



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

592I0732

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1260** - 02/24/2003

Introduced by: Representatives Bartling, Cutler, Deadrick (Thomas), Gillespie, Hennies, and Peterson (Jim) and Senators Nachtigal, Albers, Moore, and Napoli

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the release of  
2 satisfied liens and to provide an additional remedy for the unjust failure to do so.  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:  
4 Section 1. That § 44-3-8 be amended to read as follows:  
5 44-3-8. Whenever any mortgage, pledge, or other lien of any kind has been satisfied either  
6 by payment, foreclosure, or other legal means, the holder of such lien ~~must within ten days after~~  
7 ~~written demand is made by the owner of the property~~ shall, within thirty days of satisfaction,  
8 deliver a sworn satisfaction to the debtor. However, immediately upon satisfaction of a lien or  
9 at any time thereafter, if the owner of the property makes written demand on the lienholder, the  
10 lienholder shall, within ten days of receipt, execute and deliver to ~~such owner~~ the debtor a  
11 sufficient sworn satisfaction, ~~discharge, or release~~ to cancel the ~~same~~ lien or any record thereof.  
12 ~~Failure~~ If the lienholder fails to execute and deliver such to the owner of the property a sworn  
13 satisfaction, ~~discharge, or release shall entitle~~ within ten days of receipt of a proper written  
14 demand, the owner of the property is entitled to recover from the person who ~~should have~~  
15 ~~executed the same~~ failed to comply with the provisions of this section all damages that he or she



1 may have sustained thereby, including his attorney's fees and an additional penalty in the sum of  
2 one hundred dollars.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

71710009

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 3** - 01/22/2003

Introduced by: Senators Vitter, Albers, Bogue, and Kelly and Representatives Hunhoff, Sebert, and Sigdestad at the request of the Interim Alcoholic Beverage Licensing and Regulation Committee

1 FOR AN ACT ENTITLED, An Act to revise the convention facility on-sale alcoholic beverage  
2 license requirements.

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

4 Section 1. That § 35-4-11.2 be amended to read as follows:

5 35-4-11.2. Notwithstanding the provisions of § 35-4-11, each municipality may issue two  
6 convention facility on-sale licenses for convention facilities substantially constructed within the  
7 two years following issuance of such license or previously completed. ~~▲ If located in a first class~~  
8 municipality, the hotel-motel convention facility ~~as used in this section is a facility located in~~  
9 ~~South Dakota and in a bona fide manner~~ shall be used and kept open for the hosting of large  
10 groups of guests for compensation ~~which has~~ and shall have at least one hundred rooms which  
11 are suitable lodging accommodations and convention facilities with seating for at least four  
12 hundred persons. ~~However, for the purposes of~~ If located in a second or third class municipality,  
13 the hotel-motel convention facilities ~~located in municipalities other than municipalities of the first~~  
14 ~~class, the minimum number of rooms required as~~ facility shall have at least forty rooms which



- 1 are suitable lodging accommodations shall be fifty rooms and convention facilities with seating
- 2 for at least one hundred fifty persons.

# 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,  
10 even at times of peak usage; designed to be a nonblocking network, minimizing  
11 network 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  
9 receive 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  
12 beyond 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  
12 purpose of determining universal service obligations and support mechanisms.  
13 For a rural telephone company, the service area is the company's study area or  
14 any other area designated jointly by the commission and the Federal  
15 Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of  
16 January 1, 1998;

17 ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and  
18 protocols of generally accepted standards setting bodies;

19 ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited  
20 to specific application requirements;

21 ~~(25)~~(27) "Switched access," ~~an~~ any exchange access service purchased for the  
22 origination and termination of interexchange telecommunications services  
23 which includes central office switching and signaling, local loop facility, or  
24 local transport;

1       ~~(26)~~(28)     "Telecommunications company," any person or municipal corporation owning,  
2                   operating, reselling, managing, or controlling in whole or in part, any  
3                   telecommunications line, system, or exchange in this state, directly or  
4                   indirectly, for public use. For purposes of this definition the term, for public  
5                   use, means for the use of the public in general or for a specific segment of the  
6                   public, or which connects to the public in general or for a specific segment of  
7                   the public, or which connects to the public switched network for access to any  
8                   telecommunications service;

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

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

23       (31)     "Telephone solicitor," any person or organization who individually or through  
24                   salespersons, makes or causes to be made a telephone solicitation call. This term does

1 not include any not-for-profit or charitable organization exempt from federal income  
 2 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of  
 3 January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

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

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

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

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

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

19 ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully  
 20 switched, digital, addressable information transport from the 144 Kbps to the  
 21 DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and  
 22 6.312 Mbps, respectively.

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

1 Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that  
2 comply with the provisions of this Act for obtaining a list of persons who do not wish to receive  
3 unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor  
4 who makes unsolicited telephone calls may call any number listed on the register. The  
5 commission may promulgate rules, pursuant to chapter 1-26, concerning procedures and  
6 requirements regarding the implementation of a register, setting of fees for purchase of the  
7 register, form of the application, requirements for acquiring a copy of the register, requirements  
8 for enrollment on and removal from the register, procedures for maintaining a register, setting  
9 of fees to enroll or renew enrollment on the register, procedures for operating the register,  
10 standards concerning the use of the register, and application of the civil fines.

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

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

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

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

24 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 There is hereby established in the state treasury, the telephone solicitation account. Unless  
3 otherwise provided by law, this fund shall consist of all fees and fines imposed pursuant to this  
4 Act designated for deposit in the fund. The fund shall be maintained separately and administered  
5 by the commission to implement and administer provisions of this Act. Any interest earned on  
6 money in the fund shall be deposited in the fund. Expenditures from the fund shall be budgeted  
7 through the normal budget process. Unexpended funds and interest shall remain in the fund until  
8 appropriated by the Legislature. Any expenditure from the fund shall be disbursed on warrants  
9 drawn by the state auditor and shall be supported by vouchers approved by the commission.

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

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

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

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

24 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Notwithstanding the provisions of chapter 49-1A, the commission may use amounts  
3 deposited in the gross receipts tax fund to implement this Act. All funds used shall be returned  
4 to the gross receipts tax fund within three years of implementation of the register.

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

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

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

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

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

391I0133

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 56** - 01/23/2003

Introduced by: Senator Knudson and Representative Michels

1 FOR AN ACT ENTITLED, An Act to revise and update certain provisions related to the South  
2 Dakota Life and Health Insurance Guaranty Association.

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

4 Section 1. This Act shall be known and may be cited as the South Dakota Life and Health  
5 Insurance Guaranty Association Act.

6 Section 2. A. The purpose of this Act is to protect, subject to certain limitations, the persons  
7 specified in subpart A of section 3 of this Act against failure in the performance of contractual  
8 obligations, under life and health insurance policies and annuity contracts specified in subpart B  
9 of section 3 of this Act, because of the impairment or insolvency of the member insurer that  
10 issued the policies or contracts.

11 B. To provide this protection, an association of insurers is organized to pay benefits and to  
12 continue coverages as limited by this Act, and members of the association are subject to  
13 assessment to provide funds to carry out the purpose of this Act.

14 Section 3. A. This Act shall provide coverage for the policies and contracts specified in  
15 subpart B:



- 1       (1)    To persons who, regardless of where they reside (except for nonresident certificate  
2           holders under group policies or contracts), are the beneficiaries, assignees, or payees  
3           of the persons covered under subdivision (2);
- 4       (2)    To persons who are owners of or certificate holders under the policies or contracts  
5           (other than structured settlement annuities) and in each case who:
  - 6           (a)    Are residents; or
  - 7           (b)    Are not residents, but only under all of the following conditions:
    - 8           (i)    The insurer that issued the policies or contracts is domiciled in this state;
    - 9           (ii)   The states in which the persons reside have associations similar to the  
10           association created by this Act;
    - 11           (iii)   The persons are not eligible for coverage by an association in any other  
12           state due to the fact that the insurer was not licensed in the state at the  
13           time specified in the state's guaranty association law;
- 14       (3)    For structured settlement annuities specified in subpart B, subdivisions (1) and (2) of  
15           this subpart do not apply, and this Act shall (except as provided in subdivisions (4)  
16           and (5) of this subpart) provide coverage to a person who is a payee under a  
17           structured settlement annuity (or beneficiary of a payee if the payee is deceased), if  
18           the payee:
  - 19           (a)    Is a resident, regardless of where the contract owner resides; or
  - 20           (b)    Is not a resident, but only under both of the following conditions:
    - 21           (i)    (I) The contract owner of the structure settlement annuity is a resident,  
22           or (II) The contract owner of the structured settlement annuity is not a  
23           resident, but the insurer that issued the structured settlement annuity is  
24           domiciled in this state and the state in which the contract owner resides

1 has an association similar to the association created by this Act; and

2 (ii) Neither the payee (or beneficiary) nor the contract owner is eligible for  
3 coverage by the association of the state in which the payee or contract  
4 owner resides;

5 (4) This Act does not provide coverage to a person who is a payee (or beneficiary) of a  
6 contract owner resident of this state, if the payee (or beneficiary) is afforded any  
7 coverage by the association of another state;

8 (5) This Act is intended to provide coverage to a person who is a resident of this state  
9 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage,  
10 if a person who would otherwise receive coverage under this Act is provided  
11 coverage under the laws of any other state, the person may not be provided coverage  
12 under this Act. In determining the application of the provisions of this paragraph in  
13 situations where a person could be covered by the association of more than one state,  
14 whether as an owner, payee, beneficiary, or assignee, this Act shall be construed in  
15 conjunction with other state laws to result in coverage by only one association.

16 B. (1) This Act shall provide coverage to the persons specified in subpart A for direct,  
17 nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these  
18 and for certificates under direct group policies and contracts, except as limited by this Act.  
19 Annuity contracts and certificates under group annuity contracts include allocated funding  
20 agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

21 (2) This Act may not provide coverage for:

22 (a) A portion of a policy or contract not guaranteed by the insurer, or under which  
23 the risk is borne by the policy or contract owner;

24 (b) A policy or contract of reinsurance, unless assumption certificates have been

- 1 issued pursuant to the reinsurance policy or contract;
- 2 (c) A portion of a policy or contract to the extent that the rate of interest on which
- 3 it is based:
- 4 (i) Averaged over the period of four years prior to the date on which the
- 5 association becomes obligated with respect to the policy or contract,
- 6 exceeds a rate of interest determined by subtracting two percentage
- 7 points from Moody's Corporate Bond Yield Average averaged for that
- 8 same four-year period or for such lesser period if the policy or contract
- 9 was issued less than four years before the association became obligated;
- 10 and
- 11 (ii) On and after the date on which the association becomes obligated with
- 12 respect to the policy or contract, exceeds the rate of interest determined
- 13 by subtracting three percentage points from Moody's Corporate Bond
- 14 Yield Average as most recently available;
- 15 (d) A portion of a policy or contract issued to a plan or program of an employer,
- 16 association, or other person to provide life, health, or annuity benefits to its
- 17 employees, members, or others, to the extent that the plan or program is self-
- 18 funded or uninsured, including benefits payable by an employer, association,
- 19 or other person under:
- 20 (i) A multiple employer welfare arrangement as defined in 29 U.S.C.
- 21 § 1144;
- 22 (ii) A minimum premium group insurance plan;
- 23 (iii) A stop-loss group insurance plan; or
- 24 (iv) An administrative services only contract;

- 1 (e) A portion of a policy or contract to the extent that it provides for:
  - 2 (i) Dividends or experience rating credits;
  - 3 (ii) Voting rights; or
  - 4 (iii) Payment of any fees or allowances to any person, including the policy
  - 5 or contract owner, in connection with the service to or administration
  - 6 of the policy or contract;
- 7 (f) A policy or contract issued in this state by a member insurer at a time when it
- 8 was not licensed or did not have a certificate of authority to issue the policy or
- 9 contract in this state;
- 10 (g) A portion of a policy or contract to the extent that the assessments required by
- 11 section 9 of this Act with respect to the policy or contract are preempted by
- 12 federal or state law;
- 13 (h) An obligation that does not arise under the express written terms of the policy
- 14 or contract issued by the insurer to the contract owner or policy owner,
- 15 including without limitation:
  - 16 (i) Claims based on marketing materials;
  - 17 (ii) Claims based on side letters, riders, or other documents that were issued
  - 18 by the insurer without meeting applicable policy form filing or approval
  - 19 requirements;
  - 20 (iii) Misrepresentations of or regarding policy benefits;
  - 21 (iv) Extra-contractual claims; or
  - 22 (v) A claim for penalties or consequential or incidental damages;
- 23 (i) A contractual agreement that establishes the member insurer's obligations to
- 24 provide a book value accounting guaranty for defined contribution benefit plan

1 participants by reference to a portfolio of assets that is owned by the benefit  
2 plan or its trustee, which in each case is not an affiliate of the member insurer;

3 (j) An unallocated annuity contract; and

4 (k) A portion of a policy or contract to the extent it provides for interest or other  
5 changes in value to be determined by the use of an index or other external  
6 reference stated in the policy or contract, but which have not been credited to  
7 the policy or contract, or as to which the policy or contract owner's rights are  
8 subject to forfeiture, as of the date the member insurer becomes an impaired  
9 or insolvent insurer under this Act, whichever is earlier. If a policy's or  
10 contract's interest or changes in value are credited less frequently than annually,  
11 then for purposes of determining the values that have been credited and are not  
12 subject to forfeiture under this subsection, the interest or change in value  
13 determined by using the procedures defined in the policy or contract will be  
14 credited as if the contractual date of crediting interest or changing values was  
15 the date of impairment or insolvency, whichever is earlier, and will not be  
16 subject to forfeiture.

17 C. The benefits that the association may become obligated to cover may in no event exceed  
18 the lesser of:

19 (1) The contractual obligations for which the insurer is liable or would have been liable  
20 if it were not an impaired or insolvent insurer; or

21 (2) (a) With respect to one life, regardless of the number of policies or contracts:

22 (i) Three hundred thousand dollars in life insurance death benefits, but not  
23 more than one hundred thousand dollars in net cash surrender and net  
24 cash withdrawal values for life insurance;

- 1                   (ii)    In health insurance benefits:
  - 2                           (I)    One hundred thousand dollars for coverages not defined as
  - 3                                    disability insurance or basic hospital, medical and surgical
  - 4                                    insurance, or major medical insurance as defined in the National
  - 5                                    Association of Insurance Commissioners Health Insurance
  - 6                                    Shoppers' Guide, as of January 1, 2003, including any net cash
  - 7                                    surrender and net cash withdrawal values;
  - 8                            (II)   Three hundred thousand dollars for disability insurance as defined
  - 9                                    in the National Association of Insurance Commissioners Health
  - 10                                   Insurance Shoppers' Guide, as of January 1, 2003;
  - 11                           (III) Five hundred thousand dollars for basic hospital, medical and
  - 12                                    surgical insurance, or major medical insurance as defined in the
  - 13                                    National Association of Insurance Commissioners Health
  - 14                                    Insurance Shoppers' Guide, as of January 1, 2003; or
- 15                   (iii)   One hundred thousand dollars in the present value of annuity benefits,
- 16                                    including net cash surrender and net cash withdrawal values;
- 17                   (b)    With respect to each payee of a structured settlement annuity (or beneficiary
- 18                                    or beneficiaries of the payee if deceased), one hundred thousand dollars in
- 19                                    present value annuity benefits, in the aggregate, including net cash surrender
- 20                                    and net cash withdrawal values;
- 21                   (c)    However, in no event may the association be obligated to cover more than (i)
- 22                                    an aggregate of three hundred thousand dollars in benefits with respect to any
- 23                                    one life under subsections 2(a), 2(b), and 2(c) of subpart C of this section
- 24                                    except with respect to benefits for basic hospital, medical and surgical

1 insurance, and major medical insurance under subsection 2(a)(ii) of this section,  
2 in which case the aggregate liability of the association may not exceed five  
3 hundred thousand dollars with respect to any one individual, or (ii) with respect  
4 to one owner of multiple nongroup policies of life insurance, whether the  
5 policy owner is an individual, firm, corporation, or other person, and whether  
6 the persons insured are officers, managers, employees, or other persons, more  
7 than five million dollars in benefits, regardless of the number of policies and  
8 contracts held by the owner;

9 (d) The limitations set forth in this section are limitations on the benefits for which  
10 the association is obligated before taking into account either its subrogation  
11 and assignment rights or the extent to which those benefits could be provided  
12 out of the assets of the impaired or insolvent insurer attributable to covered  
13 policies. The costs of the association's obligations under this Act may be met  
14 by the use of assets attributable to covered policies or reimbursed to the  
15 association pursuant to its subrogation and assignment rights.

16 D. In performing its obligations to provide coverage under section 8 of this Act, the  
17 association may not be required to guarantee, assume, reinsure, or perform, or cause to be  
18 guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or  
19 impaired insurer under a covered policy or contract that do not materially affect the economic  
20 values or economic benefits of the covered policy or contract.

21 Section 4. This Act shall be construed to effect the purpose under section 2 of this Act.

22 Section 5. Terms used in this Act mean:

23 (1) "Account," either of the two accounts created under section 6 of this Act;

24 (2) "Association," the South Dakota Life and Health Insurance Guaranty Association

- 1 described in section 6 of this Act;
- 2 (3) "Authorized assessment" or the term "authorized" when used in the context of  
3 assessments, means a resolution by the board of directors has been passed whereby  
4 an assessment will be called immediately or in the future from member insurers for a  
5 specified amount. An assessment is authorized when the resolution is passed;
- 6 (4) "Benefit plan," a specific employee, union, or association of natural persons benefit  
7 plan;
- 8 (5) "Called assessment" or the term "called" when used in the context of assessments,  
9 means that a notice has been issued by the association to member insurers requiring  
10 that an authorized assessment be paid within the time frame set forth within the  
11 notice. An authorized assessment becomes a called assessment when notice is mailed  
12 by the association to member insurers;
- 13 (6) "Contractual obligation," an obligation under a policy or contract or certificate under  
14 a group policy or contract, or portion thereof for which coverage is provided under  
15 section 3 of this Act;
- 16 (7) "Covered policy," a policy or contract or portion of a policy or contract for which  
17 coverage is provided under section 3 of this Act;
- 18 (8) "Director," the director of the Division of Insurance of this state;
- 19 (9) "Extra-contractual claims," include, for example, claims relating to bad faith in the  
20 payment of claims, punitive or exemplary damages, or attorneys' fees and costs;
- 21 (10) "Impaired insurer," a member insurer which, after the effective date of this Act, is not  
22 an insolvent insurer, and is placed under an order of rehabilitation or conservation by  
23 a court of competent jurisdiction;
- 24 (11) "Insolvent insurer," a member insurer which after the effective date of this Act, is

1 placed under an order of liquidation by a court of competent jurisdiction with a  
2 finding of insolvency;

3 (12) "Member insurer," an insurer licensed or that holds a certificate of authority to  
4 transact in this state any kind of insurance for which coverage is provided under  
5 section 3 of this Act, and includes an insurer whose license or certificate of authority  
6 in this state may have been suspended, revoked, not renewed, or voluntarily  
7 withdrawn, but does not include:

8 (a) A health maintenance organization;

9 (b) A fraternal benefit society;

10 (c) A mandatory state pooling plan;

11 (d) A mutual assessment company or other person that operates on an assessment  
12 basis;

13 (e) An insurance exchange;

14 (f) An organization engaged in the issuance of charitable gift annuities, which is  
15 described in § 58-1-16; or

16 (g) An entity similar to any of the above;

17 (13) "Moody's Corporate Bond Yield Average," the Monthly Average Corporates as  
18 published by Moody's Investors Service, Inc., or any successor thereto;

19 (14) "Owner" of a policy or contract and "policy owner" and "contract owner," the person  
20 who is identified as the legal owner under the terms of the policy or contract or who  
21 is otherwise vested with legal title to the policy or contract through a valid assignment  
22 completed in accordance with the terms of the policy or contract and properly  
23 recorded as the owner on the books of the insurer. The terms owner, contract owner,  
24 and policy owner do not include persons with a mere beneficial interest in a policy or

1 contract;

2 (15) "Person," an individual, corporation, limited liability company, partnership,  
3 association, governmental body or entity, or voluntary organization;

4 (16) "Premiums," amounts or considerations (by whatever name called) received on  
5 covered policies or contracts less returned premiums, considerations, and deposits and  
6 less dividends and experience credits. The term, premiums, does not include amounts  
7 or considerations received for policies or contracts or for the portions of policies or  
8 contracts for which coverage is not provided under subpart B of section 3 except that  
9 assessable premium may not be reduced on account of subsection 3B(2)(c) relating  
10 to interest limitations and subdivision 3C(2) relating to limitations with respect to one  
11 individual, one participant, and one contract owner. Premiums do not include:

12 (a) Premiums on an unallocated annuity contract; or

13 (b) With respect to multiple nongroup policies of life insurance owned by one  
14 owner, whether the policy owner is an individual, firm, corporation, or other  
15 person, and whether the persons insured are officers, managers, employees, or  
16 other persons, premiums in excess of five million dollars with respect to these  
17 policies or contracts, regardless of the number of policies or contracts held by  
18 the owner;

19 (17) "Principal place of business" of a plan sponsor or a person other than a natural person,  
20 the single state in which the natural persons who establish policy for the direction,  
21 control, and coordination of the operations of the entity as a whole primarily exercise  
22 that function, determined by the association in its reasonable judgment by considering  
23 the following factors:

24 (a) The state in which the primary executive and administrative headquarters of the

1 entity is located;

2 (b) The state in which the principal office of the chief executive officer of the entity  
3 is located;

4 (c) The state in which the board of directors (or similar governing person or  
5 persons) of the entity conducts the majority of its meetings;

6 (d) The state in which the executive or management committee of the board of  
7 directors (or similar governing person or persons) of the entity conducts the  
8 majority of its meetings;

9 (e) The state from which the management of the overall operations of the entity  
10 is directed; and

11 (f) In the case of a benefit plan sponsored by affiliated companies comprising a  
12 consolidated corporation, the state in which the holding company or  
13 controlling affiliate has its principal place of business as determined using the  
14 above factors. However, in the case of a plan sponsor, if more than fifty  
15 percent of the participants in the benefit plan are employed in a single state,  
16 that state shall be deemed to be the principal place of business of the plan  
17 sponsor.

18 The principal place of business of a plan sponsor of a benefit plan shall be  
19 deemed to be the principal place of business of the association, committee,  
20 joint board of trustees, or other similar group of representatives of the parties  
21 who establish or maintain the benefit plan that, in lieu of a specific or clear  
22 designation of a principal place of business, shall be deemed to be the principal  
23 place of business of the employer or employee organization that has the largest  
24 investment in the benefit plan in question;

- 1 (18) "Receivership court," the court in the insolvent or impaired insurer's state having  
2 jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;
- 3 (19) "Resident," a person to whom a contractual obligation is owed and who resides in this  
4 state on the date of entry of a court order that determines a member insurer to be an  
5 impaired insurer or a court order that determines a member insurer to be an insolvent  
6 insurer, whichever occurs first. A person may be a resident of only one state, which  
7 in the case of a person other than a natural person shall be its principal place of  
8 business. Citizens of the United States that are either (i) residents of foreign countries,  
9 or (ii) residents of United States possessions, territories, or protectorates that do not  
10 have an association similar to the association created by this Act, shall be deemed  
11 residents of the state of domicile of the insurer that issued the policies or contracts;
- 12 (20) "Structured settlement annuity," an annuity purchased in order to fund periodic  
13 payments for a plaintiff or other claimant in payment for or with respect to personal  
14 injury suffered by the plaintiff or other claimant;
- 15 (21) "State," a state, the District of Columbia, Puerto Rico, and a United States  
16 possession, territory, or protectorate;
- 17 (22) "Supplemental contact," a written agreement entered into for the distribution of  
18 proceeds under a life, health, or annuity policy or contract;
- 19 (23) "Unallocated annuity contract," an annuity contract or group annuity certificate which  
20 is not issued to an individual, except to the extent of any annuity  
21 benefits guaranteed to an individual by an insurer under the contract or certificate.

22 Section 6. A. There is hereby continued the nonprofit legal entity known as the South Dakota  
23 Life and Health Insurance Guaranty Association as created by § 58-29C-1. All member insurers  
24 shall be and remain members of the association as a condition of their authority to transact

1 insurance in this state. The association shall perform its functions under the plan of operation  
2 established and approved under section 10 of this Act and shall exercise its powers through a  
3 board of directors established under section 7 of this Act. For purposes of administration and  
4 assessment, the association shall maintain two accounts:

5 (1) The life insurance and annuity account which includes the following subaccounts:

6 (a) Life insurance account; and

7 (b) Annuity account which shall include annuity contracts owned by a  
8 governmental retirement plan (or its trustee) established under Section 401,  
9 403(b), or 457 of the United States Internal Revenue Code; and

10 (2) The health insurance account.

11 B. The association shall come under the immediate supervision of the director and shall be  
12 subject to the applicable provisions of the insurance laws of this state. Meetings or records of  
13 the association may be opened to the public upon majority vote of the board of directors of the  
14 association.

15 Section 7. A. The board of directors of the association shall consist of not less than five nor  
16 more than nine member insurers serving terms as established in the plan of operation. The insurer  
17 members of the board shall be elected by member insurers subject to the approval of the director.  
18 Vacancies on the board shall be filled for the remaining period of the term by a majority vote of  
19 the remaining board members, subject to the approval of the director.

20 B. In approving selections or in appointing members to the board, the director shall consider,  
21 among other things, whether all member insurers are fairly represented.

22 C. Members of the board may be reimbursed from the assets of the association for expenses  
23 incurred by them as members of the board of directors but members of the board may not  
24 otherwise be compensated by the association for their services.

1 Section 8. A. If a member insurer is an impaired insurer, the association may, in its discretion,  
2 and subject to any conditions imposed by the association that do not impair the contractual  
3 obligations of the impaired insurer and that are approved by the director:

- 4 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any  
5 or all of the policies or contracts of the impaired insurer; or
- 6 (2) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper  
7 to effectuate subdivision (1) and assure payment of the contractual obligations of the  
8 impaired insurer pending action under subdivision (1).

9 B. If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

- 10 (1) (a) (i) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or  
11 reinsured, the policies or contracts of the insolvent insurer; or
- 12 (ii) Assure payment of the contractual obligations of the insolvent insurer;  
13 and
- 14 (b) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably  
15 necessary to discharge the association's duties; or
- 16 (2) Provide benefits and coverages in accordance with the following provisions:
  - 17 (a) With respect to life and health insurance policies and annuities, assure payment  
18 of benefits for premiums identical to the premiums and benefits (except for  
19 terms of conversion and renewability) that would have been payable under the  
20 policies or contracts of the insolvent insurer, for claims incurred:
    - 21 (i) With respect to group policies and contracts, not later than the earlier  
22 of the next renewal date under those policies or contracts or forty-five  
23 days, but in no event less than thirty days, after the date on which the  
24 association becomes obligated with respect to the policies and contracts;

- 1 (ii) With respect to nongroup policies, contracts, and annuities not later  
2 than the earlier of the next renewal date, if any, under the policies or  
3 contracts or one year, but in no event less than thirty days, from the date  
4 on which the association becomes obligated with respect to the policies  
5 or contracts;
- 6 (b) Make diligent efforts to provide all known insureds or annuitants (for  
7 nongroup policies and contracts), or group policy owners with respect to  
8 group policies and contracts, thirty days notice of the termination (pursuant to  
9 subsection (a) of this subdivision) of the benefits provided;
- 10 (c) With respect to nongroup life and health insurance policies and annuities  
11 covered by the association, make available to each known insured or annuitant,  
12 or owner if other than the insured or annuitant, and with respect to an  
13 individual formerly insured or formerly an annuitant under a group policy who  
14 is not eligible for replacement group coverage, make available substitute  
15 coverage on an individual basis in accordance with the provisions of subsection  
16 (d), if the insureds or annuitants had a right under law or the terminated policy  
17 or annuity to convert coverage to individual coverage or to continue an  
18 individual policy or annuity in force until a specified age or for a specified time,  
19 during which the insurer had no right unilaterally to make changes in any  
20 provision of the policy or annuity or had a right only to make changes in  
21 premium by class;
- 22 (d) (i) In providing the substitute coverage required under subsection (c), the  
23 association may offer either to reissue the terminated coverage or to  
24 issue an alternative policy;

- 1                   (ii) Alternative or reissued policies shall be offered without requiring
- 2                                   evidence of insurability, and may not provide for any waiting period or
- 3                                   exclusion that would not have applied under the terminated policy;
- 4                   (iii) The association may reinsure any alternative or reissued policy;
- 5           (e)   (i) Alternative policies adopted by the association are subject to the
- 6                                   approval of the domiciliary insurance director and the receivership
- 7                                   court. The association may adopt alternative policies of various types
- 8                                   for future issuance without regard to any particular impairment or
- 9                                   insolvency;
- 10                  (ii) Alternative policies shall contain at least the minimum statutory
- 11                                   provisions required in this state and provide benefits that may not be
- 12                                   unreasonable in relation to the premium charged. The association shall
- 13                                   set the premium in accordance with a table of rates that it shall adopt.
- 14                                   The premium shall reflect the amount of insurance to be provided and
- 15                                   the age and class of risk of each insured, but may not reflect any
- 16                                   changes in the health of the insured after the original policy was last
- 17                                   underwritten;
- 18                  (iii) Any alternative policy issued by the association shall provide coverage
- 19                                   of a type similar to that of the policy issued by the impaired or insolvent
- 20                                   insurer, as determined by the association;
- 21           (f) If the association elects to reissue terminated coverage at a premium rate
- 22                                   different from that charged under the terminated policy, the premium shall be
- 23                                   set by the association in accordance with the amount of insurance provided and
- 24                                   the age and class of risk, subject to approval of the domiciliary insurance

1 director and the receivership court;

2 (g) The association's obligations with respect to coverage under any policy of the  
3 impaired or insolvent insurer or under any reissued or alternative policy shall  
4 cease on the date the coverage or policy is replaced by another similar policy  
5 by the policy owner, the insured, or the association;

6 (h) When proceeding under this subdivision B(2) with respect to a policy or  
7 contract carrying guaranteed minimum interest rates, the association shall  
8 assure the payment or crediting of a rate of interest consistent with subsection  
9 3B(2)(c).

10 C. Nonpayment of premiums within thirty-one days after the date required under the terms  
11 of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage  
12 shall terminate the association's obligations under the policy or coverage under this Act with  
13 respect to the policy or coverage, except with respect to any claims incurred or any net cash  
14 surrender value which may be due in accordance with the provisions of this Act.

15 D. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer  
16 shall belong to and be payable at the direction of the association, and the association shall be  
17 liable for unearned premiums due to policy or contract owners arising after the entry of the  
18 order.

19 E. The protection provided by this Act does not apply where any guaranty protection is  
20 provided to residents of this state by the laws of the domiciliary state or jurisdiction of the  
21 impaired or insolvent insurer other than this state.

22 F. In carrying out its duties under subpart B, the association may:

23 (1) Subject to approval by a court in this state, impose permanent policy or contract liens  
24 in connection with a guarantee, assumption, or reinsurance agreement, if the

1 association finds that the amounts which can be assessed under this Act are less than  
2 the amounts needed to assure full and prompt performance of the association's duties  
3 under this Act, or that the economic or financial conditions as they affect member  
4 insurers are sufficiently adverse to render the imposition of such permanent policy or  
5 contract liens, to be in the public interest;

6 (2) Subject to approval by a court in this state, impose temporary moratoriums or liens  
7 on payments of cash values and policy loans, or any other right to withdraw funds  
8 held in conjunction with policies or contracts, in addition to any contractual  
9 provisions for deferral of cash or policy loan value. In addition, in the event of a  
10 temporary moratorium or moratorium charge imposed by the receivership court on  
11 payment of cash values or policy loans, or on any other right to withdraw funds held  
12 in conjunction with policies or contracts, out of the assets of the impaired or insolvent  
13 insurer, the association may defer the payment of cash values, policy loans, or other  
14 rights by the association for the period of the moratorium or moratorium charge  
15 imposed by the receivership court, except for claims covered by the association to be  
16 paid in accordance with a hardship procedure established by the liquidator or  
17 rehabilitator and approved by the receivership court.

18 G. A deposit in this state, held pursuant to law or required by the director for the benefit of  
19 creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry  
20 of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in  
21 this state or in a reciprocal state, pursuant to §§ 58-29B-144 and 58-29B-149, shall be promptly  
22 paid to the association. The association shall be entitled to retain a portion of any amount so paid  
23 to it equal to the percentage determined by dividing the aggregate amount of policy owners'  
24 claims related to that insolvency for which the association has provided statutory benefits by the

1 aggregate amount of all policy owners' claims in this state related to that insolvency and shall  
2 remit to the domiciliary receiver the amount so paid to the association and not retained pursuant  
3 to this subpart. Any amount so paid to the association less the amount not retained by it shall be  
4 treated as a distribution of estate assets pursuant to § 58-29B-98 or similar provision of the state  
5 of domicile of the impaired or insolvent insurer.

6 H. If the association fails to act within a reasonable period of time with respect to an  
7 insolvent insurer, as provided in subpart B of this section, the director shall have the powers and  
8 duties of the association under this Act with respect to the insolvent insurer.

9 I. The association may render assistance and advice to the director, upon the director's  
10 request, concerning rehabilitation, payment of claims, continuance of coverage, or the  
11 performance of other contractual obligations of an impaired or insolvent insurer.

12 J. The association shall have standing to appear or intervene before a court or agency in this  
13 state with jurisdiction over an impaired or insolvent insurer concerning which the association is  
14 or may become obligated under this Act or with jurisdiction over any person or property against  
15 which the association may have rights through subrogation or otherwise. Standing shall extend  
16 to all matters germane to the powers and duties of the association, including proposals for  
17 reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent  
18 insurer and the determination of the policies or contracts and contractual obligations. The  
19 association may also appear or intervene before a court or agency in another state with  
20 jurisdiction over an impaired or insolvent insurer for which the association is or may become  
21 obligated or with jurisdiction over any person or property against whom the association may  
22 have rights through subrogation or otherwise.

23 K. (1) A person receiving benefits under this Act shall be deemed to have assigned the rights  
24 under, and any causes of action against any person for losses arising under, resulting

1 from, or otherwise relating to, the covered policy or contract to the association to the  
2 extent of the benefits received because of this Act, whether the benefits are payments  
3 of or on account of contractual obligations, continuation of coverage, or provision of  
4 substitute or alternative coverages. The association may require an assignment to it  
5 of such rights and cause of action by any payee, policy, or contract owner,  
6 beneficiary, insured, or annuitant as a condition precedent to the receipt of any right  
7 or benefits conferred by this Act upon the person.

8 (2) The subrogation rights of the association under this subpart shall have the same  
9 priority against the assets of the impaired or insolvent insurer as that possessed by the  
10 person entitled to receive benefits under this Act.

11 (3) In addition to subdivisions (1) and (2) of this subpart, the association shall have all  
12 common law rights of subrogation and any other equitable or legal remedy that would  
13 have been available to the impaired or insolvent insurer or owner, beneficiary, or  
14 payee of a policy or contract with respect to the policy or contracts (including, in the  
15 case of a structured settlement annuity, any rights of the owner, beneficiary, or payee  
16 of the annuity, to the extent of benefits received pursuant to this Act, against a person  
17 originally or by succession responsible for the losses arising from the personal injury  
18 relating to the annuity or payment therefor, excepting any such person responsible  
19 solely by reason of serving as an assignee in respect of a qualified assignment under  
20 Internal Revenue Code § 130).

21 (4) If the preceding provisions of this subpart are invalid or ineffective with respect to any  
22 person or claim for any reason, the amount payable by the association with respect to  
23 the related covered obligations shall be reduced by the amount realized by any other  
24 person with respect to the person or claim that is attributable to the policies (or

1 portion thereof) covered by the association.

2 (5) If the association has provided benefits with respect to a covered obligation and a  
3 person recovers amounts as to which the association has rights as described in the  
4 preceding subdivisions of this subpart, the person shall pay to the association the  
5 portion of the recovery attributable to the policies (or portion thereof) covered by the  
6 association.

7 L. In addition to the rights and powers elsewhere in this Act, the association may:

8 (1) Enter into such contracts as are necessary or proper to carry out the provisions and  
9 purposes of this Act;

10 (2) Sue or be sued, including taking any legal actions necessary or proper to recover any  
11 unpaid assessments under section 9 of this Act and to settle claims or potential claims  
12 against it;

13 (3) Borrow money to effect the purposes of this Act; any notes or other evidence of  
14 indebtedness of the association not in default shall be legal investments for domestic  
15 insurers and may be carried as admitted assets;

16 (4) Employ or retain such persons as are necessary or appropriate to handle the financial  
17 transactions of the association, and to perform such other functions as become  
18 necessary or proper under this Act;

19 (5) Take such legal action as may be necessary or appropriate to avoid or recover  
20 payment of improper claims;

21 (6) Exercise, for the purposes of this Act and to the extent approved by the director, the  
22 powers of a domestic life or health insurer, but in no case may the association issue  
23 insurance policies or annuity contracts other than those issued to perform its  
24 obligations under this Act;

- 1 (7) Organize itself as a corporation or in other legal form permitted by the laws of the  
2 state;
- 3 (8) Request information from a person seeking coverage from the association in order to  
4 aid the association in determining its obligations under this Act with respect to the  
5 person, and the person shall promptly comply with the request; and
- 6 (9) Take other necessary or appropriate action to discharge its duties and obligations  
7 under this Act or to exercise its powers under this Act.

8 M. The association may join an organization of one or more other state associations of  
9 similar purposes, to further the purposes and administer the powers and duties of the association.

10 N. (1) At any time within one year after the date on which the association becomes  
11 responsible for the obligations of a member insurer (the coverage date), the  
12 association may elect to succeed to the rights and obligations of the member insurer,  
13 that accrue on or after the coverage date and that relate to contracts covered (in  
14 whole or in part) by the association, under any one or more indemnity reinsurance  
15 agreements entered into by the member insurer as a ceding insurer and selected by the  
16 association. However, the association may not exercise an election with respect to a  
17 reinsurance agreement if the receiver, rehabilitator, or liquidator of the member  
18 insurer has previously and expressly disaffirmed the reinsurance agreement. The  
19 election shall be effected by a notice to the receiver, rehabilitator, or liquidator and  
20 to the affected reinsurers. If the association makes an election, subsections (a) to (d),  
21 inclusive, of this subdivision shall apply with respect to the agreements selected by the  
22 association:

- 23 (a) The association shall be responsible for all unpaid premiums due under the  
24 agreements (for periods both before and after the coverage date), and shall be

1 responsible for the performance of all other obligations to be performed after  
2 the coverage date, in each case which relate to contracts covered (in whole or  
3 in part) by the association. The association may charge contracts covered in  
4 part by the association, through reasonable allocation methods, the costs for  
5 reinsurance in excess of the obligations of the association;

6 (b) The association is entitled to any amounts payable by the reinsurer under the  
7 agreements with respect to losses or events that occur in periods after the  
8 coverage date and that relate to contracts covered by the association (in whole  
9 or in part). However, upon receipt of any such amounts, the association is  
10 obliged to pay to the beneficiary under the policy or contract on account of  
11 which the amounts were paid a portion of the amount equal to the excess of:

- 12 (i) The amount received by the association, over
- 13 (ii) The benefits paid by the association on account of the policy or contract  
14 less the retention of the impaired or insolvent member insurer applicable  
15 to the loss or event;

16 (c) Within thirty days following the association's election, the association and each  
17 indemnity reinsurer shall calculate the net balance due to or from the  
18 association under each reinsurance agreement as of the date of the association's  
19 election, giving full credit to all items paid by either the member insurer (or its  
20 receiver, rehabilitator, or liquidator) or the indemnity reinsurer during the  
21 period between the coverage date and the date of the association's election.  
22 Either the association or indemnity reinsurer shall pay the net balance due the  
23 other within five days of the completion of the aforementioned calculation. If  
24 the receiver, rehabilitator, or liquidator has received any amounts due the

1           association pursuant to subsection (b), the receiver, rehabilitator, or liquidator  
2           shall remit the same to the association as promptly as practicable.

3           (d)   If the association, within sixty days of the election, pays the premiums due for  
4           periods both before and after the coverage date that relate to contracts covered  
5           by the association (in whole or in part), the reinsurer is not entitled to terminate  
6           the reinsurance agreements insofar as the agreements relate to contracts  
7           covered by the association (in whole or in part) and is not entitled to set off any  
8           unpaid premium due for periods prior to the coverage date against amounts  
9           due the association.

10          (2)   If the association transfers its obligations to another insurer, and if the association and  
11          the other insurer agree, the other insurer shall succeed to the rights and obligations  
12          of the association under subdivision (1) effective as of the date agreed upon by the  
13          association and the other insurer and regardless of whether the association has made  
14          the election referred to above in subdivision (1) provided that:

15          (a)   The indemnity reinsurance agreements shall automatically terminate for new  
16          reinsurance unless the indemnity reinsurer and the other insurer agree to the  
17          contrary;

18          (b)   The obligations described in the proviso to subsection (1)(b) of this subpart no  
19          longer apply on and after the date the indemnity reinsurance agreement is  
20          transferred to the third party insurer; and

21          (c)   This subdivision (2) does not apply if the association has previously expressly  
22          determined in writing that it will not exercise the election referred to in  
23          subdivision (1);

24          (3)   The provisions of this subpart shall supersede the provisions of any law of this state

1 or of any affected reinsurance agreement that provides for or requires any payment  
2 of reinsurance proceeds, on account of losses or events that occur in periods after the  
3 coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member  
4 insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts  
5 payable by the reinsurer under the reinsurance agreement with respect to losses or  
6 events that occur in periods prior to the coverage date (subject to applicable setoff  
7 provisions); and

8 (4) Except as otherwise expressly provided above, nothing herein alters or modifies the  
9 terms and conditions of the indemnity reinsurance agreements of the insolvent  
10 member insurer. Nothing herein abrogates or limits any rights of any reinsurer to claim  
11 that it is entitled to rescind a reinsurance agreement. Nothing herein gives a policy  
12 owner or beneficiary an independent cause of action against an indemnity reinsurer  
13 that is not otherwise set forth in the indemnity reinsurance agreement.

14 O. The board of directors of the association shall have discretion and may exercise reasonable  
15 business judgment to determine the means by which the association is to provide the benefits of  
16 this Act in an economical and efficient manner.

17 P. Where the association has arranged or offered to provide the benefits of this Act to a  
18 covered person under a plan or arrangement that fulfills the association's obligations under this  
19 Act, the person is not entitled to benefits from the association in addition to or other than those  
20 provided under the plan or arrangement.

21 Q. Venue in a suit against the association arising under the Act shall be in Hughes County.  
22 The association may not be required to give an appeal bond in an appeal that relates to a cause  
23 of action arising under this Act.

24 R. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies

1 or contracts under subpart A or B, the association may, subject to approval of the receivership  
2 court, issue substitute coverage for a policy or contract that provides an interest rate, crediting  
3 rate, or similar factor determined by use of an index or other external reference stated in the  
4 policy or contract employed in calculating returns or changes in value by issuing an alternative  
5 policy or contract in accordance with the following provisions:

- 6 (1) In lieu of the index or other external reference provided for in the original policy or  
7 contract, the alternative policy or contract provides for (i) a fixed interest rate or (ii)  
8 payment of dividends with minimum guarantees or (iii) different methods for  
9 calculating interest or changes in value;
- 10 (2) There is no requirement for evidence of insurability, waiting period, or other exclusion  
11 that would not have applied under the replaced policy or contract; and
- 12 (3) The alternative policy or contract is substantially similar to the replaced policy or  
13 contract in all other material terms.

14 Section 9. A. For the purpose of providing the funds necessary to carry out the powers and  
15 duties of the association, the board of directors shall assess the member insurers, separately for  
16 each account, at such time and for such amounts as the board finds necessary. Assessments shall  
17 be due not less than thirty days after prior written notice to the member insurers and shall accrue  
18 interest at ten percent per annum on and after the due date.

19 B. There shall be two classes of assessments, as follows:

- 20 (1) Class A assessments shall be authorized and called for the purpose of meeting  
21 administrative and legal costs and other expenses. Class A assessments may be  
22 authorized and called whether or not related to a particular impaired or insolvent  
23 insurer.
- 24 (2) Class B assessments shall be authorized and called to the extent necessary to carry out

1 the powers and duties of the association under section 8 of this Act with regard to an  
2 impaired or an insolvent insurer.

3 C. (1) The amount of a Class A assessment shall be determined by the board and may be  
4 authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may  
5 provide that it be credited against future Class B assessments. The total of all nonpro  
6 rata assessments may not exceed one hundred fifty dollars per member insurer in any  
7 one calendar year. The amount of a Class B assessment shall be allocated for  
8 assessment purposes among the accounts pursuant to an allocation formula which  
9 may be based on the premiums or reserves of the impaired or insolvent insurer or any  
10 other standard deemed by the board in its sole discretion as being fair and reasonable  
11 under the circumstances.

12 (2) Class B assessments against member insurers for each account and subaccount shall  
13 be in the proportion that the premiums received on business in this state by each  
14 assessed member insurer on policies or contracts covered by each account for the  
15 three most recent calendar years for which information is available preceding the year  
16 in which the insurer became insolvent (or, in the case of an assessment with respect  
17 to an impaired insurer, the three most recent calendar years for which information is  
18 available preceding the year in which the insurer became impaired) bears to premiums  
19 received on business in this state for those calendar years by all assessed member  
20 insurers.

21 (3) Assessments for funds to meet the requirements of the association with respect to an  
22 impaired or insolvent insurer may not be authorized or called until necessary to  
23 implement the purposes of this Act. Classification of assessments under subpart B and  
24 computation of assessments under this subpart shall be made with a reasonable degree

1 of accurate, recognizing that exact determinations may not always be possible. The  
2 association shall notify each member insurer of its anticipated pro rata share of an  
3 authorized assessment not yet called within one hundred eighty days after the  
4 assessment is authorized.

5 D. The association may abate or defer, in whole or in part, the assessment of a member  
6 insurer if, in the opinion of the board, payment of the assessment would endanger the ability of  
7 the member insurer to fulfill its contractual obligations. In the event an assessment against a  
8 member insurer is abated, or deferred in whole or in part, the amount by which the assessment  
9 is abated or deferred may be assessed against the other member insurers in a manner consistent  
10 with the basis for assessments set forth in this section. Once the conditions that caused a deferral  
11 have been removed or rectified, the member insurer shall pay all assessments that were deferred  
12 pursuant to a repayment plan approved by the association.

13 E. (1) (a) Subject to the provisions of subsection (b) of this subdivision, the total of all  
14 assessments authorized by the association with respect to a member insurer for  
15 each subaccount of the life insurance and annuity account and for the health  
16 account may not in one calendar year exceed two percent of that member  
17 insurer's average annual premiums received in this state on the policies and  
18 contracts covered by the subaccount or account during the three calendar years  
19 preceding the year in which the insurer became an impaired or insolvent  
20 insurer.

21 (b) If two or more assessments are authorized in one calendar year with respect to  
22 insurers that become impaired or insolvent in different calendar years, the  
23 average annual premiums for purposes of the aggregate assessment percentage  
24 limitation referenced in subsection (a) of this subdivision shall be equal and

1           limited to the higher of the three-year average annual premiums for the  
2           applicable subaccount or account as calculated pursuant to this section.

3           (c)   If the maximum assessment, together with the other assets of the association  
4           in an account, does not provide in one year in either account an amount  
5           sufficient to carry out the responsibilities of the association, the necessary  
6           additional funds shall be assessed as soon thereafter as permitted by this Act.

7           (2)   The board may provide in the plan of operation a method of allocating funds among  
8           claims, whether relating to one or more impaired or insolvent insurers, when the  
9           maximum assessment will be insufficient to cover anticipated claims.

10          (3)   If the maximum assessment for a subaccount of the life and annuity account in one  
11          year does not provide an amount sufficient to carry out the responsibilities of the  
12          association, then pursuant to subdivision C(2), the board shall access the other  
13          subaccounts of the life and annuity account for the necessary additional amount,  
14          subject to the maximum stated in subdivision (1) of this section.

15          F. The board may, by an equitable method as established in the plan of operation, refund to  
16          member insurers, in proportion to the contribution of each insurer to that account, the amount  
17          by which the assets of the account exceed the amount the board finds is necessary to carry out  
18          during the coming year the obligations of the association with regard to that account, including  
19          assets accruing from assignment, subrogation, net realized gains, and income from investments.  
20          A reasonable amount may be retained in any account to provide funds for the continuing  
21          expenses of the association and for future losses claims.

22          G. It shall be proper for any member insurer, in determining its premium rates and policy  
23          owner dividends as to any kind of insurance within the scope of this Act, to consider the amount  
24          reasonably necessary to meet its assessment obligations under this Act.

1 H. The association shall issue to each insurer paying an assessment under this Act, other than  
2 a Class A assessment, a certificate of contribution, in a form prescribed by the director, for the  
3 amount of the assessment so paid. All outstanding certificates shall be of equal dignity and  
4 priority without reference to amounts or dates of issue. A certificate of contribution may be  
5 shown by the insurer in its financial statement as an asset in such form and for such amount, if  
6 any, and period of time as the director may approve.

7 I. (1) A member insurer that wishes to protest all or part of an assessment shall pay when  
8 due the full amount of the assessment as set forth in the notice provided by the  
9 association. The payment shall be available to meet association obligations during the  
10 pendency of the protest or any subsequent appeal. Payment shall be accompanied by  
11 a statement in writing that the payment is made under protest and setting forth a brief  
12 statement of the grounds for the protest.

13 (2) Within sixty days following the payment of an assessment under protest by a member  
14 insurer, the association shall notify the member insurer in writing of its determination  
15 with respect to the protest unless the association notifies the member insurer that  
16 additional time is required to resolve the issues raised by the protest.

17 (3) Within thirty days after a final decision has been made, the association shall notify the  
18 protesting member insurer in writing of that final decision. Within sixty days of receipt  
19 of notice of the final decision, the protesting member insurer may appeal that final  
20 action to the director.

21 (4) In the alternative to rendering a final decision with respect to a protest based on a  
22 question regarding the assessment base, the association may refer protests to the  
23 director for a final decision, with or without a recommendation from the association.

24 (5) If the protest or appeal on the assessment is upheld, the amount paid in error or

1 excess shall be returned to the member company. Interest on a refund due a protesting  
2 member shall be paid at the rate actually earned by the association.

3 J. The association may request information of member insurers in order to aid in the exercise  
4 of its power under this section and member insurers shall promptly comply with a request.

5 Section 10. A. (1) The association shall submit to the director a plan of operation and any  
6 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable  
7 administration of the association. The plan of operation and any amendments thereto shall  
8 become effective upon the director's written approval or unless it has not been disapproved  
9 within thirty days.

10 (2) If the association fails to submit a suitable plan of operation within one hundred  
11 twenty days following the effective date of this Act or if at any time thereafter the  
12 association fails to submit suitable amendments to the plan, the director shall, after  
13 notice and hearing, adopt and promulgate such reasonable rules as are necessary or  
14 advisable to effectuate the provisions of this Act. The rules shall continue in force  
15 until modified by the director or superseded by a plan submitted by the association  
16 and approved by the director.

17 B. All member insurers shall comply with the plan of operation.

18 C. The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

- 19 (1) Establish procedures for handling the assets of the association;
- 20 (2) Establish the amount and method of reimbursing members of the board of directors  
21 under section 7 of this Act;
- 22 (3) Establish regular places and times for meetings including telephone conference calls  
23 of the board of directors;
- 24 (4) Establish procedures for records to be kept of all financial transactions of the

1 association, its agents, and the board of directors;

2 (5) Establish the procedures whereby selections for the board of directors will be made  
3 and submitted to the director;

4 (6) Establish any additional procedures for assessments under section 9 of this Act;

5 (7) Contain additional provisions necessary or proper for the execution of the powers and  
6 duties of the association.

7 D. The plan of operation may provide that any or all powers and duties of the association,  
8 except those under subdivision 8L(3) and section 9 of this Act, are delegated to a corporation,  
9 association, or other organization which performs or will perform functions similar to those of  
10 this association, or its equivalent, in two or more states. Such a corporation, association, or  
11 organization shall be reimbursed for any payments made on behalf of the association and shall  
12 be paid for its performance of any function of the association. A delegation under this subpart  
13 shall take effect only with the approval of both the board of directors and the director, and may  
14 be made only to a corporation, association, or organization which extends protection not  
15 substantially less favorable and effective than that provided by this Act.

16 Section 11. In addition to the duties and powers enumerated elsewhere in this Act,

17 A. The director shall:

18 (1) Upon request of the board of directors, provide the association with a statement of  
19 the premiums in this and any other appropriate states for each member insurer;

20 (2) When an impairment is declared and the amount of the impairment is determined,  
21 serve a demand upon the impaired insurer to make good the impairment within a  
22 reasonable time; notice to the impaired insurer shall constitute notice to its  
23 shareholders, if any; the failure of the insurer to promptly comply with such demand  
24 shall not excuse the association from the performance of its powers and duties under

1           this Act;

2           (3)   In any liquidation or rehabilitation proceeding involving a domestic insurer, be  
3           appointed as the liquidator or rehabilitator.

4           B. The director may suspend or revoke, after notice and hearing, the certificate of authority  
5           to transact insurance in this state of any member insurer which fails to pay an assessment when  
6           due or fails to comply with the plan of operation. As an alternative the director may levy a  
7           forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may  
8           not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than  
9           one hundred dollars per month.

10          C. A final action of the board of directors or the association may be appealed to the director  
11          by a member insurer if the appeal is taken within sixty days of its receipt of notice of the final  
12          action being appealed. A final action or order of the director shall be subject to judicial review  
13          in a court of competent jurisdiction in accordance with the laws of this state that apply to the  
14          actions or orders of the director.

15          D. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all  
16          interested persons of the effect of this Act.

17          Section 12. To aid in the detection and prevention of insurer insolvencies or impairments,

18          A. It shall be the duty of the director:

19          (1)   To notify the directors of all the other states, territories of the United States and the  
20                District of Columbia within thirty days following the action taken or the date the  
21                action occurs, when the director takes any of the following actions against a member  
22                insurer:

23               (a)   revocation of license;

24               (b)   Suspension of license; or

1 (c) Makes a formal order that the company restrict its premium writing, obtain  
2 additional contributions to surplus, withdraw from the state, reinsure all or any  
3 part of its business, or increase capital, surplus, or any other account for the  
4 security of policy owners or creditors.

5 (2) To report to the board of directors when the director has taken any of the actions set  
6 forth in subdivision (1) or has received a report from any other director indicating that  
7 any such action has been taken in another state. The report to the board of directors  
8 shall contain all significant details of the action taken or the report received from  
9 another director.

10 (3) To report to the board of directors when the director has reasonable cause to believe  
11 from an examination, whether completed or in process, of any member insurer that  
12 the insurer may be an impaired or insolvent insurer.

13 (4) To furnish to the board of directors the National Association of Insurance  
14 Commissioners Insurance Regulatory Information System (IRIS) ratios and listings  
15 of companies not included in the ratios developed by the National Association of  
16 Insurance Commissioners, and the board may use the information contained therein  
17 in carrying out its duties and responsibilities under this section. The report and the  
18 information contained therein shall be kept confidential by the board of directors until  
19 such time as made public by the director or other lawful authority.

20 B. The director may seek the advice and recommendations of the board of directors  
21 concerning any matter affecting the duties and responsibilities of the director regarding the  
22 financial condition of member insurers and companies seeking admission to transact insurance  
23 business in this state.

24 C. The board of directors may, upon majority vote, make reports and recommendations to

1 the director upon any matter germane to the solvency, liquidation, rehabilitation, or conservation  
2 of any member insurer or germane to the solvency of any company seeking to do an insurance  
3 business in this state. The reports and recommendations may not be considered public  
4 documents.

5 D. The board of directors may, upon majority vote, notify the director of any information  
6 indicating a member insurer may be an impaired or insolvent insurer.

7 E. The board of directors may, upon majority vote, make recommendations to the director  
8 for the detection and prevention of insurer insolvencies.

9 Section 13. A. A member insurer may offset against its premium tax liability to this state an  
10 assessment described in subpart 9H to the extent of twenty percent of the amount of the  
11 assessment for each of the five calendar years following the year in which the assessment was  
12 paid. If the assessment is five hundred dollars or less, the member insurer shall take the total  
13 offset in the first year following the year in which the assessment was paid. However, total  
14 assessments offset against premium taxes may not exceed two million dollars in any year. If  
15 offsets exceed the annual limitation in this section, the excess may be carried forward to a  
16 subsequent year in which the annual limitation has not been exceeded. Any excess shall be  
17 apportioned among the contributing insurers in relation to their assessment that caused the limit  
18 to be exceeded. In the event a member insurer should cease doing business, all uncredited  
19 assessments may be credited against its premium tax liability for the year it ceases doing business.

20 B. Any sums that are acquired by refund, pursuant to subpart 9F, from the association by  
21 member insurers, and that have been offset against premium taxes as provided in subpart A of  
22 this section, shall be paid by the insurers to this state in such manner as the tax authorities may  
23 require. The association shall notify the director that refunds have been made.

24 Section 14. A. This Act may not be construed to reduce the liability for unpaid assessments

1 of the insureds of an impaired or insolvent insurer operating under a plan with assessment  
2 liability.

3 B. Records shall be kept of all meetings of the board of directors to discuss the activities of  
4 the association in carrying out its powers and duties under section 8 of this Act. The records of  
5 the association with respect to an impaired or insolvent insurer may only be disclosed upon the  
6 termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or  
7 insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon  
8 the order of a court of competent jurisdiction. Nothing in this subpart shall limit the duty of the  
9 association to render a report of its activities under section 15 of this Act.

10 C. For the purpose of carrying out its obligations under this Act, the association shall be  
11 deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable  
12 to covered policies reduced by any amounts to which the association is entitled as subrogee  
13 pursuant to subpart 8K. Assets of the impaired or insolvent insurer attributable to covered  
14 policies shall be used to continue all covered policies and pay all contractual obligations of the  
15 impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as  
16 used in this subpart, are that proportion of the assets which the reserves that should have been  
17 established for such policies bear to the reserves that should have been established for all policies  
18 of insurance written by the impaired or insolvent insurer.

19 D. As a creditor of the impaired or insolvent insurer as established in subpart C of this section  
20 and consistent with § 58-29B-98, the association and other similar associations shall be entitled  
21 to receive a disbursement of assets out of the marshaled assets, from time to time as the assets  
22 become available to reimburse it, as a credit against contractual obligations under this Act. If the  
23 liquidator has not, within one hundred twenty days of a final determination of insolvency of an  
24 insurer by the receivership court, made an application to the court for the approval of a proposal

1 to disburse assets out of marshaled assets to guaranty associations having obligations because  
2 of the insolvency, then the association shall be entitled to make application to the receivership  
3 court for approval of its own proposal to disburse these assets.

4 E. (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding,  
5 the court may take into consideration the contributions of the respective parties,  
6 including the association, the shareholders, and policy owners of the insolvent insurer,  
7 and any other party with a bona fide interest, in making an equitable distribution of  
8 the ownership rights of the insolvent insurer. In such a determination, consideration  
9 shall be given to the welfare of the policy owners of the continuing or successor  
10 insurer.

11 (2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be  
12 made until and unless the total amount of valid claims of the association with interest  
13 thereon for funds expended in carrying out its powers and duties under section 8 of  
14 this Act with respect to the insurer have been fully recovered by the association.

15 F. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has  
16 been entered, the receiver appointed under the order may recover on behalf of the  
17 insurer, from any affiliate that controlled it, the amount of distributions, other than  
18 stock dividends paid by the insurer on its capital stock, made at any time during the  
19 five years preceding the petition for liquidation or rehabilitation subject to the  
20 limitations of subdivisions (2) to (4), inclusive.

21 (2) No such distribution is recoverable if the insurer shows that when paid the distribution  
22 was lawful and reasonable, and that the insurer did not know and could not reasonably  
23 have known that the distribution might adversely affect the ability of the insurer to  
24 fulfill its contractual obligations.

1       (3) Any person who was an affiliate that controlled the insurer at the time the  
2       distributions were paid is liable up to the amount of distributions received. Any person  
3       who was an affiliate that controlled the insurer at the time the distributions were  
4       declared, shall be liable up to the amount of distributions which would have been  
5       received if they had been paid immediately. If two or more persons are liable with  
6       respect to the same distributions, they shall be jointly and severally liable.

7       (4) The maximum amount recoverable under this subpart shall be the amount needed in  
8       excess of all other available assets of the insolvent insurer to pay the contractual  
9       obligations of the insolvent insurer.

10      (5) If any person liable under subdivision (3) is insolvent, all its affiliates that controlled  
11      it at the time the distribution was paid, shall be jointly and severally liable for any  
12      resulting deficiency in the amount recovered from the insolvent affiliate.

13      Section 15. The association is subject to examination and regulation by the director. The  
14      board of directors shall submit to the director each year, not later than one hundred twenty days  
15      after the association's fiscal year, a financial report in a form approved by the director and a  
16      report of its activities during the preceding fiscal year. Upon the request of a member insurer,  
17      the association shall provide the member insurer with a copy of the report.

18      Section 16. The association shall be exempt from payment of all fees and all taxes levied by  
19      this state or any of its subdivisions, except taxes levied on real property.

20      Section 17. There is no liability on the part of and no cause of action of any nature may arise  
21      against any member insurer or its agents or employees, the association or its agents or  
22      employees, members of the board of directors, or the director or the director's representatives,  
23      for any action or omission by them in the performance of their powers and duties under this Act.  
24      Immunity shall extend to the participation in any organization of one or more other state

1 associations of similar purposes and to any such organization and its agents or employees.

2 Section 18. All proceedings in which the insolvent insurer is a party in any court in this state  
3 shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation  
4 is final to permit proper legal action by the association on any matters germane to its powers or  
5 duties. As to judgment under any decision, order, verdict, or finding based on default the  
6 association may apply to have such judgment set aside by the same court that made such  
7 judgment and shall be permitted to defend against such suit on the merits.

8 Section 19. A. No person, including an insurer, agent, or affiliate of an insurer may make,  
9 publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be  
10 made, published, disseminated, circulated, or placed before the public, in any newspaper,  
11 magazine, or other publication, or in the form of a notice, circulate, pamphlet, letter, or poster,  
12 or over any radio station or television station, or in any other way, any advertisement,  
13 announcement, or statement, written or oral, which uses the existence of the Life and Health  
14 Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement  
15 to purchase any form of insurance covered by the South Dakota Life and Health Insurance  
16 Guaranty Association Act. However, this section does not apply to the South Dakota Life and  
17 Health Insurance Guaranty Association or any other entity which does not sell or solicit  
18 insurance.

19 B. Within one hundred eighty days of the effective date of this Act, the association shall  
20 prepare a summary document describing the general purposes and current limitations of the Act  
21 and complying with subpart C of this section. This document shall be submitted to the director  
22 for approval. At the expiration of the sixtieth day after the date on which the director approves  
23 the document, an insurer may not deliver a policy or contract to a policy or contract owner  
24 unless the summary document is delivered to the policy or contract owner at the time of delivery

1 of the policy or contract. The document shall also be available upon request by a policy owner.  
2 The distribution, delivery, or contents or interpretation of this document does not guarantee that  
3 either the policy or the contract or the owner of the policy or contract is covered in the event of  
4 the impairment or insolvency of a member insurer. The description document shall be revised by  
5 the association as amendments to the Act may require. Failure to receive this document does not  
6 give the policy owner, contract owner, certificate holder, or insured any greater rights than  
7 those stated in this Act.

8 C. The document prepared under subpart B shall contain a clear and conspicuous disclaimer  
9 on its face. The director shall establish the form and content of the disclaimer. The disclaimer  
10 shall:

- 11 (1) State the name and address of the Life and Health Insurance Guaranty Association  
12 and insurance department;
- 13 (2) Prominently warn the policy or contract owner that the Life and Health Insurance  
14 Guaranty Association may not cover the policy or, if coverage is available, it will be  
15 subject to substantial limitations and exclusions and conditioned on continued  
16 residence in this state;
- 17 (3) State the types of policies for which guaranty funds will provide coverage;
- 18 (4) State that the insurer and its agents are prohibited by law from using the existence of  
19 the Life and Health Insurance Guaranty Association for the purpose of sales,  
20 solicitation, or inducement to purchase any form of insurance;
- 21 (5) State that the policy or contract owner should not rely on coverage under the Life and  
22 Health Insurance Guaranty Association when selecting an insurer;
- 23 (6) Explain rights available and procedures for filing a complaint to allege a violation of  
24 any provisions of this Act; and

1       (7) Provide other information as directed by the director including sources for  
2           information about the financial condition of insurers provided that the information is  
3           not proprietary and is subject to disclosure under that state's public records law.

4       D. A member insurer shall retain evidence of compliance with subpart B for so long as the  
5 policy or contract for which the notice is given remains in effect.

6       Section 20. That §§ 58-29C-1 to 58-29C-43, inclusive, are repealed.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

624I0383

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 98** - 02/06/2003

Introduced by: Senator Sutton (Dan) and Representative Rave

1 FOR AN ACT ENTITLED, An Act to revise certain organizational and administrative  
2 provisions related to consumer power districts.

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

4 Section 1. That § 15-6-4(d) be amended to read as follows:

5 15-6-4(d). The summons shall be served by delivering a copy thereof. Service in the  
6 following manner shall constitute personal service:

7 (1) If the action be against a domestic private corporation, on the president or other head  
8 of the corporation, secretary, cashier, treasurer, a director, or managing or registered  
9 agent thereof, and such service may be made within or without this state. In case the  
10 sheriff shall return the summons with his certificate that no such officer, director, or  
11 agent can conveniently be found in his county, service may be made by leaving a copy  
12 of the summons and complaint at any office of such corporation within this state, with  
13 the person in charge of such office;

14 (2) If the action be against a foreign private corporation, on the president or other head  
15 of the corporation, secretary, cashier, treasurer, a director or managing agent thereof;



1       (3) In an action against a railroad corporation or against a person, firm, or corporation  
2           operating an elevator or licensed warehouse in this state, service may be made by  
3           serving any of the persons mentioned in subparagraphs (1) and (2) of this subsection,  
4           or by service upon any acting ticket, station, or freight agent of a railroad company  
5           or upon any acting agent in charge of any such elevator or warehouse, in the county  
6           where the action or proceeding is commenced;

7       (4) If the action be against a public corporation within this state, service may be made as  
8           follows:

- 9           (i) Upon a county, by serving upon any county commissioner;
- 10          (ii) Upon a first or second class municipality, by serving upon the mayor or any  
11           alderman or commissioner;
- 12          (iii) Upon a third class municipality, by serving upon any trustee;
- 13          (iv) Upon an organized township, by serving upon any supervisor; and
- 14          (v) Upon any school district, by serving upon any member of the school board or  
15           board of education;
- 16          (vi) Upon a consumers power district, by serving upon any member of the board  
17           of directors;

18       (5) If the action be against a minor, upon a parent or person having custody, and if the  
19           minor be over the age of fourteen years, then also upon such minor personally, and  
20           in any event upon the legally appointed guardian or conservator, if there be one. If a  
21           guardian ad litem has been appointed, such service shall also be made on such  
22           guardian ad litem;

23       (6) If the action be against a person judicially declared to be mentally incompetent, or  
24           who is a patient at an institution for persons with mental illnesses or developmental

1 disabilities or for whom a guardian or conservator has been legally appointed, upon  
2 such guardian or conservator, and upon the administrator or superintendent of such  
3 institutions for persons with mental illnesses or developmental disabilities, or person  
4 having custody, and also upon the person with mental illness or a developmental  
5 disability; provided that if the person with mental illness or a developmental disability  
6 is a patient of an institution for persons with mental illnesses or developmental  
7 disabilities, and the administrator or superintendent thereof shall certify in writing that  
8 service upon such person personally would be unavailing or injurious to his physical  
9 or mental well-being, and such certificate be filed, service upon such individual may  
10 be dispensed with by order of court;

11 (7) If against the state or any of its institutions, departments, or agencies, by service upon  
12 such officer or employee as may be designated by the statute authorizing such action,  
13 and upon the attorney general. In all matters involving title to land owned or held in  
14 trust by the state or any of its institutions, departments, or agencies, upon the  
15 commissioner of school and public lands and the attorney general. In all matters other  
16 than those involving title to such lands, if no officer or employee is designated, then  
17 upon the Governor and the attorney general. Any of such officers or employees  
18 referred to in § 15-6-4 may admit service of the summons with the same legal effect  
19 as if it had been personally served upon them by an officer or elector;

20 (8) If the action be against a state officer, employee or agent arising out of his office,  
21 employment or agency, a copy of the summons and complaint shall be mailed,  
22 certified mail, postage prepaid to the attorney general together with an admission of  
23 service and a return envelope, postage prepaid, addressed to the sender. The executed  
24 admission of service shall be filed by the sender in accordance with § 15-6-5(d);

- 1 (9) Whenever the manner of service of process is specified in any statute or rule relating  
2 to any action, remedy or special proceedings the manner of service so specified shall  
3 be followed;
- 4 (10) In all other cases, to the defendant personally; and
- 5 (11) If the action be against a business with a fictitious name, upon the owner or other  
6 head of the business, secretary, cashier, treasurer, director, manager or bookkeeper  
7 thereof, and such service may be made within or without this state.
- 8 (12) In an action against a person or business entity in a foreign country, service may be  
9 made as follows:
- 10 (i) By an internationally agreed means reasonably calculated to give notice, such  
11 as those means authorized by the Hague Convention on the service abroad of  
12 judicial and extrajudicial documents; or
- 13 (ii) If there is no internationally agreed means of service, service reasonably  
14 calculated to give notice may be made:
- 15 (A) In the manner prescribed by the law of the foreign country for service  
16 in that country in an action in any of its court of general jurisdiction;
- 17 (B) As directed by the foreign authority in response to a letter rogatory or  
18 letter request; or
- 19 (C) Unless prohibited by the law of the foreign country; by one delivery to  
20 the individual personally; upon a corporation, limited liability company,  
21 limited partnership or partnership or association, by delivery to an  
22 officer, or a managing or general agent; or by any form of mail requiring  
23 a signed receipt; or
- 24 (iii) As directed by the court.

1 Service under this subdivision may be made by any person authorized by § 15-6-4(c), anyone  
2 duly authorized to serve lawful summons by the law of the country where service is to be made,  
3 pursuant to the applicable treaty or convention, or by anyone designated by order of the court  
4 or the foreign court. Proof of service may be made as prescribed in § 15-6-4(g), pursuant to the  
5 applicable treaty or convention, by order of the court, or by law of the foreign country. Proof  
6 of service by mail shall include an affidavit or certificate of addressing and mailing.

7 Section 2. That § 49-35-27 be amended to read as follows:

8 49-35-27. Any district may amend its petition to provide for a change in its name or change  
9 in the location of its principal place of business and may reduce or increase the number of  
10 members of its board of directors. No elimination or detachment, increase, enlargement,  
11 annexation, or consolidation of the territory of a district, or change in its principal place of  
12 business, its name or the number of members of its board of directors, may occur unless  
13 authorized by the directors of the district involved. The amendment shall comply with the  
14 requirements of § 49-36-4 and shall be filed forthwith in the Office of the Secretary of State.

15 Section 3. That § 49-36-4 be amended to read as follows:

16 49-36-4. Subject to the provisions of chapters 49-35 to 49-40, inclusive, ~~and subject to the~~  
17 ~~approval of the circuit court for the county in which the petition for formation of the district was~~  
18 ~~originally filed~~, the board of directors in a consumers power district may amend the petition for  
19 its creation, or any amended petition, to increase or decrease the number of its directors, or to  
20 provide for the division of the territory of such district into two or more subdivisions for the  
21 nomination and election of some or all of the directors, or may do either or both.

22 A notarized original and an exact or conforming copy of the petition of amendment shall be  
23 executed by the president of the board of directors, or other officer of the district so authorized,  
24 and shall set forth:

- 1       (1)   The name of the consumers power district;
- 2       (2)   The amendment so adopted;
- 3       (3)   A statement setting forth the date of the meeting of directors at which the amendment  
4           was adopted, that a quorum was present at such meeting, and that such amendment  
5           received at least a majority of the votes entitled to be cast by directors present at such  
6           meeting.

7       Upon filing of the petition of amendment as provided in this section with the Office of the  
8       Secretary of State, if the secretary of state finds that the petition conforms to law, the secretary  
9       of state shall file the petition and issue a certificate of amendment to the consumers power  
10       district.

11       Each subdivision shall be composed of one or more voting precincts and the total number  
12       of voters in each subdivision shall be approximately the same so far as practicable. The qualified  
13       voters of a subdivision of a district may only cast their ballots for candidates for directors to be  
14       elected from such subdivision, and for candidates for directors to be elected at large from the  
15       whole district, and the ballots for directors shall be prepared accordingly.

16       Section 4. That § 49-36-8 be repealed.

17       ~~—49-36-8. Each director before entering upon the duties of his office shall file with the~~  
18       ~~secretary of state a corporate surety bond in the penal sum of not less than one thousand dollars,~~  
19       ~~with good and sufficient surety to be approved by the secretary of state. Such bond shall be~~  
20       ~~conditioned for the faithful performance of his duty as director and shall further undertake that~~  
21       ~~such director will not by any of his acts or doings incur any liabilities for or on behalf of said~~  
22       ~~district which will result in the levying of any taxes upon any property within the district for the~~  
23       ~~payment of obligations of the district. The cost of such bond shall be paid by the district.~~

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

508I0503

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 121 - 02/06/2003**

Introduced by: Senators de Hueck, Abdallah, Apa, Duenwald, Duniphan, Olson (Ed), Sutton (Dan), and Sutton (Duane) and Representatives Frost, Garnos, Juhnke, Konold, Lintz, McCaulley, Murschel, Nesselhuf, O'Brien, Sigdestad, and Teupel

1 FOR AN ACT ENTITLED, An Act to revise certain penalties for violations relating to alcoholic  
2 beverage licenses.

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

4 Section 1. That § 35-2-10 be amended to read as follows:

5 35-2-10. Any ~~license issued~~ licensee under this title may, ~~in compliance with chapter 1-26,~~  
6 ~~be revoked or suspended by the secretary~~ be ordered to pay a fine not to exceed five hundred  
7 dollars upon proof of a first violation within two years by the licensee, ~~his agents or employees,~~  
8 or any agent or employee of the licensee, or by the manager or contractual ~~operators~~ operator  
9 of a retail establishments and their agents or employees establishment, or any agent or employee  
10 of the retail establishment operating under a county or municipal license, of any provision of this  
11 title, ~~or any rule or regulation adopted by the secretary as provided in this title,~~ or violation of  
12 any ordinance or regulation of the political subdivision issuing the license relevant of alcoholic  
13 beverage control. Upon proof of a second violation within two years, the licensee may be  
14 ordered to pay a fine not to exceed one thousand dollars. Upon proof of a third violation within



1 two years, the licensee's license may, in compliance with chapter 1-26, be revoked or suspended.

2 For licensees with multiple alcoholic beverage licenses for the same premises, upon suspension  
3 or revocation of any license pursuant to this chapter, such licensee shall cease operation under  
4 all alcoholic beverage licenses held by such licensee for the same premises for the same period  
5 as the suspension or revocation.

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

8 Any retail licensee shall have present on the premises during regular operating hours at least  
9 one employee or agent that has been certified by a nationally recognized training program  
10 approved by the Department of Revenue that provides instruction on techniques to prevent  
11 persons under the age of twenty-one years from purchasing or consuming alcoholic beverages.

12 Section 3. That § 35-2-10.1 be repealed.

13 ~~35-2-10.1. No retail license may be revoked or suspended because of a violation of any~~  
14 ~~statute, ordinance, rule, or regulation prohibiting the sale or service of any alcoholic beverage~~  
15 ~~to a person under the age of twenty-one years if the violation was committed by an employee or~~  
16 ~~agent of the licensee and:~~

17 ~~(1) The licensee did not see the violation occur;~~

18 ~~(2) The employee or agent has been certified by a nationally recognized training program~~  
19 ~~approved by the Department of Revenue that provides instruction on techniques to~~  
20 ~~prevent persons under the age of twenty-one years from purchasing or consuming~~  
21 ~~alcoholic beverages;~~

22 ~~(3) The licensee has a written policy requiring the licensee's employees or agents to~~  
23 ~~examine the driver's license or other age-bearing identification document of any~~  
24 ~~person who appears to be under the age of twenty-one years before selling or serving~~

1           any alcoholic beverage to that person, and the employee or agent has agreed in  
2           writing to abide by the policy;

3    ~~(4) The employee or agent has not been convicted of a similar violation within the past~~  
4           ~~twelve months; and~~

5    ~~(5) The licensee has not had any prior violation of any statute, ordinance, rule, or~~  
6           ~~regulation prohibiting the sale or service of an alcoholic beverage to a person under~~  
7           ~~the age of twenty-one years on the premise where the violation occurred in the~~  
8           ~~previous twelve months.~~

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

258I0523

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**SB 133** - 02/25/2003

Introduced by: Senators Duenwald, Abdallah, and Dempster and Representatives Teupel, Davis, Hackl, Juhnke, Lintz, Peterson (Jim), and Rhoden

1 FOR AN ACT ENTITLED, An Act to permit the county levy and rural fire protection district  
2 levy to be increased for fire fighting purposes.

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

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

6 Notwithstanding the provisions of § 10-13-35, any county that levies a property tax for fire  
7 fighting pursuant to § 34-31-3 or rural fire protection district that levies a property tax for fire  
8 fighting pursuant to § 34-31A-22 may increase the total amount of revenue payable from such  
9 taxes on real property. This increase may be made to the taxes payable in either 2004 or 2005,  
10 or both. For taxes payable in 2006, and each year thereafter, the total amount of revenue payable  
11 from taxes on real property pursuant to §§ 34-31-3, 34-31A-21, and 34-31A-32 may increase  
12 no more than the amount provided in §§ 10-13-35 to 10-13-36, inclusive.



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

345I0679

## SENATE ENGROSSED NO. **SB 154** - 02/10/2003

Introduced by: Senators Bogue, Abdallah, Diedrich (Larry), LaPointe, McCracken, and Reedy and Representatives Peterson (Bill), Dykstra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to authorize certain interstate shipments of wine, to  
2 establish certain penalties, and to collect sales tax.

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

4 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one  
5 years of age may purchase and receive wine from another state as provided in this section if the  
6 wine is not in distribution in this state and the wine comes from a winery that is located in a state  
7 that affords South Dakota wineries an equal reciprocal shipping privilege, or a winery located  
8 in South Dakota. The person shall place an order with a licensee as defined in subdivision  
9 35-4-2(3) or (5). The licensee shall order the wine through a wholesaler licensed pursuant to  
10 subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of wine. The licensee shall  
11 inform the purchaser of the cost of the wine, the amount of any tax that would apply to the  
12 purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and the amount of  
13 charges for freight and handling. The licensee shall collect the total amount due from the  
14 customer before ordering the wine through the wholesaler. After receiving the order for the wine  
15 from the licensed retailer the wholesaler shall arrange for the wine to be shipped directly to the



1 licensee who placed the order for the purchaser. Wine purchased pursuant to this Act may only  
2 be delivered and received by the purchaser from a licensee as defined in subdivision 35-4-2(3)  
3 or (5).

4 Section 2. If the wholesaler orders twelve or less cases of a particular brand of wine for an  
5 individual purchaser in one calendar year pursuant to this section, no registration fee pursuant  
6 to chapter 39-13 may be imposed.

7 Section 3. No person may receive more than twelve cases of wine, containing no more than  
8 nine liters per case, in any calendar year for personal use from another state under this Act. No  
9 person who receives wine under this Act may resell any of the wine. However, if the delivery of  
10 the wine does not result in a completed sale to the person who placed the original order, the  
11 licensee may sell the wine in the ordinary course of business. It is a Class 2 misdemeanor for any  
12 person to receive more than twelve cases of wine during a calendar year in violation of this Act.  
13 It is a Class 2 misdemeanor for any person to resell or attempt to resell any wine obtained  
14 pursuant to this Act. The Department of Revenue shall promulgate rules pursuant to chapter  
15 1-26 to provide for the reporting and tracking of information related to the sale of wine under  
16 this Act and to prescribe forms for the implementation of this Act.

17 Section 4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship no  
18 more than twelve cases of wine per person per calendar year. A case may contain no more than  
19 nine liters per case in any one shipment. Any wine sold may only be for personal use and not for  
20 resale. The wine may only be sold directly to a resident of another state if the state to which the  
21 wine is sent allows residents of the state to receive wine sent from outside that state.

22 Section 5. No person in the business of selling alcoholic beverages may ship or cause to be  
23 shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued  
24 pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any

- 1 person who violates this section and order such person to cease and desist any shipments of
- 2 alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a
- 3 Class 6 felony.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

715I0655

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 156** - 02/11/2003

Introduced by: Senators McCracken, Bogue, and Symens and Representatives Kraus,  
McLaughlin, and Miles

1 FOR AN ACT ENTITLED, An Act to revise certain provisions to provide workers'  
2 compensation benefits to children of deceased employees.

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

4 Section 1. That § 62-4-12 be amended to read as follows:

5 62-4-12. The amount of compensation which shall be paid for an injury to the employee  
6 resulting in death, if the employee leaves a spouse, ~~child or~~ and any children, shall be paid at the  
7 rate provided by § 62-4-3 for life or until remarriage in the case of a spouse, ~~and in the event of~~  
8 ~~remarriage.~~ If the spouse remarries, two years' benefits shall be paid to the spouse in a lump sum;  
9 ~~and in the case of a child or.~~ The amount of compensation which shall be paid for an injury to  
10 the employee resulting in death, if the employee leaves any children and no spouse, shall be paid  
11 at the rate provided by § 62-4-3 until the child is age eighteen or for life in the case of ~~a~~ any child  
12 ~~or children who are~~ is physically or mentally incapable of ~~supporting themselves~~ self-support or  
13 until age twenty-two ~~if the~~ for any child or children are enrolled as a full-time student in any  
14 accredited educational institution. ~~If the child or children are~~ any child is not in the custody of  
15 the surviving spouse, the compensation shall be divided pursuant to the provisions of § ~~29-1-5~~



1 section 2 of this Act.

2 Section 2. That chapter 62-4 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The amount of compensation which shall be paid for an injury to the employee resulting in  
5 death, if the employee leaves any child who is not in the custody of the surviving spouse, shall  
6 be paid at the rate provided by § 62-4-3, with half of the amount being paid to the surviving  
7 spouse. The other half shall be paid to the surviving child or in equal shares to the surviving  
8 children, until age eighteen, or for life in the case of a child who is physically or mentally  
9 incapable of self-support, or until age twenty-two for any child enrolled as a full-time student in  
10 any accredited educational institution. When a child is no longer eligible for benefits, his or her  
11 share shall be paid to the surviving spouse.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

480I0672

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 187** - 02/20/2003

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

Introduced by: Senator Koetzle and Representative Lange

1 FOR AN ACT ENTITLED, An Act to clarify the authority of counties to grant certain utility  
2 easements for the installation of underground cable.

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

4 Section 1. That § 31-26-1 be amended to read as follows:

5 31-26-1. The board of county commissioners, upon written application designating the  
6 particular highway the use of which is desired, may grant to any person engaged in the  
7 manufacture or sale of electric light and power, or any municipality authorized by law to  
8 purchase electric current, or any person authorized by law to purchase such current from such  
9 municipality, or any person engaged in, or about to engage in, the furnishing of telephone  
10 service, the right to erect and maintain poles and wires or to bury underground cable for the  
11 purpose of conducting electricity for lighting, heating, and power purposes, together with stay  
12 wires and braces, and for the purpose of furnishing telephone service, in and along any public  
13 highway in its county for a period not to exceed twenty years, subject to the conditions set forth  
14 in this chapter and such further reasonable regulations as the Legislature may hereafter prescribe.

15 Section 2. That § 31-26-3 be amended to read as follows:



1       31-26-3. The poles and fixtures, guy wires, braces, and stays or underground cable buried  
2 or erected under § 31-26-1 shall be located under the joint field supervision and direction of the  
3 grantee and the governing body charged with the maintenance of the state trunk highway on  
4 which they are placed and constructed consistent with the permit requirements adopted under  
5 § 31-26-22. They shall be so constructed as not to inconvenience the public in the use of any  
6 road or the navigation of any stream. An appeal from the decision of the Department of  
7 Transportation may be taken to the Transportation Commission. An appeal from the decision of  
8 the commission may be taken to the circuit court in the manner provided by law and the rules of  
9 practice and procedure adopted by the Supreme Court.

10       Section 3. That § 31-26-5 be amended to read as follows:

11       31-26-5. The grantee under § 31-26-1 shall construct and maintain said poles, wires, or  
12 underground cable and line in accordance with the National Electrical Safety Code adopted by  
13 the Bureau of Standards of the United States Department of Commerce.

14       Section 4. That § 31-26-9 be amended to read as follows:

15       31-26-9. Any person who, having received a grant as to placing of wires and poles or  
16 underground cable on a highway under this chapter, fails to comply with the provisions of  
17 § 31-26-4, 31-26-5, or 31-26-7 commits a petty offense.

18       Section 5. That § 31-26-11 be amended to read as follows:

19       31-26-11. In the case of either a transmission line application or a telephone line application  
20 under § 31-26-1, the applicant shall state the place where ~~his~~ the applicant's central plant is  
21 located, the point or points to which ~~he~~ the applicant desires to transmit electricity or furnish  
22 telephone service, and the route over which ~~he~~ the applicant desires to construct such lines ~~which~~  
23 or bury underground cable. The application shall state what electric, telegraph, and telephone  
24 lines are, at the time of making the application, occupying a part of the highway or highways

1 which the proposed lines are to occupy. Any applicant who hereafter desires to construct a  
2 telephone line or bury underground cable shall state whether ~~he~~ the applicant has obtained a  
3 certificate of convenience and necessity from the Public Utilities Commission.

4 Section 6. That § 31-26-12 be amended to read as follows:

5 31-26-12. If the applicant in the case of a transmission application, wishes to construct lines  
6 or bury underground cable for rural electrification ~~he~~ the applicant may state that ~~he~~ the applicant  
7 wishes to construct lines for rural electrification throughout the county, in which event ~~he~~ the  
8 applicant need not show the point or points to which ~~he~~ the applicant desires to transmit  
9 electricity nor the route, and if the application is granted to such applicant for rural electrification  
10 county-wide authorization may be given to such applicant but subject to the other provisions of  
11 this chapter. For the purposes of this chapter, a line or underground cable shall be deemed "for  
12 rural electrification" if it carries at least one circuit of such voltage as is practical for and  
13 customarily used in distributing electricity to farms.

14 Section 7. That § 31-26-13 be amended to read as follows:

15 31-26-13. ~~It shall be the duty of the county auditor to~~ The county auditor shall present an  
16 application under § 31-26-1 to the board of county commissioners within thirty days after the  
17 filing of the same, at a regular or special meeting called for that purpose and ~~to~~ shall give ten  
18 days' notice by mail of such application and the time and place when and where such application  
19 will be heard to all persons, firms, or corporations owning or operating electric, telephone, or  
20 telegraph lines or underground cable on any part of the highway or highways which the proposed  
21 lines may occupy.

22 Section 8. That § 31-26-15 be amended to read as follows:

23 31-26-15. If the application for construction or reconstruction of an electric line is granted  
24 by the board of county commissioners, it shall be competent for such board to adjust any

1 differences that may arise between any such applicant and any owner or owners of any electric,  
2 telephone, or telegraph line or underground cable affected by such decision, in the matter of  
3 construction or reconstruction, and such board may adjust and apportion the costs which may  
4 be occasioned in order to carry out the plans, methods, or means approved by the board as  
5 deemed necessary to avoid or minimize interference or hazard; ~~provided, however,~~ However,  
6 if there is a dispute between two telephone companies such dispute shall be adjusted by the  
7 Public Utilities Commission.

8 Section 9. That § 31-26-18 be amended to read as follows:

9 31-26-18. ~~When~~ If the board of county commissioners ~~shall have~~ has granted the right to  
10 any person to construct lines or bury underground cable for the transmission of electricity as  
11 provided in §§ 31-26-1 to 31-26-17, inclusive, and if before constructing such line the applicant  
12 ~~shall desire~~ desires to change the route designated in the grant, the board may change the route  
13 upon application of the person constructing the same subject to the same provisions for placing  
14 poles, fixtures, guy wires, braces, and stays or underground cable, as provided by law on original  
15 construction.

16 Section 10. That § 31-26-21 be amended to read as follows:

17 31-26-21. Nothing contained in § 31-26-19 or 31-26-20 shall be construed to exempt anyone  
18 owning or operating any telephone, telegraph, or electric line or underground cable in this state  
19 from liability for any damage or injury which anyone may sustain by reason of the faulty or  
20 negligent construction or maintenance of such telephone, telegraph, or electric line or  
21 underground cable.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

743I0576

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 188** - 02/26/2003

Introduced by: Senators Diedrich (Larry), Abdallah, Brown, Duxbury, Jaspers, McCracken, Moore, Olson (Ed), Schoenbeck, Sutton (Duane), and Symens and Representatives Dykstra, Begalka, Burg, Hargens, Konold, Peterson (Jim), Sebert, Solum, and Williamson

1 FOR AN ACT ENTITLED, An Act to provide a credit against certain taxes paid by railroads  
2 for the replacement and repair of rail lines and to revise certain provisions regarding the  
3 distribution of the assessed value of a railroad.

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

5 Section 1. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Any publicly operated railroad or railway corporation operating over rail lines located within  
8 this state may claim a credit against the tax levied on such rail lines for amounts that the railroad  
9 or railway corporation has certified as having been expended in the replacement and repair of  
10 such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for  
11 a credit pursuant to this section. The certification required by this section shall be on forms  
12 provided by the Department of Revenue. The labor and material expenses certified pursuant to  
13 this section shall be itemized separately. The credit provided in this section shall be applied  
14 proportionally across the railroad's entire mainline within this state. The credit shall be applied



1 to tax liability over a three-year period in an amount equal to thirty-three and one-third percent  
2 the first year following certification; thirty-three and one-third percent of such an amount shall  
3 carry forward into the second year following certification; and thirty-three and one-third percent  
4 shall carry forward into the third year following certification. Each year's carryover shall be  
5 accumulated as a tax credit with other years' annual tax credits. No credit may be given for the  
6 repair or replacement of railway line necessitated by washout, fire, or train derailment. If any rail  
7 line goes over ten million gross ton miles per mile annually in a calendar year, the rail line may  
8 not receive a credit pursuant to this section in the following calendar year.

9 Section 2. That § 10-28-16 be amended to read as follows:

10 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each  
11 year, transmit to the county auditor of each county through which any railroad runs, a statement  
12 showing the length of main track, of main line or lines, and the branches thereof and sidetracks  
13 within such county, and the assessed value based on a statewide formula that weights traffic (ton  
14 miles) ~~thirty-three and one-third~~ seventy-five percent and miles of track in the county by ~~sixty-six~~  
15 ~~and two-thirds~~ twenty-five percent. The county auditor shall then distribute the value to each  
16 taxing district where the line runs on a per mile basis within the county.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0759

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 202** - 02/26/2003

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions to comply with the requirements  
2 of the Juvenile Justice and Delinquency Act.

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

4 Section 1. That § 26-7A-1 be amended to read as follows:

5 26-7A-1. Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean:

- 6 (1) "Abused or neglected child," a child as defined in § 26-8A-2;
- 7 (2) "Adjudicatory hearing," a hearing to determine whether the allegations of a petition  
8 alleging that a child is abused or neglected are supported by clear and convincing  
9 evidence or whether the allegations of a petition alleging a child to be in need of  
10 supervision or a delinquent are supported by evidence beyond a reasonable doubt;
- 11 (3) "Adult," a person eighteen years of age or over, except any person under twenty-one  
12 years of age who is under the continuing jurisdiction of the court or who is before the  
13 court for an alleged delinquent act committed before the person's eighteenth birthday;
- 14 (4) "Advisory hearing," the initial hearing conducted by the court to inform the child and  
15 the child's parents, guardian, custodian, or other interested parties of their statutory



- 1 and constitutional rights;
- 2 (5) "Association," an association, institution, or corporation which includes in its  
3 purposes the care or disposition of children coming within the provisions of this  
4 chapter or chapter 26-8A, 26-8B, or 26-8C;
- 5 (6) "Child," a person less than eighteen years of age and any person under twenty-one  
6 years of age who is under the continuing jurisdiction of the court or who is before the  
7 court for an alleged delinquent act committed before the person's eighteenth birthday;
- 8 (7) "Child in need of supervision," a child as defined in § 26-8B-2;
- 9 (8) "Commit," to transfer custody of a person;
- 10 (9) "Conservator," a conservator of a child as defined in § 29A-1-201;
- 11 (10) "Court" or "juvenile court," the circuit court;
- 12 (11) "Custodian," any foster parent, employee of a public or private residential home or  
13 facility, other person legally responsible for a child's welfare in a residential setting,  
14 or person providing in-home or out-of-home care; for purposes of this definition,  
15 out-of-home care means any day care as defined in §§ 26-6-14, 26-6-14.1, and  
16 26-6-14.8;
- 17 (12) "Delinquent child," a child as defined in § 26-8C-2;
- 18 (13) "Department of Social Services" or "department," the South Dakota Department of  
19 Social Services;
- 20 (14) "Deprivation of custody," transfer of custody of a child by the court from the child's  
21 parents, guardian, or other custodian to another person, agency, department, or  
22 institution;
- 23 (15) "Detention," the temporary custody of a child in secured physically restricting  
24 facilities for children, sight and sound separated from adult prisoners;

- 1 (16) "Detention facility," a secured, physically-restricting facility ~~where~~ designed, staffed,  
2 and operated for children ~~are physically~~ and separated by sight and sound from adult  
3 prisoners or a facility for children in the same building or secure perimeter as an adult  
4 jail or lockup, where children are sight and sound separated from adult prisoners,  
5 where staff in the detention facility are trained and certified by the entity operating  
6 facility to work with children, and the facility had been approved as a collocated  
7 facility by the Office of Juvenile Justice and Delinquency Prevention;
- 8 (17) "Dispositional hearing," a hearing after adjudication at which the court makes an  
9 interim or final decision in the case;
- 10 (18) "Guardian," a guardian of a child as defined in § 29A-1-201;
- 11 (19) "Guardian ad litem," a representative of a child as defined in subdivision 15-6-17(c),  
12 including a court-appointed special advocate for a child;
- 13 (20) "Intake officer," a judge of a circuit court or the court's designee who may not be a  
14 court services officer, law enforcement officer, or prosecuting attorney. For purposes  
15 of chapters 26-7A, 26-8A, 26-8B, and 26-8C, intake officers may administer oaths  
16 or affirmations as provided by chapter 18-3;
- 17 (21) "Minor," a person who has not reached his or her eighteenth birthday;
- 18 (22) "Parents," biological or adoptive parents of a child, including either parent, any single  
19 or surviving parent, and any custodial or noncustodial parent, jointly or severally;
- 20 (23) "Protective supervision," a legal status created by court order under which an alleged  
21 or adjudicated abused or neglected child is permitted to remain in the home of the  
22 child's parents, guardian, or custodian or is placed with a relative or other suitable  
23 person and supervision and assistance is provided by the court, Department of Social  
24 Services, or another agency designated by the court;

1 (24) "Qualified mental health professional," a person as defined in § 27A-1-3;

2 (25) "Shelter," a physically-unrestricting home or facility for temporary care of a child;

3 (26) "Temporary care," the care given to a child in temporary custody;

4 (27) "Temporary custody," the physical and legal control of a child prior to final  
5 disposition.

6 Section 2. That § 26-7A-23 be amended to read as follows:

7 26-7A-23. A board of county commissioners may provide and maintain at public expense  
8 temporary care, shelter, or detention facilities, ~~physically~~ sight and sound separated from adult  
9 prisoners, where children coming within the provisions of this chapter or chapter 26-8A, 26-8B,  
10 26-8C, or §§ 26-11A-13 and 26-11A-14, may, if necessary or appropriate, be placed for  
11 temporary care, temporary custody, shelter, or detention as designated by the court, or  
12 temporary detention or shelter by the Department of Corrections. Sections 26-11A-19 and  
13 26-7A-94 governs the costs of custodial care of children.

14 Section 3. That § 26-7A-26 be amended to read as follows:

15 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely  
16 detained at any time in a jail, lockup, or in any type of detention or temporary care facility  
17 containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may  
18 not be securely detained in a jail, lockup, or in any type of detention or temporary care facility  
19 containing adult prisoners except for approved collocated detention centers as defined in § 26-  
20 7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

21 ~~An apparent, or alleged, or adjudicated child in need of supervision or an apparent, alleged,~~  
22 ~~or adjudicated delinquent child fourteen years of age or older may be held in detention in an adult~~  
23 ~~lockup or jail if physically separated from adult prisoners subject to any restrictions under this~~  
24 ~~chapter or chapter 26-8A, 26-8B, or 26-8C.~~

1 ~~An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or~~  
2 ~~adjudicated~~ delinquent child may be held in an adult lockup or jail for up to six hours for  
3 purposes of identification, processing, interrogation, transfer to juvenile facility, or release to  
4 parents if the child is physically sight and sound separated from adult prisoners.

5 In any area not designated as a metropolitan statistical area by the United States Bureau of  
6 the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for up  
7 to forty-eight hours excluding holidays and weekends or until the temporary custody hearing,  
8 whichever is earlier, if the facility has been certified by the Department of Corrections as  
9 providing sight and sound separation of juveniles from adults and if no suitable juvenile facility  
10 is available.

11 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being  
12 tried in circuit court as an adult pursuant to § 26-11-3.1 may be held ~~in detention~~ in an adult  
13 lockup or jail if physically separated from adult prisoners.

14 A child who has attained the age of majority who is under the continuing jurisdiction of the  
15 court may be held ~~in detention~~ in an adult jail or lockup.

16 A child under the age of eighteen years who has been transferred to adult court pursuant to  
17 § 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held ~~in~~  
18 ~~detention~~ in an adult jail or lockup.

19 Section 4. That § 26-8B-2 be amended to read as follows:

20 26-8B-2. In this chapter and chapter 26-7A, the term, child in need of supervision, means:

- 21 (1) Any child of compulsory school age who is habitually absent from school without  
22 legal excuse;
- 23 (2) Any child who has run away from home or is otherwise beyond the control of the  
24 child's parent, guardian, or custodian;

1 (3) Any child whose behavior or condition endangers the child's own welfare or the  
2 welfare of others; ~~or~~

3 (4) Any child who has violated any federal, state, or local law or regulation for which  
4 there is not a penalty of a criminal nature for an adult, except violations of subdivision  
5 34-46-2(2), or petty offenses; or

6 (5) Any child who has violated § 35-9-2.

7 Section 5. That § 26-8B-3 be amended to read as follows:

8 26-8B-3. An apparent or alleged child in need of supervision taken into temporary custody  
9 by a law enforcement officer prior to a temporary custody hearing shall be released to the child's  
10 parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or  
11 in the judgment of the intake officer are not suitable to receive the child, in which case the child  
12 shall be placed in shelter. A child may be placed in detention for no more than twenty-four hours,  
13 excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents,  
14 guardian, or custodian are not available or are not suitable to receive the child, and finds at least  
15 one of the following circumstances exists:

- 16 (1) The child has failed to comply with court services or a court-ordered program;
- 17 (2) The child is being held for another jurisdiction as a parole or probation violator, as a  
18 runaway or as a person under court-ordered detention;
- 19 (3) The child has a demonstrated propensity to run away from the child's home, from  
20 court-ordered placement outside of the child's home or from agencies charged with  
21 providing temporary care for the child;
- 22 (4) The child is under court-ordered home detention in this jurisdiction; or
- 23 (5) There are specific, articulated circumstances which justify the detention for the  
24 protection of the child from potentially immediate harm to the child or to others.

1       The shelter or detention authorized shall be the least restrictive alternative available. The  
2 child may be held in detention up to an additional twenty-four hours following the temporary  
3 custody hearing pending transfer to shelter or release.

4       If the child is accused of or has been found in violation of a valid court order, the child may  
5 be placed in detention for more than twenty-four hours, if a temporary custody hearing, pursuant  
6 to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility,  
7 an interview is conducted with the child, and a written assessment of the child's immediate needs  
8 is provided at the temporary custody hearing. The interview and assessment may be conducted  
9 by law enforcement, states attorney, court services, or other public employee. The child may not  
10 be held in detention greater than seventy-two hours unless revocation proceedings have been  
11 initiated.

12       If the child is being held for another jurisdiction as a parole or probation violator, as runaway  
13 or as a person under court-ordered detention, the child may be placed in detention for more than  
14 twenty-four hours, and up to seven days, if a temporary custody hearing, pursuant to  
15 § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.

16       Section 6. That § 26-8B-6 be amended to read as follows:

17       26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall enter  
18 a decree of disposition according to the least restrictive alternative available in keeping with the  
19 best interests of the child. The decree shall contain one or more of the following alternatives:

20       (1)   The court may place the child on probation or under protective supervision in the  
21            custody of one or both parents, guardian, custodian, relative, or another suitable  
22            person under conditions imposed by the court;

23       (2)   The court may require as a condition of probation that the child report for assignment  
24            to a supervised work program, provided the child is not placed in a detention facility

1 and is not deprived of the schooling that is appropriate to the child's age, needs, and  
2 specific rehabilitative goals. The supervised work program shall be of a constructive  
3 nature designed to promote rehabilitation, shall be appropriate to the age level and  
4 physical ability of the child and shall be combined with counseling by a court services  
5 officer or other guidance personnel. The supervised work program assignment shall  
6 be made for a period of time consistent with the child's best interests, but may not  
7 exceed ninety days;

8 (3) If the court finds that the child has violated a valid court order, the court may place  
9 the child in a detention facility, for purposes of disposition if:

10 (a) The child is not deprived of the schooling that is appropriate for the child's age,  
11 needs, and specific rehabilitative goals;

12 (b) The child had a due process hearing before the order was issued; and

13 (c) ~~Before the issuance of such order, a local interagency team, authorized~~  
14 ~~pursuant to § 27A-15-56 shall review the behavior of the child and the~~  
15 ~~circumstances under which such child was brought before the court and made~~  
16 ~~subject to such order; determine the reasons for the behavior that caused such~~  
17 ~~child to be brought before the court and made subject to such order; determine~~  
18 ~~that all dispositions, including treatment, other than placement in a detention~~  
19 ~~facility or the Department of Corrections, have been exhausted or are clearly~~  
20 ~~inappropriate; and submit to the court a written report stating the results of the~~  
21 ~~review and determinations made~~ A plan of disposition from a court services  
22 officer is provided to the court;

23 (4) The court may require the child to pay for any damage done to property or for  
24 medical expenses under conditions set by the court if payment can be enforced

- 1 without serious hardship or injustice to the child;
- 2 (5) The court may commit the child to the Department of Corrections for placement in  
3 a juvenile correctional facility, foster home, group home, group care center, or  
4 residential treatment center pursuant to chapter 26-11A. Prior to placement in a  
5 juvenile correctional facility, an interagency team comprised of representatives from  
6 the Department of Human Services, Department of Social Services, Department of  
7 Education and Cultural Affairs, ~~and the Department of Corrections,~~ and the Unified  
8 Judicial System shall make a written finding that placement at a Department of  
9 Corrections facility is the least restrictive placement commensurate with the best  
10 interests of the child. Subsequent placement in any other Department of Corrections  
11 facility may be authorized without an interagency review;
- 12 (6) The court may place a child in an alternative educational program;
- 13 (7) The court may order the child to be examined and treated at the Human Services  
14 Center;
- 15 (8) The court may impose a fine not to exceed five hundred dollars;
- 16 (9) The court may order the suspension or revocation of the child's driving privilege or  
17 restrict the privilege in such manner as it sees fit or as required by § 32-12-52.4;
- 18 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,  
19 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,  
20 or other party responsible for the child.

21 No adjudicated child in need of supervision may be incarcerated in a detention facility except  
22 as provided in subdivision (3) or (5) of this section.

23 Section 7. That § 26-8C-2 be amended to read as follows:

24 26-8C-2. In this chapter and chapter 26-7A, the term, delinquent child, means any child ten

1 years of age or older who, regardless of where the violation occurred, has violated any federal,  
2 state, or local law or regulation for which there is a penalty of a criminal nature for an adult,  
3 except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as  
4 misdemeanors, or petty offenses or any violation of § 35-9-2.

5 Section 8. That § 26-11-1 be amended to read as follows:

6 26-11-1. If any child under the age of eighteen years is arrested, with or without a warrant,  
7 for a violation of any law or municipal ordinance for which the child is not subject to proceedings  
8 as a child in need of supervision as defined in § 26-8B-2 or a delinquent child as defined in  
9 § 26-8C-2 or for a violation of subdivision 34-46-2(2), the child shall be brought before the  
10 judge of a court having jurisdiction over the offense and proceedings shall be conducted as  
11 though the child were eighteen years of age or older.

12 A child under the age of eighteen years, subject to proceedings pursuant to this section and  
13 accused of a Class 2 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a  
14 detention or temporary care facility for up to seven days if physically sight and sound separated  
15 from adult prisoners. No child may be held in or sentenced to a detention facility for a violation  
16 of subdivision 34-46-2(2).

17 A child under the age of eighteen years, subject to proceedings pursuant to this section and  
18 accused of a Class 1 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a  
19 detention or temporary care facility for up to thirty days if physically sight and sound separated  
20 from adult prisoners.

21 Section 9. That § 24-11-1 be amended to read as follows:

22 24-11-1. The ~~word "jail"~~ term, jail, as used in this chapter includes any building or place  
23 provided or used by any county, municipality, or civil township for the detention of adult persons  
24 convicted or accused of the violation of any law of this state, any ordinance or bylaw of any

1 municipality; or civil township, or any rule or regulation of any board, commission, or public  
2 officer having the effect of law; or for the detention of adult persons held as witnesses or  
3 committed for contempts, except juvenile detention facilities located outside jails and lockups  
4 and approved collocated detention facilities operated by counties. The governing body or  
5 commission responsible for the operation of a jail shall classify its jails based upon the types of  
6 persons detained therein and the maximum length of detention of persons in such jails.

7 Section 10. That § 24-11-16 be amended to read as follows:

8 24-11-16. The sheriff or other officer having charge of any jail shall keep jail records. These  
9 records shall be carefully kept and preserved and delivered to such officer's successor in office.  
10 ~~Such~~ The officer shall exhibit these records to any judge of the circuit court ~~when,~~ if requested  
11 to do so, and to the Department of Corrections for the purposes on monitoring compliance with  
12 the requirements of the Juvenile Justice and Delinquency Prevention Act pursuant to § 1-15-28.

13 Section 11. That § 32-12-52.4 be amended to read as follows:

14 32-12-52.4. Upon a first conviction or a first adjudication ~~of delinquency~~ as a child in need  
15 of supervision for a violation of § 35-9-2 while in a motor vehicle, the court shall suspend the  
16 driver license or driving privilege of any driver of a vehicle who was under the age of twenty-one  
17 when the offense occurred, for a period of six months.

18 Upon a second or subsequent conviction or a second or subsequent adjudication ~~of~~  
19 ~~delinquency~~ as a child in need of supervision for a violation of § 35-9-2 while in a motor vehicle,  
20 the court shall suspend the driver license or driving privilege of any driver of a vehicle who was  
21 under the age of twenty-one when the offense occurred, for a period of one year. For any offense  
22 under this section, the court may issue an order permitting the person to operate a motor vehicle  
23 for purposes of the person's employment, attendance at school, or attendance at counseling  
24 programs.

1 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified  
2 Judicial System shall notify the Department of Commerce and Regulation of any conviction or  
3 adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period  
4 of suspension shall begin on the date the person's suspended driver license is received by the  
5 court or the Department of Commerce and Regulation. At the expiration of the period of  
6 suspension, a person may make application to have the license reinstated and pay the license fee  
7 as prescribed in § 32-12-47.1.

8 Section 12. That § 26-7A-15 be amended to read as follows:

9 26-7A-15. The officer or party who takes a child into temporary custody, with or without  
10 a court order, except under a court order issued during a noticed hearing after an action has been  
11 commenced, shall immediately, without unnecessary delay in keeping with the circumstances,  
12 inform the child's parents, guardian, or custodian of the temporary custody and of the right to  
13 a prompt hearing by the court to determine whether temporary custody should be continued. If  
14 the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer  
15 or party taking temporary custody of the child shall report that fact and the circumstances  
16 immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian,  
17 or custodian, without unnecessary delay, of the time, date, and place of the temporary custody  
18 hearing. The hearing shall be held within forty-eight hours if it concerns any apparent abused or  
19 neglected child or if it concerns any apparent delinquent child pursuant to § 26-8C-3 or within  
20 twenty-four hours if it concerns ~~any apparent delinquent child pursuant to § 26-8C-3~~ or any  
21 apparent child in need of supervision pursuant to § 26-8B-3, excluding Saturdays, Sundays, and  
22 court holidays, after taking the child into temporary custody, unless extended by order of the  
23 court. Failure to notify the child's parents, guardian, or custodian of the temporary custody  
24 hearing is not cause for delay of the hearing if the child is represented by an attorney at the

1 hearing.

2 Section 13. That § 26-7A-20 be amended to read as follows:

3 26-7A-20. If the child is an apparent, alleged, or adjudicated child in need of supervision,  
4 after the temporary custody hearing the court shall release the child from temporary custody to  
5 the child's parents, guardian, or custodian, with or without restriction or condition or upon  
6 written promise of the parents, guardian, or custodian regarding care and supervision of the  
7 child, unless the court finds that the child should continue to be held in temporary custody for  
8 any of the following reasons:

- 9 (1) The child has failed to comply with court services or a court-ordered program;
- 10 (2) The child is being held for another jurisdiction as a parole or probation violator, as a  
11 runaway, or as a child under other court-ordered detention;
- 12 (3) The child has a demonstrated propensity to run away from the child's home, from  
13 court-ordered placement outside of the child's home, or from agencies charged with  
14 providing temporary care for the child;
- 15 (4) The child is under court-ordered home detention in this jurisdiction;
- 16 (5) There are specific, articulated circumstances which justify the detention for the  
17 protection of the child from potentially immediate harm to the child's self or to others;  
18 or
- 19 (6) The child is a material witness, the detention is necessary because of implications of  
20 tampering with the child, and an affidavit so stating is filed with the court.

21 An apparent, alleged, or adjudicated child in need of supervision may not be placed in  
22 detention for longer than twenty-four hours after the temporary custody hearing unless the child  
23 has been accused of or has been found in violation of a valid court order.

24 Section 14. That § 26-9-2 be amended to read as follows:

1        26-9-2. When any person is prosecuted under § 26-9-1, and the charge against such person  
2 concerns the abuse or neglect of a child, the offense for convenience may be termed contributory  
3 abuse or contributory neglect. ~~When~~ If it concerns the delinquency of a child, for convenience  
4 it may be termed contributory delinquency. If it concerns a child in need of supervision, for  
5 convenience it may be termed contributing to the child's status as a child in need of supervision.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

529I0714

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 206** - 02/26/2003

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

Introduced by: Senator Symens

1 FOR AN ACT ENTITLED, An Act to limit the use of information contained in certain  
2 commitment documentation related to drug offenses.

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

4 Section 1. That chapter 34-20A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 The petition for commitment, written application, and written report to the circuit court and  
7 the resulting protective custody order required by § 34-20A-70 shall be sealed and may not be  
8 used for the purpose of enforcing the provisions of chapter 22-42 and chapter 22-42A against  
9 the person being committed. Any law enforcement official or prosecuting attorney may petition  
10 the circuit court to examine these documents, and the court may allow such examination upon  
11 a showing that the purpose of the examination is not to investigate a violation of chapter 22-42  
12 or chapter 22-42A against the person being committed. However, any information obtained from  
13 the examination of the petition for commitment, written application, written report, or protective  
14 custody order may not be used against the person being committed in any prosecution for a  
15 violation of chapter 22-42 or chapter 22-42A.

