (26 U.S.C. section 1, et seq.),  
6 with respect to the person then acting as trustee of the trust and excludes the trustor  
7 of the trust and any interested trustee;

8 (2) "Income trust," any trust, created by either an inter vivos or a testamentary  
9 instrument, which directs or permits the trustee to distribute the net income of the  
10 trust to one or more persons, either in fixed proportions or in amounts or proportions  
11 determined by the trustee. However, no trust that otherwise is an income trust may  
12 qualify pursuant to this subdivision, if it is subject to taxation under I.R.C. section  
13 2001 or section 2501, until the expiration of the period for filing the return therefor  
14 (including extensions);

15 (3) "Interested distributee," any person to whom distributions of income or principal can



1 currently be made who has the power to remove the existing trustee and designate as  
2 successor a person who may be a related or subordinate party, as defined in I.R.C.  
3 section 672(c), with respect to such distributee;

4 (4) "Interested trustee," (i) any individual trustee to whom the net income or principal of  
5 the trust can currently be distributed or would be distributed if the trust were then to  
6 terminate and be distributed, or (ii) any trustee who may be removed and replaced by  
7 an interested distributee, or (iii) any individual trustee whose legal obligation to  
8 support a beneficiary may be satisfied by distributions of income and principal of the  
9 trust, or (iv) any of the above;

10 (5) "Total return unitrust," any income trust which has been converted under and meets  
11 the provisions of this Act;

12 (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted  
13 otherwise, whether acting in their discretion or on the direction of one or more  
14 persons acting in a fiduciary capacity;

15 (7) "Trustor," any individual who created an inter vivos or a testamentary trust;

16 (8) "Unitrust amount," an amount computed as a percentage of the fair market value of  
17 the trust;

18 (9) "Current valuation year," the accounting period of the trust for which the unitrust  
19 amount is being determined;

20 (10) "Prior valuation year," each of the two accounting periods of the trust immediately  
21 preceding the current valuation year; and

22 (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.).

23 Section 2. A trustee, other than an interested trustee, or, if two or more persons are acting  
24 as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter

1 "trustee"), may, in its sole discretion and without the approval of any court, (i) convert an income  
2 trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii)  
3 change the percentage used to calculate the unitrust amount and the method used to determine  
4 the fair market value of the trust if:

5 (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust  
6 being administered as an income trust, that future distributions from the trust will be  
7 unitrust amounts rather than net income, (ii) in the case of a trust being administered  
8 as a total return unitrust, that future distributions from the trust will be net income  
9 rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust  
10 amount or the method used to determine the fair market value of the trust will be  
11 changed as stated in the policy;

12 (2) The trustee sends written notice of its intention to take such action, along with copies  
13 of such written policy and this chapter, to (i) the trustor, if living, (ii) all living persons  
14 who are currently receiving or eligible to receive distributions of income of the trust,  
15 (iii) all living persons who would receive principal of the trust if the trust were to  
16 terminate at the time of the giving of such notice (without regard to the exercise of  
17 any power of appointment) or, if the trust does not provide for its termination, all  
18 living persons who would receive or be eligible to receive distributions of income or  
19 principal of the trust if the persons identified in subclause (ii) of this subdivision were  
20 deceased, and (iv) all persons acting as adviser or protector of the trust;

21 (3) At least one person receiving notice under each of subclauses (ii) and (iii) of  
22 subdivision (2) is, to the best information and belief of the trustee, legally competent;  
23 and

24 (4) No person receiving such notice objects, by written instrument delivered to the

1 trustee, to the proposed action of the trustee within sixty days of receipt of such  
2 notice.

3 Section 3. If there is no trustee of the trust other than an interested trustee, the interested  
4 trustee or, if two or more persons are acting as trustee and are interested trustees, a majority of  
5 such interested trustees, may, in its sole discretion and without the approval of any court, take  
6 such action as provided in section 2 of this Act so long as the trustee appoints a disinterested  
7 person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i)  
8 the percentage to be used to calculate the unitrust amount, (ii) the method to be used in  
9 determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded  
10 in determining the unitrust amount; and complies with all of the provisions of subdivisions (1)  
11 to (4), inclusive, of section 2 of this Act.

12 Section 4. If any trustee desires to (i) convert an income trust to a total return unitrust, (ii)  
13 reconvert a total return unitrust to an income trust, or (iii) change the percentage used to  
14 calculate the unitrust amount and the method used to determine the fair market value of the trust  
15 but does not have the ability to or elects not to do it under the provisions of sections 2 and 3 of  
16 this Act, or in the event the trustee receives a written objection within the applicable period, the  
17 trustee may petition the court for such order as the trustee deems appropriate. In the event,  
18 however, there is only one trustee of such trust and such trustee is an interested trustee or in the  
19 event there are two or more trustees of such trust and a majority of them are interested trustees,  
20 the court, in its own discretion or on the petition of such trustee or trustees or any person  
21 interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity,  
22 shall present such information to the court as shall be necessary to enable the court to make its  
23 determination.

24 Section 5. The fair market value of the trust shall be determined at least annually, using such

1 valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for  
2 which a fair market value cannot be readily ascertained shall be valued using such valuation  
3 methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation,  
4 if all income received with respect to such assets is distributed to the extent distributable in  
5 accordance with the terms of the governing instrument.

6 Section 6. The unitrust amount shall be determined as follows:

7 (1) For the first three accounting periods of the trust, the unitrust amount for a current  
8 valuation year of the trust shall be three percent, or such higher percentage specified  
9 by the terms of the governing instrument or by the election of the trustee, the  
10 disinterested person, or the court, of the net fair market value of the assets held in the  
11 trust on the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a  
13 current valuation year of the trust shall be three percent, or such higher percentage  
14 specified by the terms of the governing instrument or by the election of the trustee,  
15 the disinterested person, or the court, of the average of the net fair market value of  
16 the assets held in the trust on the first business day of the current valuation year and  
17 the net fair market value of the assets held in the trust on the first business day of each  
18 of the two preceding valuation years;;

19 (3) The percentage that may be elected in determining the unitrust amount shall be a  
20 reasonable current return from the trust, taking into account the intentions of the  
21 trustor of the trust as expressed in the governing instrument, the needs of the  
22 beneficiaries, general economic conditions, projected current earnings and  
23 appreciation for the trust, and projected inflation and its impact on the trust.  
24 However, if such percentage is three percent or greater, or if no percentage is

1 specified, then that percentage shall be three percent;

2 (4) The unitrust amount for the current valuation year shall be proportionately reduced  
3 for any distributions, in whole or in part, other than distributions of the unitrust  
4 amount, and for any payments of expenses, including debts, disbursements and taxes,  
5 from the trust within a current valuation year that the trustee determines to be  
6 material and substantial, and shall be proportionately increased for the receipt, other  
7 than a receipt that represents a return on investment, of any additional property into  
8 the trust within a current valuation year;

9 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount  
10 on a daily basis;

11 (6) If the net fair market value of an asset held in the trust has been incorrectly  
12 determined either in a current valuation year or in a prior valuation year, the unitrust  
13 amount shall be increased in the case of an undervaluation, or be decreased in the case  
14 of an overvaluation, by an amount equal to the difference between the unitrust amount  
15 determined based on the correct valuation of the asset and the unitrust amount  
16 originally determined;

17 (7) In determining the net fair market value of the assets held in trust, the determination  
18 may not include the value of any residential property or any tangible personal property  
19 that, as of the first business day of the current valuation year, one or more income  
20 beneficiaries of the trust have or had the right to occupy, or have or had the right to  
21 possess or control, other than in a capacity as trustee, and instead the right of  
22 occupancy or the right of possession or control shall be deemed to be the unitrust  
23 amount with respect to the residential property or the tangible personal property; or  
24 any asset specifically given to a beneficiary under the terms of the trust and the return

1 on investment on that asset, which return on investment shall be distributed to the  
2 beneficiary.

3 Section 7. The unitrust amount may not be less than the net income of the trust, determined  
4 without regard to the provisions of section 8 of this Act, for (i) a trust for which a marital  
5 deduction has been taken for federal tax purposes under I.R.C. section 2056 or 2523 (during the  
6 lifetime of the spouse for whom the trust was created), or (ii) a trust to which the generation-  
7 skipping transfer tax due under I.R.C. section 2601 does not apply by reason of any effective  
8 date or transition rule.

9 Section 8. Following the conversion of an income trust to a total return unitrust, the trustee:

10 (1) Shall treat the unitrust amount as if it were net income of the trust for purposes of  
11 determining the amount available, from time to time, for distributions from the trust;

12 and

13 (2) May allocate to trust income for each taxable year of the trust (or portions thereof)

14 (i) net short-term capital gain described in I.R.C. section 1222(5) for such year (or  
15 portion thereof) but only to the extent that the amounts so allocated together with all  
16 other amounts allocate to trust income for such year (or portion thereof) does not

17 exceed the unitrust amount for such year (or portion thereof); and (ii) net long-term  
18 capital gain described in I.R.C. section 1222(7) for such year (or portion thereof) but

19 only to the extent that the amount so allocated together with all other amounts,  
20 including amounts described in clause (i) above, allocated to trust income for such

21 year (or portion thereof) does not exceed the unitrust amount for such year (or  
22 portion thereof).

23 Section 9. In administering a total return unitrust, the trustee may, in its sole discretion but  
24 subject to the provisions of the governing instrument, determine:

- 1 (1) The effective date of the conversion;
- 2 (2) The timing of distributions (including provisions for prorating a distributions for a  
3 short year in which a beneficiary' right to payments commences or ceases);
- 4 (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in  
5 kind;
- 6 (4) If the trust is reconverted to an income trust, the effective date of such reconversion;  
7 and
- 8 (5) Such other administrative issues as may be necessary or appropriate to carry out the  
9 purposes of this Act.

10 Section 10. Conversion to a total return unitrust under the provisions of this Act does not  
11 affect any other provisions of the governing instrument, if any, regarding distributions of  
12 principal.

13 Section 11. In the case of a trust for which a marital deduction has been taken for federal tax  
14 purpose under I.R.C. section 2056 or 2523, the spouse otherwise entitled to receive the net  
15 income of the trust has the right, by written instrument delivered to the trustee, to compel the  
16 reconversion during his or her lifetime of the trust from a total return unitrust to an income trust,  
17 notwithstanding anything in this Act to the contrary.

18 Section 12. This Act shall be construed as pertaining to the administration of a trust and shall  
19 be available to any trust that is administered in South Dakota under South Dakota law unless (i)  
20 the governing instrument reflects an intention that the current beneficiary or beneficiaries are to  
21 receive an amount other than a reasonable current return from the trust, ii) the trust is a trust  
22 described in I.R.C. section 170(f)(2)(B), 6664(d), 1361(d), 2702(a)(3), or 2702(b), (iii) one or  
23 more persons to whom the trustee could distribute income have a power of withdrawal over the  
24 trust that is not subject to an ascertainable standard under I.R.C. section 2041 or 2514 or that

1 can be exercised to discharge a duty of support he or she possesses, or (iv) the governing  
2 instrument expressly prohibits use of this Act by specific reference to the chapter. A provision  
3 in the governing instrument that "The provisions of this Act, or any corresponding provision of  
4 future law, may not be used in the administration of this trust" or similar words reflecting such  
5 intent are sufficient to preclude use of this Act.

6 Section 13. Any trustee or disinterested person who in good faith takes or fails to take any  
7 action under this Act is not liable to any person affected by such action or inaction, regardless  
8 of whether such person received written notice as provided in this Act and regardless of whether  
9 such person was under a legal disability at the time of the delivery of such notice. Such person's  
10 exclusive remedy shall be to obtain an order of the court directing the trustee to convert an  
11 income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust  
12 or to change the percentage used to calculate the unitrust amount.

13 Section 14. Nothing in this Act is intended to create or imply a duty to take any action under  
14 this Act, and no trustee is liable for not considering whether to take any action or for choosing  
15 not to take any such action.

16 Section 15. This Act is effective upon enactment and is available to trusts in existence at the  
17 date of enactment or created thereafter.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

445H0124

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 152** - 01/28/2002

Introduced by: Senators Sutton (Dan), Diedrich (Larry), Diedrich (Elmer), Greenfield, Hutmacher, McIntyre, Munson, Staggers, Symens, and Whiting and Representatives Monroe, Bartling, Broderick, Garnos, Heineman, Olson (Mel), Pederson (Gordon), Sebert, and Slaughter

1 FOR AN ACT ENTITLED, An Act to allow the offer of an individual health benefit plan  
2 without certain mandates.

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

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

6 An insurer may offer an individual health benefit plan that does not meet the minimum  
7 requirements of any or all of the following sections: §§ 58-17-1.1, 58-17-1.2, 58-17-30.5, 58-17-  
8 62, 58-17-84.1, 58-17-98, and 58-17-107. The offer of rejection shall be contained in a separate  
9 disclosure document approved by the director.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

571H0690

## SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **SB 164** - 01/24/2002

Introduced by: Senator Diedtrich (Elmer) and Representative Frost

1 FOR AN ACT ENTITLED, An Act to require damage disclosure statements for certain large  
2 boats.

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

4 Section 1. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Upon the sale, assignment, or transfer of a large boat, or if registering a large boat in South  
7 Dakota which is titled in another state or jurisdiction, the seller, assignor, or transferor, or person  
8 wishing to register in South Dakota a large boat which is titled in another state or jurisdiction  
9 shall submit an accurately completed damage disclosure statement when applying for a certificate  
10 of title pursuant to § 32-3A-20. The completed damage disclosure statement may be on the back  
11 of the certificate of title or on a separate document that has been approved for use by the  
12 department. No certificate of title may be issued by the department unless the damage disclosure  
13 statement accompanies the application. It is a Class 1 misdemeanor to intentionally falsify any  
14 information on the damage disclosure statement. No person is liable to a subsequent owner of  
15 a large boat because a prior owner of the large boat failed to disclose that the large boat had



1 previously been damaged and repaired. This section applies to any large boat with damage in  
2 excess of twenty-five percent of the retail value as determined by the Anderson Bugg Outboard  
3 Services Blue Book or the National Automobile Dealers Association Marine Guide, in effect at  
4 the time of the damage. If the large boat has incurred damages more than once, only those  
5 damages which occurred at one time would be considered in determining whether the damages  
6 exceeded twenty-five percent of the retail value as determined by the Anderson Bugg Outboard  
7 Services Blue Book or the National Automobile Dealers Association Marine Guide, in effect at  
8 the time of the damage.

9 Section 2. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purposes of the damage disclosure statement provided by section 1 of this Act,  
12 damage is damage to the large boat caused by fire, vandalism, collision, weather, submersion in  
13 water, or flood, and does not include normal wear and tear, glass damage, mechanical repairs,  
14 or electrical repairs that have not been caused by fire, vandalism, collision, weather, submersion  
15 in water, or flood.

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

18 The department shall retain each damage disclosure statement received. The statement shall  
19 become part of the title history available to the public pursuant to § 32-3A-38.

20 Section 4. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The department shall promulgate rules, pursuant to chapter 1-26, to prescribe the format for  
23 the damage disclosure statement provided by section 1 of this Act. An area for a damage  
24 disclosure statement shall appear on the back of each certificate of title issued by the department.

1 The department may also approve separate documents on which a damage disclosure statement  
2 may be submitted. The damage disclosure statement form shall indicate whether the large boat  
3 has been damaged such that it cost more than twenty-five percent of the retail value as  
4 determined by the Anderson Bugg Outboard Services Blue Book or the National Automobile  
5 Dealers Association Marine Guide, in effect at the time of the damages to repair to its  
6 predamaged condition and any other damage information the department deems appropriate. If  
7 a separate document from the certificate of title contains the damage disclosure statement, the  
8 document shall also require the following information: year, make, model, and hull identification  
9 number of the large boat.

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

12 The dollar amount of damage to a large boat required to be disclosed pursuant to section 1  
13 of this Act shall include the costs necessary to return the damaged large boat to its predamaged  
14 condition. Such costs include parts, labor, paint, and hull work done on the damaged large boat.

15 Section 6. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Any large boat that is required to be titled pursuant to this chapter and is sold or offered for  
18 sale by a boat dealer as defined in § 32-3A-2 shall display a sticker, decal, or notice that discloses  
19 damage to the large boat in accordance with the provisions of this Act, as determined by the  
20 department in rules promulgated pursuant to chapter 1-26. The rules shall also prescribe the  
21 format and construction of the sticker, decal, or notice.

22 Section 7. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Each certificate of title issued by the department shall contain the following phrase: South

1 Dakota state law requires the disclosure of damage on large boats. This information is available  
2 upon written request from the Department of Revenue. Each certificate of title shall also contain  
3 on its front a statement as to whether previous damage disclosure statements indicate the large  
4 boat had been damaged at one time in excess of twenty-five percent of the retail value as  
5 determined by the Anderson Bugg Outboard Services Blue Book or the National Automobile  
6 Dealers Association Marine Guide, in effect at the time of the damages as provided by section  
7 1 of this Act.

8 Section 8. That § 32-3A-38 be amended to read as follows:

9 32-3A-38. The department may upon written request and receipt of a five dollar fee furnish  
10 a person a certified abstract of the title history which shall include any damage disclosure  
11 statement of any boat registered under the provisions of this chapter. The abstract may include  
12 all documents filed with the department to establish the title history of the boat. The fee shall be  
13 deposited in the state motor vehicle fund. Governmental entities and their subdivisions are  
14 exempt from this fee requirement.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0693

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 181** - 02/04/2002

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

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

1 FOR AN ACT ENTITLED, An Act to provide for a study of the state minimum wage.

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

3 Section 1. There is hereby established a minimum wage task force. The task force shall study  
4 the potential effect on workers and businesses of the state of an increase in the state minimum  
5 wage. The task force shall also explore the advantages and disadvantages of the state minimum  
6 wage being the same as the federal minimum wage. The task force shall make its  
7 recommendations to the 2003 Legislature. The task force shall be appointed by the Governor and  
8 shall represent various occupations within South Dakota.

