

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0275

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1020** -

02/18/2003

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

1 FOR AN ACT ENTITLED, An Act to authorize the Game, Fish and Parks Commission to
2 revise certain provisions related to the licensing of and hunting methods used by disabled
3 hunters.

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

5 Section 1. That § 41-8-37 be amended to read as follows:

6 41-8-37. No person, who is in or on a motor vehicle, may discharge a firearm or bow and
7 arrow at any wild animals except coyotes, jackrabbits, rodents, skunks, badgers, raccoons, and
8 foxes.

9 Licensed hunters who are paraplegics or otherwise physically unable to walk with or without
10 crutches, braces, or other mechanical support; or who are otherwise considered to be limited or
11 impaired in their ability to walk, and who have been issued a disabled hunter permit by the
12 department, may shoot in fields, woods, or from public roads from a stationary motor vehicle
13 while hunting game animals or game birds in accordance with the conditions of the permit and
14 rules promulgated by the Game, Fish and Parks Commission ~~pursuant to chapter 1-26.~~ The



1 commission shall promulgate rules pursuant to chapter 1-26 to establish the definition of disabled
2 hunter; the eligibility criteria, application, and approval procedures for issuance of a disabled
3 hunter permit; the duration of a permit; and the extent of the permitted shooting activities.

4 A violation of this section is a Class 2 misdemeanor.

5 Section 2. That § 32-20-6.6 be amended to read as follows:

6 32-20-6.6. No person, other than a law enforcement officer or conservation officer, or any
7 person on the person's own land or land leased by the person, may operate or ride on any
8 motorcycle or off-road vehicle with any firearm in the person's possession unless the firearm is
9 completely unloaded and within a carrying case which encloses the entire firearm. However, this
10 section does not apply to any person who is carrying a pistol and possesses a permit to carry a
11 concealed pistol issued pursuant to chapter 23-7. This section does not apply to any person who
12 holds a permit issued pursuant to § 41-8-37 while engaged in hunting from an off-road vehicle
13 in accordance with the provisions of the permit. This section shall be enforced by all law
14 enforcement officers including conservation officers; ~~notwithstanding the provisions of~~
15 ~~§ 41-15-10.1.~~ A violation of this section is a Class 2 misdemeanor.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0278

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1045 - 02/20/2003

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

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

1 FOR AN ACT ENTITLED, An Act to require resident surplus line brokers to have a bond.

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

3 Section 1. That chapter 58-32 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Within thirty days of issuance of a license as a resident surplus line broker and before
6 procuring any insurance coverage for an insured, the broker shall file with the director, and
7 thereafter for as long as the license remains in effect the broker shall keep in force, a bond in
8 favor of the State of South Dakota in the penal sum of two thousand dollars with an authorized
9 corporate surety approved by the director. The bond shall be conditioned upon the broker
10 conducting business under the license in accordance with the provisions of this chapter and
11 promptly remitting the taxes pursuant to §§ 58-32-44 and 58-32-45. No such bond may be
12 terminated unless at least thirty days' prior written notice of the termination is given to the broker
13 and filed with the director.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0563 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1095 - 02/21/2003

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

1 FOR AN ACT ENTITLED, An Act to make an appropriation from the general fund for costs
2 associated with the medicaid program and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of four million dollars
5 (\$4,000,000), or so much thereof as may be necessary, to the Department of Social Services to
6 provide medical services to Title XIX eligible clients in South Dakota in accordance with § 28-6-
7 1.

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

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



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

580I0382

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1120** - 02/21/2003

Introduced by: Representatives Van Etten, Adelstein, Buckingham, Christensen, Cradduck, Cutler, Glenski, Haverly, Hennies, Kraus, McCaulley, McCoy, McLaughlin, Murschel, Rave, Thompson, Wick, and Williamson and Senators Vitter, Abdallah, Duniphan, Ham, and McCracken

1 FOR AN ACT ENTITLED, An Act to require that counties be reimbursed for housing persons
2 sent to county jail in lieu of the penitentiary.

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

4 Section 1. That § 22-6-1.1 be amended to read as follows:

5 22-6-1.1. If a person is convicted of a Class 5 or Class 6 felony, the court may sentence the
6 person so convicted to imprisonment in the county jail of the county where such person was
7 convicted, for a term of not more than one year. The state may reimburse any county of this state
8 for the expenses the county incurs for housing such person. However, the reimbursement may
9 not exceed twenty-five dollars per day. Upon receipt of the bill, the state shall make
10 reimbursement within thirty days.

11 Section 2. That § 23A-27-18.1 be amended to read as follows:

12 23A-27-18.1. The conditions of probation imposed pursuant to § 23A-27-12 or 23A-27-13
13 or the conditions of suspension of execution imposed pursuant to § 23A-27-18, may include the
14 requirement that the defendant be imprisoned in the county jail for a specific period not



1 exceeding one hundred eighty days or in the state penitentiary for a specific period not exceeding
2 one hundred eighty days or the sentence which was imposed or which may be imposed by law,
3 whichever is less. The imprisonment may be further restricted to certain days specified by the
4 court as part of such conditions. Any such imprisonment, either in the county jail or state
5 penitentiary, shall be credited toward any incarceration imposed upon any subsequent revocation
6 of a suspended imposition or execution of sentence. During any such imprisonment the defendant
7 shall be subject to all policies, rules, and regulations of the county jail or state penitentiary. The
8 state may reimburse any county of this state for the expenses the county incurs for housing such
9 person. However, the reimbursement may not exceed twenty-five dollars per day. Upon receipt
10 of the bill, the state shall make reimbursement within thirty days.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

308I0618

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1125 - 02/21/2003

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

Introduced by: Representatives Peterson (Bill) and Olson (Mel) and Senators Olson (Ed), Knudson, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise the distribution of certain revenues outside the
2 state aid to education formula.

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

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

6 The school district outside revenue fund is hereby created in the state treasury, and the
7 Department of Education and Cultural Affairs shall distribute any money appropriated to the
8 fund. The moneys deposited in the fund shall be invested by the state investment council pursuant
9 to chapter 4-5, and all interest and profits derived from such investment shall be retained in the
10 fund.

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

13 The secretary of the Department of Education and Cultural Affairs shall distribute money in
14 the school district outside revenue fund among the school districts on the basis provided in



1 section 3 of this Act. The secretary shall pay each school district its share of the money in the
2 school district outside other revenue fund in nine monthly installments beginning in October of
3 each year.

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

6 The secretary shall determine the amount of all fines deposited in the county outside school
7 district fund for the previous year in conformity with S.D. Const., Art. VIII, § 3 as of July first.
8 The amount of all such fines shall be added to the amount deposited in the school district outside
9 revenue fund as of September first. The secretary shall compute each school district's share of
10 this total amount based upon the school district's percent of the statewide total average daily
11 membership as defined in subdivision 13-13-10.1(1) for the previous school year. The secretary
12 shall then subtract the amount of fines deposited in each county outside school district fund and
13 then distribute an appropriate amount from the school district outside revenue fund to each
14 county outside school district fund. The secretary shall distribute the money pursuant to section
15 2 of this Act.

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

17 13-13-4. The county ~~general outside school district fund to be apportioned pursuant to~~
18 ~~§ 13-13-5 shall consist of the net proceeds of all~~ is hereby created in the county treasury of each
19 county. All fines for violation of state laws and any tax so designated in Title 10 funds received
20 from school district outside revenue fund shall be deposited in the county outside school district
21 fund. No later than August first of each year, each county treasurer shall submit a report to the
22 secretary of Education and Cultural Affairs providing the amount of money in the fund.

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

24 13-13-5. The county treasurer shall on or before the fifth day of January and July furnish the

1 county auditor with a statement of all money in the county treasury belonging to the county
2 ~~general school~~ outside school district fund ~~and~~. The county treasurer shall pay the money, upon
3 the order of the auditor to the public school districts having land area within the county in
4 proportion to the average daily membership of children residing in the school districts as certified
5 by the ~~Division of Education Services and Resources~~ Department of Education and Cultural
6 Affairs.

7 Section 6. That § 13-13-73.1 be amended to read as follows:

8 13-13-73.1. The Department of Revenue shall ~~exclude~~ include the real property valuation of
9 manufactured homes, considered as real estate pursuant to § 10-4-2.4, and manufactured homes,
10 converted to real estate after July 1, 1999, when computing local effort pursuant to
11 §§ 13-13-10.1 and 13-37-35.1 for the purpose of the state aid to education formula. The county
12 auditor shall also ~~exclude~~ include such real estate value when computing the tax levy for school
13 purposes. ~~However, such manufactured homes shall continue to be subject to each tax levy.~~ The
14 Legislature shall make an adjustment in the relationship between statewide local effort as a
15 percentage of statewide local need pursuant to §§ 13-13-71 to 13-13-72.1, inclusive, to account
16 for the change of moving manufactured homes from outside the state aid to education formula
17 to inside the formula. The inclusion of valuation of manufactured homes in the local effort shall
18 be accomplished without maintaining the relationship required by § 13-13-72.

19 Section 7. That § 10-33-21 be amended to read as follows:

20 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing
21 and providing telephone and exchange service comprising rental and toll service by means of
22 wired circuits and otherwise and whose annual gross receipts are less than fifty million dollars
23 shall be taxed on the basis of gross receipts, according to one of the two following schedules.
24 ~~Whichever schedule provides the lesser percentage of tax shall be applied by the~~ The Department

1 ~~or before July first following certify to the county auditor of each county in the state in which~~
2 ~~such company operates the amount of the tax to be paid in such county on the basis of the gross~~
3 ~~receipts received by such company from its operations in such county and shall further certify~~
4 ~~to the county auditor the amount to which each school district shall be entitled in each such~~
5 ~~county on the basis of the gross receipts received by such company in each school district. The~~
6 ~~county auditor shall extend such tax on his books and certify the same to the county treasurer~~
7 and certify the amount to the company by July first.

8 Section 9. That § 10-33-25 be amended to read as follows:

9 10-33-25. The tax levied in § 10-33-21 ~~shall become due and be~~ is due and payable to the
10 ~~county treasurer of each county in which such company operates and~~ Department of Revenue
11 as certified by the secretary of revenue on September first of each year following the filing of the
12 report of ~~such~~ gross receipts. The Department of Revenue shall deposit the taxes paid in the
13 school district outside revenue fund.

14 Section 10. That § 10-33-28 be repealed.

15 ~~10-33-28. The county treasurer shall allocate and transmit the taxes imposed by § 10-33-21~~
16 ~~and collected from each such company to the school treasurers of each school district in which~~
17 ~~such company operates on the basis of the gross receipts received by such company from its~~
18 ~~operations within each such school district within the county.~~

19 Section 11. That § 10-36-7 be amended to read as follows:

20 10-36-7. The secretary of revenue shall compute ~~and determine~~ the amount of tax to be paid
21 by ~~such~~ each company as provided in § 10-36-6 and ~~shall on or before July first following certify~~
22 ~~to the county auditor of each county in the state in which such company operates the amount of~~
23 ~~the tax to be paid in such county on the basis of the gross receipts received by such company~~
24 ~~from its operations in such county and shall further certify to the county auditor the amount to~~

1 ~~which each school district shall be entitled in each such county on the basis of the gross receipts~~
2 ~~received by such company in each school district. The county auditor shall extend such tax on~~
3 ~~his books and certify the same to the county treasurer~~ and shall certify the amount to the
4 company by July first.

5 Section 12. That § 10-36-8 be amended to read as follows:

6 10-36-8. The tax levied by § 10-36-6 ~~shall become due and be~~ is due and payable to the
7 ~~county treasurer of each county in which such company operates and~~ Department of Revenue
8 as certified by the secretary of revenue on September first of each year following the filing of the
9 report of ~~such~~ gross receipts. The Department of Revenue shall deposit the taxes paid in the
10 school district outside fund.

11 Section 13. That § 10-36-10 be repealed.

12 ~~10-36-10. The county treasurer shall allocate and transmit the taxes collected from each such~~
13 ~~company to the school treasurers of each school district in which such company operates on the~~
14 ~~basis of the gross receipts received by such company from its operations within each such school~~
15 ~~district within the county.~~

16 Section 14. That § 10-43-77 be amended to read as follows:

17 10-43-77. The county treasurer upon receipt of ~~such funds~~ the share of the tax pursuant to
18 this chapter shall apportion and distribute the funds between the taxing subdivisions, including
19 the county but not including the school districts, in the same proportion as the average of
20 personal property taxes assessed in each taxing subdivision, including the county and the school
21 districts, for calendar years 1972, 1973, 1974, 1975, and 1976 were distributed as determined
22 and certified by the secretary of revenue.

23 The county treasurer shall certify to the secretary of revenue the proportion of personal
24 property taxes assessed that is assigned to the school districts under the provisions of this

1 section. For school districts operating during the years 1972 to 1976, inclusive, that reorganize,
 2 ~~the funds shall be apportioned and distributed~~ county treasurer shall certify to the secretary of
 3 revenue the proportion of personal property taxes assessed that is assigned to such school
 4 districts under the provisions of this section to the successor districts. The proportion assigned
 5 shall be determined in the same manner and proportion as ~~they were distributed~~ prior to
 6 reorganization. The secretary of revenue shall determine the amount that would normally be
 7 apportioned and distributed to the school districts and deposit such amount in the school district
 8 outside revenue fund.

9 Section 15. That § 10-6-22 be amended to read as follows:

10 10-6-22. The director of equalization shall ~~forthwith~~ notify the state's attorney of any ~~such~~
 11 delinquency or offense as described by § 10-6-21 and ~~he~~ the state's attorney shall prosecute ~~such~~
 12 the offender to final judgment and execution, and such fine when. If any fine is collected, the fine
 13 shall be paid into the county treasury for the use of the public schools deposited in the county
 14 outside school district fund.

15 Section 16. That § 23A-27-25 be amended to read as follows:

16 23A-27-25. ~~All~~ The county treasurer shall deposit all fines and pecuniary penalties, other than
 17 forfeitures provided for in § 23A-43-23, costs as provided in §§ 23-3-52, 23A-27-26, and
 18 23A-27-27, and restitution and civil penalties assessed under the state's environmental laws; for
 19 the violation of any state law, ~~when collected, shall be paid into the treasury of the proper~~
 20 ~~county, the net proceeds of which shall be applied and used each year for the benefit of the public~~
 21 ~~schools of this state~~ in the county outside school district fund.

22 Section 17. That § 10-59-1 be amended to read as follows:

23 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
 24 or fees imposed by chapters 10-33, 10-36, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D,

1 10-46, 10-46A, 10-46B, 10-46C, 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B,
2 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the
3 provisions of chapter 10-45B.

4 Section 18. The first distribution of money pursuant to this Act shall begin in October, 2004.
5 The secretary shall distribute the money in a manner that each school district shall receive at least
6 eighty percent of the revenue that such school district would have received without the
7 implementation the provisions of sections 1 to 5, inclusive, and sections 7 to 17, inclusive, of this
8 Act. The remaining twenty percent of the money shall be distributed pursuant to sections 1 to
9 3, inclusive of this Act.

10 The second distribution of money pursuant to this Act shall begin in October, 2005. The
11 secretary shall distribute the money in a manner that each school district shall receive at least
12 sixty percent of the revenue that such school district would have received without the
13 implementation the provisions of sections 1 to 5, inclusive, and sections 7 to 17, inclusive, of this
14 Act. The remaining forty percent of the money shall be distributed pursuant to sections 1 to 3,
15 inclusive, of this Act.

16 The third distribution of money pursuant to this Act shall begin in October, 2006. The
17 secretary shall distribute the money in a manner that each school district shall receive at least
18 forty percent of the revenue that such school district would have received without the
19 implementation the provisions of sections 1 to 5, inclusive, and sections 7 to 17, inclusive, of this
20 Act. The remaining sixty percent of the money shall be distributed pursuant to sections 1 to 3,
21 inclusive, of this Act.

22 Each distribution thereafter shall be made pursuant to the provisions of this Act.

23 Section 19. This Act is effective on January 1, 2004.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

83110612

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1163** - 02/21/2003

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

Introduced by: Representatives Peterson (Bill), Cutler, Elliott, Frost, Hennies, Konold, Kroger, Miles, Sebert, Smidt, Solum, Van Etten, and Wick and Senators McCracken, Abdallah, Brown, Duniphan, Kloucek, Koetzle, Kooistra, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to hunting in public
2 rights-of-way.

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

4 Section 1. That § 41-9-1.1 be amended to read as follows:

5 41-9-1.1. Except for controlled access facilities as defined in § 31-8-1, interstate highways,
6 unimproved section lines not commonly used as public rights-of-way, and highways within parks
7 or recreation areas or within or adjoining public shooting areas or game refuges posted for
8 restriction of an applicable use as hereinafter set forth by the Department of Game, Fish and
9 Parks, § 41-9-1 does not apply to fishing, trapping, or hunting on highways or other public
10 rights-of-way within this state that meet the requirements of § 41-9-1.3. For purposes of this
11 section, hunting on highways or other public rights-of-way includes:

12 (1) The shooting at or taking by legal methods of small game, except mourning dove, that
13 are located within the boundaries of the highway or public right-of-way;



1 (2) The shooting at or taking by legal methods of small game, except mourning dove, that
2 are in flight over private land if the small game has either originated from or has taken
3 flight from the highway or public right-of-way or if the small game is in the process
4 of flying over the highway or public right-of-way.

5 No person, except the adjoining landowner or any person receiving written permission from
6 the adjoining landowner, may use such highways or rights-of-way for the purposes of hunting
7 defined in this title within six hundred sixty feet of an occupied dwelling, a church, schoolhouse,
8 or livestock. No person, except the adjoining landowner or any person receiving written
9 permission from the adjoining landowner, may use such highways or rights-of-way for the
10 purpose of trapping within six hundred sixty feet of an occupied dwelling, church, or
11 schoolhouse. A violation of this section is a Class 2 misdemeanor. If any person is convicted of
12 knowingly discharging a firearm within six hundred sixty feet of any occupied dwelling, church,
13 or schoolhouse for which such distance has been clearly and accurately marked and posted, the
14 court shall, in addition to any other penalty, revoke the person's hunting privileges for a period
15 of one year from the date of conviction.

16 Section 2. That chapter 41-9 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 No person hunting small game from any highway or other public right-of-way pursuant to
19 § 41-9-1.1 may discharge a firearm at any small game animal unless the motor vehicle by which
20 the person has been transported to the hunting location has, to the maximum extent practical,
21 been parked off the main traveled portion of the highway or public right-of-way in a manner that
22 does not create an unreasonable risk of injury or damage to other persons or property using the
23 highway or public right-of-way. If the person who discharges the firearm is more than fifty yards
24 from the vehicle, the doors on the side of the vehicle nearest the roadway shall be closed, but the

- 1 engine may be running. If the person who discharges the firearm is less than fifty yards from the
- 2 vehicle, all of the vehicle doors shall be closed and the engine shall be turned off.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

913I0379

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1181 - 02/20/2003

Introduced by: Representatives Juhnke, Bartling, and Peterson (Bill) and Senators Sutton (Dan), Diedrich (Larry), and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to establish a comprehensive health association to provide
2 health insurance coverage to eligible persons.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Association," the comprehensive health association established by section 2 of this
6 Act;

7 (2) "Association policy," any individual or group policy issued by the association that
8 provides the coverage specified in this Act;

9 (3) "Carrier," any person that provides health insurance in the state, including an
10 insurance company, a prepaid hospital or medical service plan, a health maintenance
11 organization, a multiple employer welfare arrangement, a carrier providing excess or
12 stop loss coverage to a self funded employer, and any other entity providing a plan of
13 health insurance or health benefits subject to state insurance regulation. The term,
14 carrier, does not include excess or stop loss covering a risk of insurance as defined in
15 §§ 58-9-5 to 58-9-33, inclusive, and does not include health insurance for coverages



1 that are not health benefit plans issued by insurance companies, prepaid hospital or
2 medical service plans, or health maintenance organizations. The term, carrier, includes
3 any health benefit plan issued through an association or trust. The term, health benefit
4 plan, as used in this Act is as defined in subdivision 58-17-66(9);

5 (4) "Director," the director of the Division of Insurance;

6 (5) "Health care facility," any health care facility licensed pursuant to chapter 34-12;

7 (6) "Health insurance," as defined in § 58-9-3;

8 (7) "Insured," any individual who is provided qualified comprehensive health insurance
9 under an association policy, which may include dependents and other covered
10 persons;

11 (8) "Medicaid," the federal-state assistance program established under Title XIX of the
12 Social Security Act;

13 (9) "Medicare," the federal government health insurance program established under Title
14 XVIII of the Social Security Act;

15 (10) "Policy," any contract, policy, or plan of health insurance;

16 (11) "Policy year," any consecutive twelve-month period during which a policy provides
17 or obligates the carrier to provide health insurance.

18 Section 2. There is established a nonprofit corporation known as the Comprehensive Health
19 Insurance Association, which shall assure that health insurance, as provided for in this Act, is
20 made available to each eligible South Dakota resident who applies to the association for
21 coverage. Any carrier providing health insurance or health care services in South Dakota shall
22 be a member of the association. The association shall operate under a plan of operation
23 established and approved pursuant to this Act and shall exercise its powers through a board of
24 directors established pursuant to this Act.

1 Section 3. The board of directors of the association shall consist of nine individuals who are
2 representative of categories of members of the association, health care providers, consumers who
3 have purchased or are likely to purchase coverage from the association, insurance producers,
4 small employers, and the director, who shall be a nonvoting ex-officio member. In the initial and
5 in each successor board, three members shall be representative of and elected by qualified writers
6 of group health insurance, two members shall be representative of and elected by qualified
7 writers of individual health insurance, one member shall be representative of the health care
8 provider community and shall be appointed by the director, one member shall be representative
9 of consumers covered through the high risk pool and shall be appointed by the director, one
10 member shall be a representative of insurance producers and shall be appointed by the director,
11 and one member shall be a representative of small employers and shall be appointed by the
12 director. There shall be no more than one member representing any one qualified writer or its
13 affiliate.

14 Members of the board may be reimbursed from the moneys of the association for expenses
15 incurred by them as members, but may not be otherwise compensated by the association for their
16 services.

17 Section 4. The board shall submit to the director a proposed plan of operation for the
18 association and any amendments necessary or suitable to assure the fair, reasonable, and
19 equitable administration of the association. If the board fails to submit a proposed plan of
20 operation within one hundred eighty days after the appointment of the board of directors, or if
21 at any later time the board fails to submit suitable amendments to the plan, the director shall
22 proceed with the rule-making process as required by this section. The plan of operation, whether
23 based upon a proposal from the board or the director, shall be established by rules promulgated
24 pursuant to chapter 1-26 and shall consider whether the proposed plan of operation is suitable

1 to assure the fair, reasonable, and equitable administration of the association, and provides for
2 the sharing of association losses, if any, on an equitable and proportionate basis among the
3 member carriers. In addition to other requirements, the plan of operation shall provide for all of
4 the following:

- 5 (1) The handling and accounting of assets and moneys of the association;
- 6 (2) The amount and method of reimbursing members of the board;
- 7 (3) Regular times and places for meetings of the board of directors;
- 8 (4) Records to be kept of all financial transactions, and the annual fiscal reporting to the
9 director;
- 10 (5) Procedures for selecting the board of directors and submitting the selections to the
11 director for approval;
- 12 (6) Procedures for assessing the members in proportion to the number of persons they
13 cover through primary, excess, and stop loss insurance in this state;
- 14 (7) The periodic advertising of the general availability of health insurance coverage from
15 the association;
- 16 (8) Additional provisions necessary or proper for the execution of the powers and duties
17 of the association.

18 Section 5. The plan of operation may provide that the powers and duties of the association
19 may be delegated. A delegation under this section takes effect only upon the approval of both
20 the board of directors and the director. The director may not approve a delegation unless the
21 protections afforded to the insureds are substantially equivalent to or greater than those provided
22 under this Act.

23 Section 6. The association has the general powers and authority enumerated by this Act and
24 executed in accordance with the plan of operation approved by the director. The association has

1 the general powers and authority granted under the laws of this state to carriers licensed to issue
2 health insurance. In addition, the association may do any of the following:

- 3 (1) Enter into contracts as necessary or proper to carry out this Act;
- 4 (2) Sue or be sued, including taking any legal action necessary or proper for recovery of
5 any assessments for, on behalf of, or against participating carriers;
- 6 (3) Borrow money to effectuate the purposes of this Act;
- 7 (4) Take legal action necessary to avoid the payment of improper claims against the
8 association or the coverage provided by or through the association;
- 9 (5) Establish or utilize a medical review committee to determine the reasonably
10 appropriate level and extent of health care services in each instance;
- 11 (6) Establish appropriate rates, scales of rates, rate classifications, and rating adjustments,
12 which rates may not be unreasonable in relation to the coverage provided and the
13 reasonable operations expenses of the association;
- 14 (7) Pool risks among members;
- 15 (8) Issue association policies on an indemnity, network, or provision of service basis and
16 may design, utilize, contract, or otherwise arrange for the delivery of cost effective
17 health care services, including establishing or contracting with preferred provider
18 organizations, health maintenance organizations, and other limited network provider
19 arrangements in providing the coverage required by this Act;
- 20 (9) Administer separate pools, separate accounts, or other plans or arrangements
21 considered appropriate for separate members or groups of members;
- 22 (10) Operate and administer any combination of plans, pools, or other mechanisms
23 considered appropriate to best accomplish the fair and equitable operation of the
24 association;

1 (11) Appoint from among members appropriate legal, actuarial, and other committees as
2 necessary to provide technical assistance in the operation of the association, policy,
3 and other contract design, and any other functions within the authority of the
4 association;

5 (12) Hire independent consultants as necessary;

6 (13) Include in its policies a provision providing for subrogation rights by the association
7 in a case in which the association pays expenses on behalf of an individual who is
8 injured or suffers a disease under circumstances creating a liability upon another
9 person to pay damages to the extent of the expenses paid by the association, but only
10 to the extent the damages exceed the policy deductible and coinsurance amounts paid
11 by the insured. The association may waive its subrogation rights if it determines that
12 the exercise of the rights would be impractical, uneconomical, or would create a
13 hardship on the insured.

14 Section 7. The board of directors shall select a plan administrator based on criteria
15 established by the board which shall include:

16 (1) The plan administrator's proven ability to handle health insurance coverage to
17 individuals;

18 (2) The efficiency and timeliness of the plan administrator's claim processing procedures;

19 (3) An estimate of total charges for administering the plan;

20 (4) The plan administrator's ability to apply effective cost containment programs and
21 procedures and to administer the plan in a cost efficient manner; and

22 (5) The financial condition and stability of the plan administrator.

23 Section 8. The plan administrator shall serve for a period specified in the contract between
24 the plan and the plan administrator subject to removal for cause and subject to any terms,

1 conditions, and limitations of the contract between the plan and the plan administrator. At least
2 one year prior to the expiration of each period of service by a plan administrator, the board shall
3 invite eligible entities, including the current plan administrator to submit bids to serve as the plan
4 administrator. Selection of the plan administrator for the succeeding period shall be made at least
5 six months prior to the end of the current period. The plan administrator shall perform such
6 functions relating to the plan as may be assigned to it, including:

- 7 (1) Determination of eligibility;
- 8 (2) Payment of claims;
- 9 (3) Establishment of a premium billing procedure for collection of premium from persons
10 covered under the plan; and
- 11 (4) Other necessary functions to assure timely payment of benefits to covered persons
12 under the plan.

13 The plan administrator shall submit regular reports to the board regarding the operation of
14 the plan. The frequency, content, and form of the report shall be specified in the contract
15 between the board and the plan administrator. Following the close of each calendar year, the plan
16 administrator shall determine net written and earned premiums, the expense of administration,
17 and the paid and incurred losses for the year and report this information to the board and the
18 division on a form prescribed by the director. The plan administrator shall be paid as provided
19 in the contract between the plan and the plan administrator.

20 Section 9. Rates for coverages issued by the association may not be unreasonable in relation
21 to the benefits provided, the risk experience, and the reasonable expenses of providing coverage.
22 Case characteristics as allowed pursuant to § 58-17-74 may be used in establishing rates for
23 those insured through the association. Rates shall take into consideration the extra morbidity and
24 administration expenses, if any, for risks insured in the association. The rates for a given

1 classification for those that qualify for coverage pursuant to § 58-17-85 or whose coverage
2 immediately prior to coverage through the association was a policy issued pursuant to § 58-17-
3 85 may not be more than one hundred fifty percent of the average in-force premium or payment
4 rate for that classification charged by the three carriers with the largest individual health
5 insurance premium or payment volume in the state during the preceding calendar year. In
6 determining the average rate of the three largest individual health carriers, the rates or payments
7 charged by the carriers shall be actuarially adjusted to determine the rate or payment that would
8 have been charged for benefits similar to those issued by the association.

9 Section 10. Following the close of each calendar year, the board shall determine the net
10 premiums and payments, the expenses of administration, and the incurred losses of the
11 association for the year. The board shall certify the amount of any net loss for the preceding
12 calendar year. In sharing losses, the board may abate or defer in any part the assessment of a
13 member, if, in the opinion of the board, payment of the assessment would endanger the ability
14 of the member to fulfill its contractual obligations. The board may also provide for an initial or
15 interim assessment against members of the association if necessary to assure the financial
16 capability of the association to meet the incurred or estimated claims expenses or operating
17 expenses of the association until the next calendar year is completed. Net gains shall be held at
18 interest to offset future losses or allocated to reduce future premiums.

19 Assessment of health carriers and excess or stop loss carriers shall be based upon the number
20 of persons they cover through primary, excess, and stop loss insurance in this state and shall be
21 as follows:

22 (1) For the purposes of this section, the term, participating carrier, includes all carriers
23 as defined in section 1 of this Act;

24 (2) In addition to the powers enumerated in this Act, the board, on behalf and under the

1 direction of the director may assess participating carriers in accordance with the
2 provisions of this section, and make advance interim assessments as may be
3 reasonable and necessary for the association's organizational and interim operating
4 expenses;

5 (3) Following the close of each fiscal year, the administrator shall determine the net
6 premiums (premiums less reasonable administrative expense allowances), the expenses
7 of administration, and the incurred losses for the year, taking into account investment
8 income and other appropriate gains and losses. The deficit incurred by the association
9 shall be recouped by assessments apportioned under this section by the board among
10 participating carriers and from other sources as may be allowed under law;

11 (4) Each participating carrier's assessment shall be determined by multiplying the total
12 assessment of all participating carriers as determined in subdivision (2) by a fraction,
13 the numerator of which equals the number of individuals in this state covered under
14 health insurance policies, including by way of excess or stop loss coverage, by each
15 participating carrier, and the denominator of which equals the total number of all
16 individuals in this state covered under health insurance policies, including by way of
17 excess or stop loss coverage, by all participating carriers, all determined as of the end
18 of the prior calendar year;

19 (5) The board shall make reasonable efforts designed to ensure that each insured
20 individual is counted only once with respect to any assessment. For that purpose, the
21 board shall require each participating carrier that obtains excess or stop loss insurance
22 to include in its count of insured individuals all individuals whose coverage is
23 reinsured, including by way of excess or stop loss coverage, in whole or part. The
24 board shall allow a participating carrier who is an excess or stop loss carrier to

1 exclude from its number of insured individuals those who have been counted by the
2 primary carrier or by the primary reinsurer or primary excess or stop loss carrier for
3 the purpose of determining its assessment under this section;

4 (6) Each participating carrier's assessment shall be determined by the board based on
5 annual statements and other reports deemed to be necessary by the board and filed by
6 the participating carrier with the board. The board may use any reasonable method of
7 estimating the number of insureds of a participating carrier if the specific number is
8 unknown. With respect to participating carriers that are excess or stop loss carriers,
9 the board may use any reasonable method of estimating the number of persons insured
10 by each reinsurer or excess or stop loss carrier;

11 (7) A participating carrier may petition the director for an abatement or deferment of all
12 or part of an assessment imposed by the board. The director may abate or defer, in
13 whole or in part, the assessment if, in the opinion of the director, payment of the
14 assessment would endanger the ability of the participating carrier to fulfill its
15 contractual obligations. If an assessment against a participating carrier is abated or
16 deferred in whole or in part, the amount by which the assessment is abated or deferred
17 may be assessed against the other participating carriers in a manner consistent with
18 the basis for assessments set forth in this section. The participating carrier receiving
19 such abatement or deferment shall remain liable to the association for the deficiency
20 for four years.

21 Any available federal funding for the establishment or operation of the association shall be
22 used to the extent possible prior to making any assessment of participating carriers. Assessments
23 made of any carrier shall be allowed as a credit on the premium tax return of that carrier, up to
24 the following maximum amounts:

- 1 (1) For the period July 1, 2005, to June 30, 2006, fifteen percent of any assessments paid
2 by the carrier during calendar year 2004;
- 3 (2) For the period July 1, 2006, to June 30, 2007, thirty percent of any assessments paid
4 by the carrier during calendar year 2005;
- 5 (3) For the period July 1, 2007, to June 30, 2008, and for each subsequent twelve-month
6 period, fifty percent of any assessments paid by the carrier during the prior calendar
7 year.

8 No credit on premium taxes may be taken by any carrier prior to July 1, 2005.

9 Section 11. The association shall conduct periodic audits to assure the general accuracy of
10 the financial data submitted to the association, and the association shall have an annual audit of
11 its operations made by an independent certified public accountant.

12 Section 12. The association and the board are subject to examination by the director. Not
13 later than April thirtieth of each year, the board of directors shall submit to the director a
14 financial report for the preceding calendar year in a form approved by the director.

15 Section 13. Any policy form issued by the association shall be filed with and approved by the
16 director before its use.

17 Section 14. The association is exempt from payment of all fees and all taxes levied by this
18 state or any of its political subdivisions.

19 Section 15. If the association policy contains a network feature, the negotiated fee will be
20 the limit of the amount paid and the provider shall be subject to subdivision 58-17C-14(2) for
21 any amounts due from the individual insured. The benefits to be contained in the association
22 policy shall be established by the board and be subject to the approval of the director. The
23 association policy shall be designed to provide comprehensive coverage consistent with major
24 medical coverage currently being offered in the individual health insurance market. The coverage

1 and benefits for association policies may not be altered by any other state law without specific
2 reference to this Act indicating a legislative intent to add or delete from the coverage provided
3 pursuant to this Act.

4 Section 16. Except as otherwise provided in this Act, a person is not eligible for an
5 association policy if the person, on the effective date of coverage, has or will have coverage as
6 an insured or covered dependent under any insurance plan that has coverage equivalent to an
7 association policy; is eligible for benefits under chapter 28-6 at the time of application; has
8 terminated coverage provided by the association within the past twelve months; is an inmate of
9 any public institution or is eligible for public programs for which medical care is provided; or has
10 his or her premiums paid for or reimbursed under any government sponsored program or by any
11 government agency or health care provider, except as an otherwise qualifying full-time employee,
12 or dependent thereof, of a government agency or health care provider. Coverage under an
13 association policy is in excess of, and may not duplicate, coverage under any other form of health
14 insurance, employee/employer welfare plan, medical coverage under any homeowner's or
15 motorized vehicle insurance, no-fault automobile, service or payment received under the laws
16 of any national, state, or local government, or CHAMPUS. This section does not apply to those
17 persons meeting provisions pursuant to chapter 28-13.

18 Association coverage terminates for any person on the date that if such circumstance had
19 been present at the time of application, the person would have been ineligible for association
20 coverage. Association coverage may also be terminated for nonpayment of premiums.

21 Section 17. An association policy shall provide that coverage of a dependent unmarried
22 person terminates when the person becomes nineteen years of age or, if the person is enrolled
23 full time in an accredited educational institution, terminates at twenty-five years of age. The
24 policy shall also provide in substance that attainment of the limiting age does not operate to

1 terminate coverage when the person is and continues to be both of the following:

- 2 (1) Incapable of self-sustaining employment by reason of mental retardation or physical
3 disability; and
- 4 (2) Primarily dependent for support and maintenance upon the person in whose name the
5 contract is issued.

6 Proof of incapacity and dependency shall be furnished to the administrator within one
7 hundred twenty days of the person's attainment of the limiting age, and subsequently as may be
8 required by the association's procedures, but not more frequently than annually after the two-year
9 period following the person's attainment of the limiting age.

10 Section 18. The board may not change the rates for association policies except on a class
11 basis with a clear disclosure in the policy of the board's right to do so and upon approval of the
12 director.

13 Section 19. An association policy shall provide that upon the death of the individual in whose
14 name the policy is issued, every other individual then covered under the contract may elect,
15 within a period specified in the policy, to continue coverage under the same or a different policy
16 until such time as the person would have ceased to be entitled to coverage had the individual in
17 whose name the policy was issued lived.

18 Section 20. The director shall prescribe the format as prescribed by section 23 of this Act for
19 disclosure by carriers of the availability of insurance coverage from the association.

20 Section 21. None of the following may be the basis of any legal civil action, or criminal
21 liability against the board, association, or members of them, either jointly or separately: the
22 participation by carriers or members in the association, the establishment of rates, forms, or
23 procedures for coverage issued by the association, serving or carrying out the functions as a
24 member of the board, or any joint or collective action required by this Act.

1 Section 22. Any carrier authorized to provide health care insurance or coverage for health
2 care services in this state shall provide notice and application for coverage under the association
3 for those individuals eligible pursuant to § 58-17-85. An application for health insurance shall
4 be on forms prescribed by the board and made available to the carriers.

5 Section 23. That § 58-17-68 be amended to read as follows:

6 58-17-68. For purposes of §§ 58-17-66 to 58-17-87, inclusive, the term, professional
7 association plan, means a health benefit plan offered through a professional association that
8 covers members of a professional association and their dependents, and not others, in this state
9 regardless of the situs of delivery of the policy or contract and which meets all the following
10 criteria:

- 11 (1) Conforms with all the provisions of the rate requirements of §§ 58-17-66 to 58-17-87,
12 inclusive;
- 13 (2) Provides renewability of coverage for the members and dependents of members of the
14 professional association that meets the renewability requirements of §§ 58-17-66 to
15 58-17-87, inclusive;
- 16 (3) Provides availability of coverage for the members and dependents of members of the
17 professional association ~~in conformance with the provisions of § 58-17-85~~ without
18 regard to health status; and
- 19 (4) Is offered by a carrier that offers health benefit plan coverage to any professional
20 association seeking health benefit plan coverage from the carrier.

21 Section 24. That § 58-17-85 be amended to read as follows:

22 58-17-85. If a person has an aggregate of at least ~~twelve~~ eighteen months of creditable
23 coverage ~~and, is a resident of this state, the carrier shall accept such person for coverage under~~
24 ~~a health benefit plan, which contains benefits which are equal to or exceed the benefits contained~~

1 in the basic plan that was approved and adopted by rule by the director pursuant to chapter 1-26
2 and the maximum lifetime maximum benefit of the coverage is not less than one million dollars
3 if the person applies within sixty-three days of the date of losing prior creditable coverage. In
4 addition to the plan which equals or exceeds the basic coverage, the carrier shall also offer to the
5 eligible person, the individual standard plan as approved and adopted by rule by the director or
6 a plan with benefits that exceed the standard plan. No carrier is required to issue further
7 individual health benefit coverage under §§ 58-17-68 to 58-17-87, inclusive, if the individual
8 health benefit plans issued to high-risk individuals constitute two percent or more of that carrier's
9 earned premium on an annual basis from individual health benefit plans covered by §§ 58-17-66
10 to 58-17-87, inclusive. Each carrier who meets the two percent earned premium threshold shall
11 report within thirty days to the director in a format prescribed by the director. If the director
12 determines that all carriers in the individual market have met the two percent threshold, the
13 threshold shall, upon order of the director, be expanded an additional two percent. The threshold
14 shall be expanded in additional two percent increments if all carriers in the individual market
15 meet the previous threshold. The director may promulgate rules pursuant to chapter 1-26 to
16 determine which individual policies may be used to determine the two percent threshold, the
17 procedures involved, and the applicable time frames. In making that determination, the director
18 shall develop a method designed to limit the number of high-risk individuals to whom any one
19 carrier may be required to issue coverage. No carrier is required to provide coverage pursuant
20 to this section if and applies within sixty-three days of the date of losing prior creditable coverage
21 and is no longer eligible for that creditable coverage, the person is eligible for coverage under
22 the association policy as provided for in this Act if none of the following apply:

- 23 (1) The applicant is eligible for continuation of coverage under an employer plan;
- 24 (2) The applicant's creditable coverage is a conversion plan from an employer group plan;

1 or

2 (3) The person is covered or eligible to be covered under creditable coverage or lost
3 creditable coverage due to nonpayment of premiums;~~or~~

4 ~~—(4)—~~ The person loses coverage under a short term or limited duration plan.

5 Any person who has exhausted continuation rights and who is eligible for conversion or other
6 individual or association coverage has the option of obtaining coverage pursuant to this section
7 or the conversion plan or other coverage. A person who is otherwise eligible for the issuance of
8 coverage pursuant to this section may not be required to show proof that coverage was denied
9 by another carrier.

10 For purposes of this section, ~~a carrier may require~~ the association shall require reasonable
11 evidence that the prospective insured is a resident of this state. Factors that the ~~carrier~~
12 association may consider include a driver's license, voter registration, and where the prospective
13 insured resides.

14 Section 25. That § 58-17-86 be repealed.

15 ~~—58-17-86. The director shall study and report on or before January 5, 1997, and on or before~~
16 ~~January fifth of each subsequent year to the Legislature and Governor on the effectiveness of~~
17 ~~§§ 58-17-66 to 58-17-87, inclusive. The report shall analyze the effectiveness of §§ 58-17-66~~
18 ~~to 58-17-87, inclusive, in promoting rate stability, product availability, and coverage~~
19 ~~affordability. The report may contain recommendations for actions to improve the overall~~
20 ~~effectiveness, efficiency, and fairness of the individual health insurance marketplace. The report~~
21 ~~may contain recommendations for market conduct or other regulatory standards or action.~~

22 Section 26. That § 58-17-80 be repealed.

23 ~~—58-17-80. Each carrier shall file with the director annually, on or before March fifteenth, an~~
24 ~~actuarial certification certifying that the carrier is in compliance with §§ 58-17-66 to 58-17-87,~~

1 ~~inclusive, and that the rating methods of the carrier are actuarially sound. The certification shall~~
2 ~~be in a form and manner and shall contain such information as may be specified by the director~~
3 ~~in rules promulgated pursuant to chapter 1-26. A copy of the certification shall be retained by~~
4 ~~the carrier at its principal place of business.~~

5 Section 27. Effective July 1, 2003, carriers that have continuously and actively marketed
6 individual health benefit plans in this state since July 1, 1996, shall annually, on or before June
7 thirtieth, certify to the director, the earned premiums and paid claims during the preceding
8 calendar year on policies issued pursuant to § 58-17-85. The director shall determine the total
9 amount of losses for the carriers that exceed ninety-five percent of earned premiums on such
10 policies during the preceding year and shall certify this amount which shall be added to the losses
11 to be assessed against members of the association as prescribed by section 10 of this Act. The
12 board shall assess all member carriers of the association for the certified losses on the same basis
13 as assessments would be made for other losses incurred by the association for the same period.
14 Upon collection of these assessments from member carriers, the association shall reimburse each
15 individual carrier who qualified under the provisions of this section and who had losses in excess
16 of ninety-five percent of earned premiums certified by the director. The reimbursement for each
17 qualified carrier shall be in an amount equal to that carrier's actual losses in excess of ninety-five
18 percent of earned premiums for the reporting period.

19 Section 28. Carriers who discontinued actively marketing individual health benefit plans in
20 this state after July 1, 1996, and have current policies issued pursuant to §§ 58-17-66 to 58-17-
21 87, inclusive, are eligible to receive reimbursement pursuant to section 27 of this Act if these
22 conditions are met:

- 23 (1) The carrier re-enters the individual health benefit plan market in this state no later than
24 July 1, 2005;

- 1 (2) The carrier has actively and continuously marketed individual health benefit plans for
2 a period of twenty-four months from the date of re-entry; and
- 3 (3) The carrier is actively marketing individual health benefit plans at the time the pooling
4 is calculated.

5 Section 29. That § 58-17-82 be amended to read as follows:

6 58-17-82. An individual health benefit plan subject to §§ 58-17-66 to 58-17-87, inclusive,
7 is renewable with respect to any person or dependent at the option of the person, except in any
8 of the following cases:

- 9 (1) The individual has failed to pay premiums or contributions in accordance with the
10 terms of the health insurance coverage or the insurer has not received timely premium
11 payments;
- 12 (2) Fraud or intentional misrepresentation of material fact by the person;
- 13 (3) In the case of a health insurance issuer that offers health insurance coverage in the
14 market through a network plan, there are no longer any enrollees in connection with
15 the plan who live, reside, or work in the service area of the issuer or in the area for
16 which the issuer is authorized to do business and the issuer would deny enrollment
17 with respect to the plan as provided for in § 58-18B-37;
- 18 (4) Election by the carrier not to renew all of its individual health benefit plans delivered
19 or issued for delivery to persons in the state. In such a case, the carrier shall provide
20 advance notice of its decision under this subdivision to the director in each state in
21 which it is licensed and provide notice of the decision not to renew coverage to all
22 affected individuals and to the director in each state in which an affected insured
23 individual is known to reside at least one hundred eighty days before the nonrenewal
24 of any individual health benefit plans by the carrier. Notice to the director under this

1 subdivision shall be provided at least three working days before the notice to the
2 affected individuals. In such instances, the director shall assist the affected persons in
3 finding replacement coverage;

4 (5) In the case of health insurance coverage that is made available only through one or
5 more bona fide associations, the membership of an employer in the association (on the
6 basis of which the coverage is provided) ceases but only if the coverage is terminated
7 uniformly without regard to any health status-related factor relating to any covered
8 individual; or

9 (6) The insured individual becomes eligible for medicare coverage under Title XVIII of
10 the Social Security Act, unless federal law requires that medicare coverage under Title
11 XVIII be excluded as a reason for renewability of coverage;

12 (7) If the issuer decides to discontinue offering a particular type of individual health
13 insurance offered in the individual market, coverage of such type may be discontinued
14 if:

15 (a) The issuer provides notice to each insured provided coverage of this type in
16 such market (and any participant and beneficiary covered under such coverage)
17 of the discontinuation at least ninety days prior to the date of the
18 discontinuation of the coverage;

19 (b) The issuer offers to each insured provided coverage of this type in such market,
20 the option to purchase ~~an~~ any other health insurance coverage currently being
21 offered by the issuer to an individual health plan in such market; or

22 (c) In exercising the option to discontinue coverage of this type and in offering the
23 option of coverage under subsection (b), the issuer acts uniformly without
24 regard to the claims experience of those insured or any health status-related

1 factor relating to any participant or beneficiary covered or any new participant
2 or beneficiary who may become eligible for such coverage.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

904I0295

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1183 - 02/19/2003

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

Introduced by: Representatives Wick, Cutler, Deadrick (Thomas), Gillespie, Hennies, Madsen, McCaulley, Michels, and Smidt and Senators de Hueck and Knudson

1 FOR AN ACT ENTITLED, An Act to prohibit pyramid promotional schemes.

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

3 Section 1. For the purposes of this Act, the term, promote, means contrive, prepare,
4 establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to
5 participate in a pyramid promotional scheme.

6 Section 2. For the purposes of this Act, the term, appropriate inventory repurchase program,
7 means a program by which a plan or operation repurchases, upon request and upon commercially
8 reasonable terms, when the salesperson's business relationship with the company ends, current
9 and marketable inventory in the possession of the salesperson that was purchased by the
10 salesperson for resale. Any such plan or operation shall clearly describe the program in its
11 recruiting literature, sales manual, or contract with independent salespersons, including the
12 disclosure of any inventory which is not eligible for repurchase under the program.

13 For the purposes of this section, the term, inventory, includes both goods and services,
14 including company-produced promotional materials, sales aids, and sales kits that the plan or



1 operation requires independent salespersons to purchase.

2 The term, commercially reasonable terms, means the repurchase of current and marketable
3 inventory within twelve months from the date of purchase at not less than ninety percent of the
4 original net cost, less appropriate set-offs and legal claims, if any.

5 The term, current and marketable, excludes inventory that is no longer within its
6 commercially reasonable use or shelf-life period, that was clearly described to salespersons prior
7 to purchase as seasonal, discontinued, or special promotion products not subject to the plan or
8 operation's inventory repurchase program, or that has been used or opened.

9 Section 3. For the purposes of this Act, the term, pyramid promotional scheme, means any
10 plan or operation by which a person gives consideration for the opportunity to receive
11 compensation that is derived primarily from the introduction of other persons into the plan or
12 operation rather than from the sale and consumption of goods, services, or intangible property
13 by a participant or other persons introduced into the plan or operation. The term includes any
14 plan or operation under which the number of persons who may participate is limited either
15 expressly or by the application of conditions affecting the eligibility of a person to receive
16 compensation under the plan or operation, or any plan or operation under which a person, on
17 giving any consideration, obtains any goods, services, or intangible property in addition to the
18 right to receive compensation.

19 Section 4. For the purposes of this Act, the term, compensation, means a payment of any
20 money, thing of value, or financial benefit conferred in return for inducing another person to
21 participate in a pyramid promotional scheme.

22 Section 5. For the purposes of this Act, the term, consideration, means the payment of cash
23 or the purchase of goods, services, or intangible property. The term does not include the
24 purchase of goods or services furnished at cost to be used in making sales and not for resale, or

1 time and effort spent in pursuit of sales or recruiting activities.

2 Section 6. For the purposes of this Act, the term, inventory loading, means that the plan or
3 operation requires or encourages its independent salespersons to purchase inventory in an
4 amount, which exceeds that which the salesperson can expect to resell for ultimate consumption
5 or to consume in a reasonable time period, or both.

6 Section 7. No person may establish, promote, operate, or participate in any pyramid
7 promotional scheme. A limitation as to the number of persons who may participate or the
8 presence of additional conditions affecting eligibility for the opportunity to receive compensation
9 under the plan does not change the identity of the plan as a pyramid promotional scheme. It is
10 not a defense under this section that a person, on giving consideration, obtains goods, services,
11 or intangible property in addition to the right to receive compensation.

12 Any person who establishes or operates a pyramid promotional scheme is guilty of a Class
13 5 felony. Any person who knowingly participates in a pyramid promotional scheme is guilty of
14 a Class 1 misdemeanor.

15 Section 8. Nothing in this Act may be construed to prohibit a plan or operation, or to define
16 a plan or operation as a pyramid promotional scheme, based on the fact that participants in the
17 plan or operation give consideration in return for the right to receive compensation based upon
18 purchases of goods, services, or intangible property by participants for personal use,
19 consumption, or resale so long as the plan or operation does not promote or induce inventory
20 loading and the plan or operation implements an appropriate inventory repurchase program.

21 Section 9. The provisions of this Act do not preclude, preempt, or prohibit the attorney
22 general from proceeding against any plan or scheme or any person involved with such plan or
23 scheme under any other provision of law.

24 Section 10. If it appears to the attorney general that any person has engaged or is about to

1 engage in any act or practice constituting a violation of any provision of this Act, or any order
2 under this Act, the attorney general may do one or more of the following:

- 3 (1) Issue a cease and desist order, with or without prior hearing, against any person
4 engaged in the prohibited activities, directing such person to cease and desist from
5 further illegal activities;
- 6 (2) Bring an action in the circuit court to enjoin the acts or practices to enforce
7 compliance with this Act, or any order under this Act; or
- 8 (3) Impose by order and collect a civil penalty against any person found in an
9 administrative action to have violated any provision of this Act, or any order issued
10 under this Act, in an amount not to exceed ten thousand dollars per violation per
11 person. The attorney general may bring actions to recover penalties pursuant to this
12 subdivision in circuit court. All civil penalties received shall be deposited in the state
13 general fund.

14 Any person named in a cease and desist order issued pursuant to this Act shall be notified of
15 his or her right to file, within fifteen days after the receipt of the order, a written notice for a
16 hearing with the attorney general. If the attorney general does not receive a written request for
17 a hearing within the time specified, the cease and desist order shall be permanent and the person
18 named in the order deemed to have waived all rights to a hearing. Every such order shall state
19 its effective date and shall concisely state its intent or purpose and the grounds on which it is
20 based. Any person aggrieved by a final order issued pursuant to this Act may obtain a review of
21 the order in the circuit court pursuant to the provisions of chapter 1-26.

22 Upon a proper showing a permanent or temporary injunction, restraining order, or writ of
23 mandamus shall be granted and a receiver or conservator may be appointed for the defendant or
24 defendant's assets. In addition, upon a proper showing by the attorney general, the court may

1 enter an order of rescission, restitution, or disgorgement directed to any person who has engaged
2 in any act constituting a violation of any provision of this Act, or any order under this Act. The
3 court may not require the attorney general to post a bond. In addition to fines or penalties, the
4 attorney general shall collect costs and attorney fees.

5 Section 11. The burden of showing compliance with the provisions of this Act lies with the
6 plan, scheme, or person involved with such plan or scheme.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0707

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **HB 1191** - 02/20/2003

Introduced by: Representative McCaulley and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to reward certain eligible teachers for performance and to
2 make an appropriation therefor.

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

4 Section 1. The Legislature finds that, in order to provide the state's children with the best
5 educational opportunities possible, it is in the state's best interest to reward teachers who
6 demonstrate outstanding performance in the classroom, in addition to relying on a traditional
7 method of compensation based on education and experience.

8 Section 2. The Department of Education and Cultural Affairs shall administer a program to
9 reward certain eligible teachers in qualified school districts for performance by means of a
10 performance bonus of not more than six thousand dollars per year, but not less than one
11 thousand dollars per year.

12 Section 3. The Department of Education and Cultural Affairs may allocate only those funds
13 appropriated by the Legislature for the purposes of this Act to each qualified school district
14 according to its relative portion of the total average daily membership as defined in § 13-13-10.1.
15 Any qualified school district may access a portion of the funds for the program if the school



1 district implements a plan to reward teachers who demonstrate excellence and mastery in their
2 profession. All moneys allocated for school districts that are not qualified school districts shall
3 be redistributed to the qualified school districts on an average daily membership basis.

4 Section 4. If a qualified school district identifies a teacher who has demonstrated excellence
5 and mastery in the current school year, the qualified school district shall provide a written
6 recommendation and substantiation, along with the specific amount of the bonus to be paid, to
7 the Department of Education and Cultural Affairs after April first but before May first. The
8 qualified school district may reward individual eligible teachers, a team of eligible teachers, or
9 a group of eligible teachers on a school-wide basis. The qualified school district is limited to
10 requesting bonuses in an amount not to exceed the amount allocated for such school district.

11 Section 5. For purposes of this Act, an eligible teacher must:

- 12 (1) Exhibit excellence and mastery in both a subject area and teaching methods;
- 13 (2) Demonstrate improved student performance based on multiple criteria; and
- 14 (3) Comply with the plan developed by the qualified school district.

15 Section 6. For purposes of this Act, a qualified school district is one that meets the following
16 criteria:

- 17 (1) All the teachers in the school district are evaluated on at least an annual basis;
- 18 (2) The school board approves a plan to reward eligible teachers that is based on
19 measured criteria and developed by members of the community, administrators,
20 school board members, and teachers;
- 21 (3) The school district identifies a panel of individuals designated to select the eligible
22 teachers who will receive a reward. The panel shall include a teacher, an
23 administrator, a school board member, a student, a parent, and a member of the
24 business community;

1 (4) The school district rewards selected teachers on a discretionary basis according to the
2 plan and does not use funds from the program to reward all teachers in the school
3 district; and

4 (5) The school district rewards selected teachers without a reduction or offset in their
5 regular salaries.

6 Section 7. Each participating school district shall annually submit a plan to the Department
7 of Education and Cultural Affairs by September first. The department shall approve or
8 disapprove the plan based on the criteria in section 6 of this Act. By October first, the
9 department shall notify each school district of the status of the school district's plan and the
10 amount of funds available for this program per qualifying school district.

11 Section 8. There is hereby appropriated from the general fund the sum of one million dollars
12 (\$1,000,000), or so much thereof as may be necessary, to the Department of Education and
13 Cultural Affairs to establish for the 2003-2004 school year a pilot program for ten to fifteen
14 school districts. The department shall make the final determination as to which school districts
15 will be able to participate in the pilot program.

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

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

554I0176

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1205 - 02/21/2003

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

Introduced by: Representatives Adelstein and LaRue

1 FOR AN ACT ENTITLED, An Act to create a committee to study the issue of school district
2 consolidation and to make an appropriation therefor.

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

4 Section 1. There is hereby established a committee to study the number of school districts
5 in South Dakota and to analyze whether the present number of school districts is effective,
6 efficient, and in the best interests of the school children of South Dakota. The committee is
7 authorized to enter into a contract with a private or public entity to conduct a study of public
8 school consolidation. The public or private entity shall present the results of the study to the
9 committee for its consideration. The committee shall complete its work by November 30, 2003,
10 and present its findings to the Legislature.

11 Section 2. The committee shall consist of fifteen legislators to be appointed as follows:

12 (1) Six members of the Senate, no more than four from the same political party,
13 appointed by the president pro tempore of the Senate; and

14 (2) Nine members of the House of Representatives, no more than six from the same
15 political party, appointed by the speaker of the House of Representatives.



1 Section 3. There is hereby appropriated from the general fund the sum of one hundred
2 twenty-five thousand dollars (\$125,000), or so much thereof as may be necessary, to the
3 Legislative Research Council for the purpose of contracting for a study to be conducted on
4 behalf of the committee and for paying the expenses of the members of the committee.

5 Section 4. The Legislative Research Council shall approve vouchers and the state auditor
6 shall draw warrants to pay expenditures authorized by this Act.

7 Section 5. Any amounts appropriated in this Act not lawfully expended or obligated by
8 June 30, 2004, shall revert in accordance with § 4-8-21.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

273I0366

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1208 - 02/21/2003

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

Introduced by: Representatives Garnos and McCaulley and Senator Napoli

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the general occupancy
2 tax.

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

4 Section 1. That § 9-55-7 be amended to read as follows:

5 9-55-7. Upon receiving a recommendation from the business improvement board, the
6 governing body may create one or more business improvement districts by adopting a resolution
7 of intent to establish a district or districts. The resolution shall contain the following information:

8 (1) A description of the boundaries of any proposed district;

9 (2) The time and place of a hearing to be held by the governing body to consider
10 establishment of a district or districts;

11 (3) The proposed public facilities and improvements to be made or maintained within any
12 such district; and

13 (4) The proposed or estimated costs for improvements, facilities, and activities within any
14 district; and the method by which the revenue shall be raised. If a special assessment
15 is proposed, the resolution also shall state the proposed method of assessment.



1 The notice of intent shall recite that the method of raising revenue shall be fair and equitable.
2 In the use of a general occupation tax, the tax shall be based primarily on the square footage of
3 the owner's and user's place of business. However, if the public improvement consists of
4 convention facilities, the general occupation tax may be a transient occupancy tax on rented hotel
5 and motel rooms and units offered and let for overnight occupancies of less than thirty
6 continuous calendar days, which tax may not exceed two dollars per occupied room per night.
7 In the use of a special assessment, the assessment shall be based upon the special benefit to the
8 property within the district.

9 Section 2. That § 9-55-2 be amended to read as follows:

10 9-55-2. Any municipality ~~of the first and second class~~ may impose a special assessment upon
11 the property within a business improvement district in the municipality or a general business
12 license and occupation tax on businesses and users of space within a business improvement
13 district or both.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

814I0734

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1236** -
02/21/2003

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

Introduced by: Representative Williamson and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to allow for the exclusion of certain health insurance
2 coverages as a condition of procuring individual health insurance.

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

4 Section 1. That § 58-17-14 be amended to read as follows:

5 58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy,
6 including the endorsements and the attached papers, if any, constitutes the entire contract of
7 insurance. No change in this policy is valid until approved by an executive officer of the
8 insurance company and unless such approval is endorsed or attached to this policy. No insurance
9 producer has authority to change this policy or to waive any of its provisions." Any rider,
10 endorsement, or application added to a policy after the date of issue or at reinstatement or
11 renewal which reduces or eliminates benefits or coverage in the policy requires signed acceptance
12 by the policyholder. After the date of policy issue, any rider or endorsement which increases
13 benefits or coverage with an accompanying increase in premium during the policy term must be
14 agreed to in writing signed by the insured, unless the increased benefits or coverage is required



1 by law. Coverage as required by § 58-17-98 may be reduced or eliminated by a rider to, or an
2 endorsement on, a new policy if the insurer would reject the application for the policy without
3 the rider or endorsement based upon the applicant's preexisting condition of the type covered by
4 § 58-17-98.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

572I0727

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1270** - 02/21/2003

Introduced by: Representative Peterson (Bill) and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to increase the tax on alcoholic beverages, to revise the
2 distribution of revenue, and to declare an emergency.

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

4 Section 1. That § 35-5-3 be amended to read as follows:

5 35-5-3. The occupational tax based on the quantities of different kinds of alcoholic beverages
6 is:

- 7 (1) Malt beverages, ~~eight dollars and fifty~~ thirteen dollars and nine cents per barrel of
8 thirty-one gallons, or a prorata portion thereof in accordance with the size of the bulk
9 container;
- 10 (2) All light wines and diluted beverages (except sparkling wines and cider) containing
11 alcohol by weight to the extent of more than 3.2 percent and not more than fourteen
12 percent, ~~ninety-three~~ one dollar and forty-three cents per gallon;
- 13 (3) All wines (except sparkling wines) containing alcohol by weight to the extent of more
14 than fourteen percent and not more than twenty percent, ~~one dollar and forty-five~~ two
15 dollars and twenty-three cents per gallon;



1 (4) All wines (except sparkling wines) containing alcohol by weight to the extent of more
2 than twenty percent and not more than twenty-four percent, all natural sparkling
3 wines containing alcohol and all artificial sparkling wines containing alcohol, ~~two~~
4 ~~dollars and seven~~ three dollars and nineteen cents per gallon;

5 (4A) All cider containing alcohol by weight not more than ten percent, ~~twenty-eight~~ forty-
6 three cents per gallon;

7 (5) All other alcoholic beverages not otherwise specified, ~~three dollars and ninety-three~~
8 six dollars and five cents per gallon.

9 For the purposes of this section, diluted beverages are alcoholic beverages prepared from the
10 admixture of spirits or wine with water, dairy products, fruit juices, or vegetable juices, to which
11 may be added natural flavors, artificial flavors, sweetening agents, or food additives to produce
12 a beverage distinct and unique from the spirits or wine. In no case does the term, diluted
13 beverages, include beverages which contain in excess of twelve percent alcohol by weight.

14 Section 2. That chapter 35-5 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Sixteen percent of all of the revenues deposited in the alcoholic beverage fund shall revert
17 to the counties. Each county's share shall be determined by the ratio of the population that each
18 county has to the total population of all the counties sharing in the receipts from the occupational
19 tax. The Department of Revenue shall distribute the revenue by November first, February first,
20 May first, and August first, of each year to the county treasurer. The funds received by each
21 county pursuant to this section shall be deposited in a special law enforcement and criminal
22 justice fund. The funds shall be used only for alcohol abuse prevention and diversion programs,
23 domestic violence programs, jails, detoxification, law enforcement, juvenile justice programs,
24 attorney fees, court expenses, and other criminal justice expenses. The board of county

1 commissioners shall, by resolution, establish a means of distributing the revenue among the
2 county law enforcement, juvenile justice, and other qualifying agencies within the county.

3 Section 3. That § 35-5-22 be amended to read as follows:

4 35-5-22. ~~Twenty-five~~ Twenty percent of all of the revenues deposited in the alcoholic
5 beverage fund shall revert to the municipalities. The share of each municipality of ~~such~~ the fund
6 shall be determined by the ratio the population of ~~such~~ that each municipality has to the total
7 population of all the municipalities sharing in the receipts from ~~such~~ the occupational tax. The
8 Department of Revenue shall ~~make such reversion by remitting not later than~~ distribute the
9 revenue by November first, February first, May first, and August first, of each year to the finance
10 officer of each ~~such~~ municipality ~~its share of such fund, and the amount so received by such.~~ The
11 revenue received by each municipality pursuant to this section shall be deposited in its general
12 fund.

13 Section 4. That § 35-5-28 be amended to read as follows:

14 35-5-28. After determination is made of the necessary reserve to provide for the reversions
15 to municipalities and counties in § 35-5-22 and section 2 of this Act, the ~~balances~~ balance
16 remaining may be transferred to the general fund.

17 Section 5. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
19 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

292I0733

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1277** -
02/21/2003

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

Introduced by: Representatives Van Etten, Christensen, Craddock, Hunhoff, Kraus, McCoy, Miles, and Rave and Senators Brown and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to create a pharmaceutical prior authorization program for
2 eligible individuals receiving medical assistance pursuant to chapter 28-6.

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

4 Section 1. The Legislature recognizes that outpatient prescription drugs are an essential
5 component of patient care and, as a health benefits payer under the state's medical assistance
6 program pursuant to chapter 28-6, the Legislature directs the Department of Social Services to
7 establish a prior authorization program to ensure that beneficiaries have access to medically
8 necessary medicines in a clinically appropriate and cost-effective manner.

9 Section 2. A Medicaid Pharmaceutical and Therapeutics Committee is established within the
10 Department of Social Services for the purpose of developing a pharmaceutical prior authorization
11 program. The Medicaid Pharmaceutical and Therapeutics Committee shall consist of ten members
12 appointed by the Governor. Five members shall be physicians licensed under chapter 36-4 and five
13 members shall be pharmacists licensed under chapter 36-11. The members shall be appointed to
14 serve for terms of three years. Members may be appointed to more than one term. The department



1 shall serve as staff for the committee. The Governor shall ensure that at least some of the
2 members of the Medicaid Pharmaceutical and Therapeutics Committee represent medicaid
3 participating physicians and pharmacies serving all segments of the medicaid population, and have
4 experience in either developing or practicing under a preferred drug formulary. Committee
5 members shall select a chair and a vice chair each year from the committee membership.

6 Section 3. The Medicaid Pharmaceutical and Therapeutics Committee shall meet at least three
7 times each year in person and, in addition, the committee may meet as needed via teleconference
8 or electronically. The chair shall arrange for meetings and the Department of Social Services shall
9 mail out agendas and record committee minutes. Any decision of the committee requires an
10 affirmative majority vote of the committee members. Any agenda item shall be requested thirty
11 days prior to the scheduled committee meeting at which it will be heard. Any person not a
12 member of the committee may attend a committee meeting at the discretion of the chair. Each
13 member of the committee may receive per diem compensation and allowable expense
14 reimbursement pursuant to § 4-7-10.4.

15 Section 4. The Department of Social Services shall give notice of its intent to propose prior
16 authorization requirements for prescription drugs and hold a public meeting regarding whether
17 a certain drug or class of drugs shall require prior authorization. The department shall provide
18 notice of the meeting at least thirty days prior to the meeting. Any interested party may provide
19 information or recommendations, or both, related to the prior authorization of a drug.

20 Section 5. The Medicaid Pharmaceutical and Therapeutics Committee shall develop its
21 recommendations for the prior authorization program by considering the clinical efficacy, safety,
22 and cost-effectiveness of a product.

23 Section 6. The Medicaid Pharmaceutical and Therapeutics Committee shall:

24 (1) Analyze and consider the recommendations of the interested parties and the potential

1 impact of a decision to require prior authorization of a drug on the clinical care likely
2 to be received by individuals covered under chapter 28-6;

- 3 (2) Make recommendations to the Department of Social Services for the establishment and
4 maintenance of an outpatient prescription drug prior authorization program; and
- 5 (3) Review on at least an annual basis whether drugs placed on prior authorization are to
6 remain on prior authorization.

7 The department may accept or reject the recommendations provided by the committee and
8 retains the authority to require prior authorization. The department shall post the list of drugs
9 requiring prior authorization, together with any limits on coverage, on the department's website.

10 Section 7. The prior authorization program shall meet the following conditions:

- 11 (1) The program shall provide telephone, facsimile, or other electronically transmitted
12 approval or denial within twenty-four hours after receipt of the prior authorization
13 request;
- 14 (2) In an emergency situation, including a situation in which a response to a prior
15 authorization request is unavailable, a seventy-two hour supply of the prescribed drug
16 shall be dispensed and paid for by the medical assistance program or, at the discretion
17 of the department, a supply greater than seventy-two hours that will assure a minimum
18 effective duration of therapy for an acute intervention;
- 19 (3) Authorization shall be granted if the drug is prescribed for a medically accepted use
20 supported by either the compendia, approved product labeling, or peer-reviewed
21 literature unless there is a therapeutically equivalent drug that is available without prior
22 authorization; and
- 23 (4) The department shall consult with prescribers to develop a streamlined process for the
24 prescriber to furnish any documentation required to support a prior authorization

1 request, including the name, title, address, and telephone number of the prescriber
2 making the request, date of the request, the product name of the requested drug, a
3 description of the circumstances and basis for the request, and whether the request is
4 an emergency.

5 Section 8. Any policies or procedures regarding the prior authorization program adopted by
6 the Department of Social Services pursuant to this Act are exempt from the Administrative
7 Procedures Act established in chapter 1-26.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

372I0528

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1279 - 02/21/2003

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

Introduced by: Representatives Peterson (Jim), Begalka, Burg, Elliott, Hargens, and Sigdestad and Senators Symens, Dennert, Diedrich (Larry), and Duxbury

1 FOR AN ACT ENTITLED, An Act to define biodiesel blend fuels.

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

3 Section 1. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read
4 as follows:

5 "Biodiesel blend," a blended special fuel containing a minimum of two percent by volume of
6 biodiesel. Biodiesel means a renewable, biodegradable, mono alkyl ester combustible liquid fuel
7 that is derived from agricultural plant oils or animal fats and that meets American Society For
8 Testing and Materials Specification D 6751-02 for Biodiesel Fuel (B100) Blend Stock for
9 Distillate Fuels.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0766

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1281** - 02/21/2003

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

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

1 FOR AN ACT ENTITLED, An Act to revise certain county zoning laws.

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

3 Section 1. That § 11-2-49 be amended to read as follows:

4 11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the
5 appointment of a board of adjustment, or for the planning and zoning commission to act as a
6 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
7 this chapter, shall provide that the board of adjustment may, ~~in appropriate cases and subject to~~
8 ~~appropriate conditions and safeguards, grant variances to the terms of the ordinance~~ approve
9 administrative actions, remedies, and procedures as authorized by § 11-2-53.

10 Section 2. Section 2. That § 11-2-53 be amended to read as follows:

11 11-2-53. The board of adjustment may:

12 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
13 decision, or determination made by an administrative official in the enforcement of this
14 chapter or of any ordinance adopted pursuant to this chapter; ~~and~~

15 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as



1 will not be contrary to the public interest, if, owing to special conditions, a literal
2 enforcement of the provisions of the ordinance will result in unnecessary hardship and
3 so that the spirit of the ordinance is observed and substantial justice done; and

4 (3) Designate certain types of developments and certain land development activities as
5 conditional uses under zoning regulations. Conditional uses may be approved upon a
6 showing by an applicant that standards and criteria stated in the ordinance will be met.
7 Such standards and criteria shall include both general requirements for all conditional
8 uses and, insofar as practicable, requirements specific to each designated conditional
9 use. A permit issued for a dairy or other animal feeding operation in compliance with
10 such standards, including a permit for future expansion, shall be a vested compensable
11 property right under the laws of South Dakota but may be revoked for good cause.

12 Section 3. That § 11-2-58 be amended to read as follows:

13 11-2-58. In exercising the powers mentioned in § 11-2-53, ~~the board of adjustment may, in~~
14 ~~conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify~~
15 ~~the order, requirement, decision, or determination appealed from and may make such order,~~
16 ~~requirement, decision, or determination as ought to be made, and to that end has all the powers~~
17 ~~of the officer from whom the appeal is taken~~ all decisions of the board of adjustment to grant
18 variances or conditional uses or in hearing appeals from any administrative order, requirement,
19 decision, or determination may be appealed to the board of county commissioners in accordance
20 with the county ordinance, and any final decision of the board of adjustment or county
21 commission shall be deemed a final administrative decision not subject to referendum or review,
22 except that any aggrieved person or legal entity shall have the right to appeal as allowed in § 11-
23 2-61.

24 Section 4. That § 11-2-59 be amended to read as follows:

1 11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is
2 necessary to reverse any order, requirement, decision, or determination of any such administrative
3 official, or to decide in favor of the applicant on any matter upon which it is required to pass
4 under any such ordinance, or to effect any variation or conditional use in the ordinance.

5 Section 5. That § 11-2-60 be amended to read as follows:

6 11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
7 county commissioners having adopted and in effect a zoning ordinance may act as and perform
8 all the duties and exercise the powers of the board of adjustment. The chair of the board of county
9 commissioners is chair of the board of adjustment as so composed. The concurring vote of at least
10 two-thirds of the members of the board as so composed is necessary to reverse any order,
11 requirement, decision, or determination of any administrative official, or to decide in favor of the
12 appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect
13 any variation or conditional use in the ordinance.

14 Section 6. That § 11-2-61 be amended to read as follows:

15 11-2-61. Any person or ~~persons, jointly or severally, aggrieved by any decision of the board~~
16 ~~of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county; legal~~
17 entity aggrieved by a decision of the board of adjustment or board of county commissioners may
18 present to a court of record a petition duly verified, setting forth that the decision is illegal, in
19 whole or in part, specifying the grounds of the illegality. The petition shall be presented to the
20 court within thirty days after the filing of the decision in the office of the board of adjustment.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0207

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 23** - 02/13/2003

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

1 FOR AN ACT ENTITLED, An Act to grant counties greater authority to prohibit the use of
2 fireworks during periods of extreme fire danger.

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

4 Section 1. That § 34-37-19 be amended to read as follows:

5 34-37-19. Any county may, by resolution, regulate or prohibit the use of fireworks, other than
6 fountains, ground spinners, toy novelties, sparklers, and smoke items, outside the boundaries of
7 any municipality in those areas where the fire danger, as determined by use of the rangeland fire
8 index as established by rule promulgated pursuant to chapter 1-26, by the secretary of agriculture
9 ~~or his designee~~, has reached the extreme category in that county ~~for two consecutive days~~ during
10 the period from June twentieth ~~through June twenty-seventh~~ to July fifth, inclusive. During such
11 period, the county's action is suspended if the rangeland fire index falls below the very high
12 category and shall again become effective if the rangeland fire index reaches the extreme category.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0290

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 29** - 01/31/2003

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct an addition
2 to the Darold "Dud" King Physical Education Center at the South Dakota School of Mines
3 and Technology and to make an appropriation therefor.

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

5 Section 1. The South Dakota Board of Regents may contract for the construction,
6 completion, finishing, equipping, and maintaining of an addition to the Darold "Dud" King
7 Physical Education Center at the South Dakota School of Mines and Technology in Rapid City,
8 including utilities, furnishings, architectural and engineering services, asbestos abatement, site
9 preparation, and the construction of sidewalks and driveways and landscaping the grounds of that
10 facility at the estimated cost of five hundred ninety thousand three hundred dollars (\$590,300).

11 Section 2. Funding for the project authorized in section 1 of this Act is to be provided from
12 gifts and grants to the South Dakota School of Mines and Technology for this purpose. The
13 Board of Regents may accept any gifts for the purposes authorized by this Act, and all such
14 moneys so contributed are hereby appropriated to the Board of Regents.

15 Section 3. The design and construction of the facilities approved by this Act shall be under



1 the general supervision of the Bureau of Administration as provided in chapter 5-14.

2 Section 4. The commissioner of the Bureau of Administration and the executive director of
3 the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay
4 expenditures authorized by this Act.

5 Section 5. No general fund dollars may be used for maintenance and repair of the facility
6 authorized by this Act, nor may the facility be added to any list of projects receiving funding
7 support from the statewide maintenance and repair fund created in § 5-14-30.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0222

SENATE ENGROSSED NO. **SB 34** - 01/30/2003

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding temporary vendors
2 maintaining records for sales tax collection purposes and to provide a penalty for failure to
3 comply with certain record keeping requirements.

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

5 Section 1. That § 10-45-85 be amended to read as follows:

6 10-45-85. A temporary vendor shall maintain, for a minimum of three years, inventory
7 records, including a beginning inventory of merchandise. ~~A temporary~~ The vendor shall provide
8 ~~an inventory list upon request~~ such records for immediate inspection and review to any agent or
9 representative of the Department of Revenue upon request. Failure to comply with this section
10 is a Class 1 misdemeanor.

11 Section 2. That § 10-45-86 be amended to read as follows:

12 10-45-86. A temporary vendor ~~licensed to conduct business in this state~~ shall maintain daily
13 sales receipts, such as cash register tapes, hand written receipts, credit card receipts, or other
14 receipts, for a minimum of ~~one year~~. ~~The receipts shall be presented;~~ three years. The vendor shall
15 provide such receipts for immediate inspection; and review to any agent or representative of the
16 Department of Revenue upon request. Failure to comply with this section is a Class 1



1 misdemeanor.

2 Section 3. That § 10-45-87 be amended to read as follows:

3 10-45-87. A temporary vendor shall, ~~upon request of an agent or representative of the~~
4 ~~Department of Revenue, supply~~ maintain for a minimum of three years, a complete list of
5 suppliers, including names and addresses. The vendor shall provide for immediate inspection and
6 review of such list to any agent or representative of the Department of Revenue upon request.
7 Failure to comply with this section is a Class 1 misdemeanor.

8 Section 4. That § 10-45-88 be amended to read as follows:

9 10-45-88. A temporary vendor operating in this state may be subjected to reviews and audits
10 ~~without notice and shall have all records available at all times for review. The records that shall~~
11 ~~be available at all times include sales receipts, credit card receipts, cash register tapes, inventory~~
12 ~~sheets, and invoices from suppliers.~~

13 Section 5. That § 10-45-89 be amended to read as follows:

14 10-45-89. ~~Failure to maintain records required by~~ The secretary shall revoke the temporary
15 license of any person that fails to comply with the provisions of §§ 10-45-85 to 10-45-89,
16 ~~inclusive, is a Class 1 misdemeanor and shall result in the immediate revocation of the temporary~~
17 ~~license.~~

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0332

SENATE ENGROSSED NO. **SB 41** - 02/05/2003

Introduced by: The Committee on Commerce at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a no solicitation calls list for
2 persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation
3 account, and to establish certain fees and civil penalties.

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

5 Section 1. That § 49-31-1 be amended to read as follows:

6 49-31-1. Terms used in this chapter mean:

- 7 (1) "Addressable," enabling users to connect and communicate with a specific party easily
8 and securely on a dial-up, addressable basis;
- 9 (2) "Available," ensuring that network services are available if the user requires them, even
10 at times of peak usage; designed to be a nonblocking network, minimizing network
11 contention;
- 12 (3) "Broadband network," the broadband network extends the range of fully switched,
13 addressable, robust transport services over the fiber network which increase in
14 multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08
15 Mbps);



- 1 (4) "Centron and centron-like services," services which provide custom switching features
2 which include distributive dial tone, select number screening, toll restriction and
3 screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting
4 and screening;
- 5 (5) "Commission," the Public Utilities Commission;
- 6 (6) "Common carrier," anyone who offers telecommunications services to the public;
- 7 (7) "Eligible telecommunications carrier," a local exchange carrier designated by the
8 commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to receive
9 universal service support funding;
- 10 (8) "Feature rich," providing the specific features and functionality required by users'
11 voice, data, video, graphics, imaging, and multimedia applications; functionally beyond
12 mere transport;
- 13 (8A) "Financial institution," any financial institution as defined in 15 U.S.C. § 6827 as of
14 January 1, 2003, including any financial institution affiliate that controls, is controlled
15 by, or is under common control with the financial institution;
- 16 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors and
17 assigns, which was providing local exchange service within a defined service area in
18 this state on or before February 8, 1996;
- 19 (10) "Interexchange telecommunications service," telecommunications service between
20 points in two or more exchanges;
- 21 (11) "LATA," a local access and transport area;
- 22 (12) "Local exchange area," a any geographic area established by a local exchange carrier
23 as filed with or approved by the commission for the administration of local
24 telecommunications service which may consist of one or more central offices or wire

1 centers together with associated facilities used in furnishing telecommunications
2 service in that area;

3 (13) "Local exchange service," the access to and transmission of two-way switched
4 telecommunications service within a local exchange area;

5 (14) "Narrowband network," a fully switched digital network covering the transport range
6 from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B
7 (Bearer) channels and a 16 Kbps signaling D (Delta) channel;

8 (15) "New products and services," any new product or service introduced after July 1,
9 1988, which is not functionally required to provide local exchange service.
10 Repackaging of any product or service which is fully competitive with any service
11 regulated as emerging competitive or noncompetitive is not considered a new product
12 or service;

13 (16) "Optional service," a any limited or discretionary service offered by a
14 telecommunications company which is not functionally required for the provision of
15 noncompetitive services and which the customer has the option to purchase;

16 (17) "Private," ensuring confidentiality and integrity of network transport of messages
17 without dependency on specialized customer premise security devices;

18 (18) "Rate of return regulation," the procedure used by the commission to approve the
19 charge for a service which gives due consideration to the public need for adequate,
20 efficient, and reasonable service and to the need of the public utility for revenues
21 sufficient to enable it to meet its total current cost of furnishing such service, including
22 taxes and interest, and including adequate provision for depreciation of its utility
23 property used and necessary in rendering service to the public, and to earn a fair and
24 reasonable return upon the value of its property;

- 1 (19) "Register," a list of names and telephone numbers of residential telephone subscribers
2 who have properly enrolled to prevent unsolicited telephone calls;
- 3 (20) "Residential telephone subscriber," any person residing in the state who has residential
4 telephone service, including cellular service, personal communications service, and
5 wireless local loop service, primarily used for personal use;
- 6 (21) "Robust," easily and economically sustaining the rigors of growth and extensive public
7 use;
- 8 ~~(20)~~(22) "Rural telephone company," a any local exchange company as defined in 47
9 U.S.C. § 153(37) as of January 1, 1998;
- 10 ~~(21)~~(23) "Secure," physically precluding unwanted access to network and information;
- 11 ~~(22)~~(24) "Service area," a geographic area established by the commission for the purpose
12 of determining universal service obligations and support mechanisms. For a rural
13 telephone company, the service area is the company's study area or any other
14 area designated jointly by the commission and the Federal Communications
15 Commission pursuant to 47 U.S.C. § 214(e)(5) as of January 1, 1998;
- 16 ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and
17 protocols of generally accepted standards setting bodies;
- 18 ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited to
19 specific application requirements;
- 20 ~~(25)~~(27) "Switched access," ~~an~~ any exchange access service purchased for the origination
21 and termination of interexchange telecommunications services which includes
22 central office switching and signaling, local loop facility, or local transport;
- 23 ~~(26)~~(28) "Telecommunications company," any person or municipal corporation owning,
24 operating, reselling, managing, or controlling in whole or in part, any

1 telecommunications line, system, or exchange in this state, directly or indirectly,
2 for public use. For purposes of this definition the term, for public use, means for
3 the use of the public in general or for a specific segment of the public, or which
4 connects to the public in general or for a specific segment of the public, or
5 which connects to the public switched network for access to any
6 telecommunications service;

7 ~~(27)~~(29) "Telecommunications service," the transmission of signs, signals, writings,
8 images, sounds, messages, data, or other information of any nature by wire,
9 radio, lightwaves, electromagnetic means, or other similar means. It does not
10 include the provision of terminal equipment used to originate or terminate such
11 service, broadcast transmissions by radio, television, and satellite stations
12 regulated by the Federal Communications Commission and one-way cable
13 television service;

14 (30) "Telephone solicitation call," any call made to a South Dakota consumer by a
15 telephone solicitor, originating from South Dakota or elsewhere, for the purpose of
16 soliciting a sale of any consumer goods or services to the person called, for the
17 purpose of soliciting an extension of credit for consumer goods or services to the
18 person called, or for the purpose of obtaining information that may be used for the
19 direct solicitation of a sale of consumer goods or services to the person called or an
20 extension of credit for such purposes;

21 (31) "Telephone solicitor," any person or organization who individually or through
22 salespersons, makes or causes to be made a telephone solicitation call. This term does
23 not include any not-for-profit or charitable organization exempt from federal income
24 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of

1 January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

2 (32) "Unsolicited telephone call," any telephone solicitation call other than a call made:

3 (a) In response to an express request of the person called;

4 (b) Primarily in connection with an existing debt or contract, payment or
5 performance of which has not been completed at the time of such call;

6 (c) To any person with whom the telephone solicitor, or any business or financial
7 institution on whose behalf the telephone call is being made has an established
8 business relationship or a business relationship that existed within the
9 immediately preceding twelve months; or

10 (d) To any person for the purpose of obtaining information and establishing a date
11 and time for an appointment with the telephone solicitor which will take place
12 at the solicitor's place of business or the consumer's home and the call is not
13 made by an automated telephone dialing system. For purposes of this
14 subsection, an automated telephone dialing system is any automatic terminal
15 equipment that stores or produces numbers to be called randomly or
16 sequentially;

17 ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully
18 switched, digital, addressable information transport from the 144 Kbps to the
19 DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and
20 6.312 Mbps, respectively.

21 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that
24 comply with the provisions of this Act for obtaining a list of persons who do not wish to receive

1 unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor
2 who makes unsolicited telephone calls may call any number listed on the register. The commission
3 may promulgate rules, pursuant to chapter 1-26, concerning procedures and requirements
4 regarding the implementation of a register, setting of fees for purchase of the register, form of the
5 application, requirements for acquiring a copy of the register, requirements for enrollment on and
6 removal from the register, procedures for maintaining a register, setting of fees to enroll or renew
7 enrollment on the register, procedures for operating the register, standards concerning the use of
8 the register, and application of the civil fines.

9 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The commission shall maintain a register of names and telephone numbers of each South
12 Dakota residential telephone subscriber who has elected not to receive unsolicited telephone calls.

13 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
16 telephone subscribers shall obtain a copy of the register from the commission. The register shall
17 be updated not more often than quarterly. Each telephone solicitor shall submit an application to
18 the commission to obtain a copy of the register. Any telephone solicitor desiring to make an
19 unsolicited telephone call shall update his or her copy of the register within thirty days after the
20 receipt of the register.

21 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 There is hereby established in the state treasury, the telephone solicitation account. Unless
24 otherwise provided by law, this fund shall consist of all fees and fines imposed pursuant to this

1 Act designated for deposit in the fund. The fund shall be maintained separately and administered
2 by the commission to implement and administer provisions of this Act. Any interest earned on
3 money in the fund shall be deposited in the fund. Expenditures from the fund shall be budgeted
4 through the normal budget process. Unexpended funds and interest shall remain in the fund until
5 appropriated by the Legislature. Any expenditure from the fund shall be disbursed on warrants
6 drawn by the state auditor and shall be supported by vouchers approved by the commission.

7 Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
10 telephone subscribers shall pay to the commission an annual fee of not more than five hundred
11 dollars. Fees collected under this section shall be credited to the telephone solicitation account.

12 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The commission shall establish or provide for the operation of a register. The register may be
15 operated by the commission or by another entity under contract with the commission. A
16 residential telephone subscriber may enroll on the register in accordance with procedures
17 prescribed by the commission. A subscriber shall pay to the commission a fee, set pursuant to
18 section 2 of this Act, of not more than five dollars to be listed on the register. Fees collected
19 under this section shall be credited to the telephone solicitation account established in section 5
20 of this Act.

21 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Notwithstanding the provisions of chapter 49-1A, the commission may use amounts deposited
24 in the gross receipts tax fund to implement this Act. All funds used shall be returned to the gross

1 receipts tax fund within three years of implementation of the register.

2 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any telecommunications company that provides local exchange service shall inform its
5 customers of the provisions of this Act by publication of the notice in the consumer pages of its
6 telephone directories.

7 Section 10. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any person who violates this Act or any rules promulgated pursuant to this Act is subject to
10 a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The
11 commission may impose a civil fine of not more than five thousand dollars for each offense. In
12 determining the amount of the penalty upon finding a violation, or the amount of a compromise
13 settlement, the commission shall consider the appropriateness of the penalty to the size of the
14 business of the person charged, prior offenses and compliance history, and the good faith of the
15 person charged in attempting to achieve compliance. Any telephone solicitation made to a person
16 whose name first appears on the register is not a violation of this Act if the solicitation is made
17 within thirty days of the receipt of the register. Any penalty collected pursuant to this section shall
18 be credited to the telephone solicitation account established pursuant to section 5 of this Act.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0554

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 80** - 01/31/2003

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

1 FOR AN ACT ENTITLED, An Act to establish the Richard Hagen-Minerva Harvey memorial
2 scholarship program and to make an appropriation therefor.

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

4 Section 1. Pursuant to the donation and intent of Minerva I. Harvey, deceased August 25,
5 1999, as expressed by Article 2 of her Last Will and Testament and presented for probate in the
6 State of New Jersey, Gloucester County Surrogate's Court, there is hereby established within the
7 Department of Education and Cultural Affairs the Richard Hagen-Minerva Harvey memorial
8 scholarship program.

9 Section 2. The Richard Hagen-Minerva Harvey memorial scholarship program shall be
10 administered by a five-member board named the Richard Hagen-Minerva Harvey Memorial
11 Scholarship Board which is hereby established. The members shall be appointed by the Governor
12 for a term of five years, except that the initial appointments shall be for periods of one, two, three,
13 four, and five years. The Governor shall appoint one member as the temporary chair of the board.
14 The board shall elect officers at its first meeting. The board shall meet no more than four times
15 a year, not including telephonic conferences, as may be necessary to complete its responsibilities



1 as prescribed by this Act. No more than three members of the board may be of the same political
2 party. At least two members of the board shall be enrolled members of a tribe located in South
3 Dakota. A majority of the board shall be present either personally or telephonically to constitute
4 a quorum.

5 Section 3. In order to be eligible for a Richard Hagen-Minerva Harvey memorial scholarship
6 award, a student shall:

- 7 (1) Have graduated from a South Dakota accredited high school;
- 8 (2) Have met high school graduation requirements established by rules promulgated
9 pursuant to chapter 1-26 by the Department of Education and Cultural Affairs;
- 10 (3) Attend a public or nonpublic accredited university, college, or technical institute
11 located in South Dakota;
- 12 (4) Apply for a Richard Hagen-Minerva Harvey memorial scholarship within one year after
13 graduating from high school or within one year of the student's release from active
14 duty with an active component of the armed forces if the release is within five years of
15 the student's graduation from high school; and
- 16 (5) Be an enrolled member of a tribe whose reservation is located in whole or part in
17 South Dakota.

18 Section 4. Scholarship award payments shall be made to the institution at the beginning of the
19 fall or spring semester on behalf of the eligible student who has received a Richard Hagen-
20 Minerva Harvey memorial scholarship. The amount of the award is as follows:

- 21 (1) Not less than one thousand dollars for the first year of attendance;
- 22 (2) Not less than one thousand dollars for the second year of attendance;
- 23 (3) Not less than one thousand five hundred dollars for the third year of attendance; and
- 24 (4) Not less than two thousand five hundred dollars for the fourth year of attendance.

1 Section 5. The board may award no more than seven scholarships per year.

2 Section 6. In order to maintain eligibility, a student who has been awarded a Richard Hagen-
3 Minerva Harvey memorial scholarship shall:

- 4 (1) Maintain a cumulative 2.5 grade point average on a 4.0 grade point scale;
- 5 (2) Be continuously enrolled for the fall and spring semesters in a public or nonpublic
6 accredited university, college, or technical institution; and
- 7 (3) Complete the equivalent of at least fourteen credit hours of instruction per semester.

8 Section 7. If factors beyond the control of a student who has been awarded a Richard Hagen-
9 Minerva Harvey memorial scholarship prevent the student from meeting the requirements in
10 section 6 of this Act, the board may temporarily waive the requirements of section 6 of this Act
11 as eligibility criteria.

12 Section 8. The Department of Education and Cultural Affairs shall provide necessary support
13 services to the board created by this Act.

14 Section 9. There is hereby continuously appropriated to the Department of Education and
15 Cultural Affairs any other fund expenditure authority necessary for the department to accept and
16 expend money the department may receive from any source for the purpose for providing a
17 Richard Hagen-Minerva Harvey memorial scholarship.

18 Section 10. The secretary of the Department of Education and Cultural Affairs shall approve
19 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

20 Section 11. The Department of Education and Cultural Affairs may promulgate rules pursuant
21 to this Act and chapter 1-26 to accept applications for a Richard Hagen-Minerva Harvey
22 memorial scholarship, establish criteria to award a Richard Hagen-Minerva Harvey memorial
23 scholarship, and to maintain eligibility for a Richard Hagen-Minerva Harvey memorial scholarship.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

384I0173

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 136 - 02/06/2003

Introduced by: Senators Bogue, Dennert, and Kelly and Representatives Deadrick (Thomas)
and Gillespie

1 FOR AN ACT ENTITLED, An Act to revise certain format standards for real estate documents
2 filed at the register of deeds.

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

4 Section 1. That § 43-28-23 be amended to read as follows:

5 43-28-23. Any real estate document recorded with the register of deeds, except for plats,
6 shall:

7 (1) Consist of one or more individual sheets measuring no larger than 8.5 inches by 14
8 inches. ~~Beginning on July 1, 2004, the document shall consist of one or more individual~~
9 ~~sheets measuring no larger~~ and no smaller than 8.5 inches by 11 inches. No sheet may
10 be attached or affixed to a page that covers up any information or printed material on
11 the document. Any continuous document or any document sheets that are stapled,
12 glued, or bound together are subject to the additional fee established pursuant to
13 subdivision 7-9-15(1);

14 (2) Be printed, typewritten, or computer generated in black ink and the print type of the
15 document may not be smaller than 10-point type;



- 1 (3) Be on white paper of not less than twenty pound weight;
- 2 (4) Contain a blank space at the top measuring no less than three inches as measured from
3 the top of the first page. The right half shall be used by the register of deeds for
4 recording information and the left half shall be used ~~to designate~~ by the document
5 preparer as required pursuant to § 7-9-1 and may include a return designation and
6 address. ~~Any subsequent page~~ All other margins shall have be a minimum of a one inch
7 ~~margin on each side;~~
- 8 (5) Have a title prominently displayed at the top of the first page below the blank space
9 referred to in subdivision (4) of this section;
- 10 (6) Be sufficiently legible to reproduce a readable copy using the register of deed's current
11 method of reproduction; and
- 12 (7) Conform to the standards provided in ~~subdivision (1)~~ of this section or be subject to
13 the increased fees as provided in § 7-9-15.

14 However, the register of deeds may not charge an increased fee for any document that has a
15 seal or stamp in a margin. Any affidavit of publication, corner record, survey, certified court or
16 governmental document, and UCC form recorded against real estate is exempt from the
17 provisions of this section. Any plat or survey and certified vital record attached to documents is
18 also exempt from the provisions of this section.

19 The provisions of this section do not apply to any real estate document prepared and executed
20 prior to July 1, 2002.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

444I0525

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 145** - 02/06/2003

Introduced by: Senators Sutton (Duane), Dennert, Duxbury, Moore, Sutton (Dan), and Symens and Representatives Burg, Elliott, Frost, Hundstad, and Novstrup

1 FOR AN ACT ENTITLED, An Act to revise certain Central Plains Water Development District
2 boundaries.

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

4 Section 1. That § 46A-3A-2 be amended to read as follows:

5 46A-3A-2. The Central Plains Water Development District is hereby established. The Central
6 Plains Water Development District includes all of ~~Hand County, Franklin, Union, Banner, Spring~~
7 ~~Lake, Illinois, Eden, Valley, Douglas, Washington, Loomis, Lincoln, William Hamilton, Holabird,~~
8 ~~Highmore, and Bramhall townships in Hyde County; Peoria, Mentor, Bryon, Logan, Blunt,~~
9 ~~Bretton, Harrold, Buckeye, Dry Run, and Canning townships in Hughes County; Lake and Elk~~
10 ~~townships in Sully County; Enterprise, Freedom, Emerson, Fairview, Saratoga, Pulaski, Myron,~~
11 ~~Devoe, Wesley, Bryant, Tamworth, Lafoon, Centerville, Pioneer, Orient, Arcade, Hillsdale, and~~
12 ~~Zell townships in Faulk County; Exline, Redfield, Lodi, Frankfort, Lake, Tulare, Crandon,~~
13 ~~Lincoln, Buffalo, Garfield, Belmont, and Cornwall townships in Spink County; Nance, Bonilla,~~
14 ~~Altoona, Pleasant View, Whiteside, Allen, Broadland, Fairfield, Iowa, Wessington, Wolsey,~~
15 ~~Hartland, Theresa, Valley, Sand Creek, Vernon, Dearborn, Clyde, Custer, Burr Oak, Kellogg,~~



- 1 ~~Carlyle, Grant, and Clifton townships in Beadle County; Faulk, Hand, Hughes, Hyde, Potter, and~~
- 2 Sully counties and all municipalities that lie wholly or partially within the included area or that are
- 3 contiguous to the included area.