



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

394I0113

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1051** - 01/22/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to make sliming court services officers or designees a crime.

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

3 Section 1. That § 22-18-26.1 be amended to read as follows:

4 22-18-26.1. Any person who, with the intent to assault, throws, smears, or causes human  
5 blood, emesis, mucus, semen, excrement, or human waste to come in contact with a law  
6 enforcement officer as defined in subdivision 22-1-2(22), a firefighter, a court services officer  
7 or designee, or an emergency medical technician, while performing official duties or actions, is  
8 guilty of a Class 1 misdemeanor.



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

394I0107

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1053** - 01/22/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to provide for the centralization and computerization of  
2 certain jury selection processes.

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

4 Section 1. That § 16-13-4.1 be amended to read as follows:

5 16-13-4.1. For the purposes of this chapter, the jury selection list shall be prepared using  
6 electronic means by the ~~county auditor pursuant to § 12-4-10~~ state court administrator's office  
7 and shall consist of the current voter registration list, ~~as~~ obtained from the secretary of state,  
8 supplemented by the list of persons eighteen years of age and over holding a valid driver's license  
9 ~~list.~~ The state court administrator's office shall annually merge these lists, and purge duplicate  
10 listings, to create an accurate jury selection list for preparing the master juror list in each county.

11 The county auditor may request that the supplemental driver's license list be compiled from a list  
12 of those drivers within the county who have renewed, updated, or applied for a driver's license  
13 in the last two years. The ~~driver's license list shall be used for the express reason of~~  
14 ~~supplementing the jury list and~~ jury selection list may not be distributed, sold, or duplicated for  
15 any other purpose.



1 Section 2. That § 16-13-5 be repealed.

2 ~~16-13-5. The board of jury selectors each year shall prepare the master juror list for the~~  
3 ~~county.~~

4 Section 3. That § 16-13-9 be repealed.

5 ~~16-13-9. A quorum of the board of jury selectors shall at all times be present during the~~  
6 ~~preparation of the master juror list.~~

7 Section 4. That § 16-13-9.1 be amended to read as follows:

8 16-13-9.1. For the purposes of this chapter, the master juror list shall be that list of names  
9 randomly selected by the ~~board of jury selectors~~ state court administrator's office from the jury  
10 selection lists and the driver license lists list, from which the various grand and petit jury panels  
11 shall be drawn.

12 Section 5. That § 16-13-9.2 be amended to read as follows:

13 16-13-9.2. ~~The board of jury selectors shall choose at random a number not less than one nor~~  
14 ~~more than the total number of jurors to be placed upon the master jury list. Using that a random~~  
15 ~~number, the board of jury selectors shall then proceed to choose not less than one nor more than~~  
16 ~~the total number of jurors to be placed on the master jury list, the state court administrator's~~  
17 ~~office shall select from the jury selection list for the each county the name corresponding to that~~  
18 ~~random number in sequence. These names shall then be supplemented by names randomly~~  
19 ~~selected from the county driver's license list in the same manner. The board of jury selectors may~~  
20 ~~use an electronic or mechanical system or device in carrying out its duties under this section. This~~  
21 ~~process shall continue until the number of names provided for pursuant to § 16-13-2 is selected.~~

22 Section 6. That § 16-13-9.4 be repealed.

23 ~~16-13-9.4. If an electronic selection process is not used, in order that every person eligible~~  
24 ~~for jury duty in the county may have a chance for jury duty, in each odd-numbered year, the~~

1 ~~random selection process determined by § 16-13-9.2 shall commence at the beginning of the jury~~  
2 ~~selection lists and then through to the end of the lists. In every even-numbered year, the random~~  
3 ~~selection process shall commence at the end of the jury selection lists and then through to the~~  
4 ~~beginning of the lists.~~

5 Section 7. That § 16-13-9.5 be repealed.

6 ~~—16-13-9.5. If an electronic selection process is not used, and the board of jury selectors~~  
7 ~~exhausts the jury selection list and the driver's license list without obtaining the minimum number~~  
8 ~~of names to be selected, the board shall repeat the process until the minimum number of names~~  
9 ~~is drawn. In that situation, the board of jury selectors may take the name immediately before or~~  
10 ~~after the number that was randomly selected pursuant to § 16-13-9.2 as it appears on the jury~~  
11 ~~selection list.~~

12 Section 8. That § 16-13-13 be amended to read as follows:

13 16-13-13. Promptly upon completion receipt of the master juror list from the state court  
14 administrator's office, and in any event before October first in each year, the board of jury  
15 selectors shall sign the list and shall file it with the clerk of courts. The list shall be kept on file  
16 for four years. The clerk of courts shall then prepare separate tickets for each person named in  
17 the master juror list furnished by the board of jury selectors, unless a name is stricken pursuant  
18 to § 16-13-15. This process may be performed electronically.

19 Section 9. That § 16-13-15 be amended to read as follows:

20 16-13-15. The board of jury selectors shall ascertain whether each of the persons on the  
21 master juror list has the qualifications of a juror as provided by § 16-13-10 from the information  
22 available to ~~them~~ the board from records of the county or other readily available sources, or has  
23 served as a juror within two years. A person has served as a juror if that person has been  
24 summoned and appeared for a trial. If, from examination of the master juror lists, it appears that

1 any person listed thereon does not have the qualifications to serve as a juror or has served as a  
2 juror within two preceding years, the board of jury selectors shall strike such name from the list  
3 and draw another in its place. ~~If the master list is selected electronically, the~~ The board shall  
4 adjust the number to be drawn to allow for the elimination of the names of those disqualified.  
5 ~~— The clerk of any magistrate court having a separate clerk shall furnish the clerk of the circuit~~  
6 ~~court with a list of the names and addresses of all persons who have served as jurors for the~~  
7 ~~calendar year when requested by the clerk of the circuit court, who shall preserve the lists for~~  
8 ~~two years.~~

9 The board of jury selectors shall record with the list of jurors the reasons for disqualification  
10 of any person stricken from the master jury list.

11 Section 10. That § 16-13-31 be amended to read as follows:

12 16-13-31. No irregularity or omission upon the part of the state court administrator's office,  
13 the board of jury selectors, or of any officer, in the performance of any duty imposed by this  
14 chapter, ~~shall~~ serves to invalidate the panel of grand or petit jurors selected unless it shall be  
15 made to appear to the satisfaction of the court for which the panel was drawn that there was such  
16 misfeasance or malfeasance as would tend to deprive some litigant or person charged with crime  
17 of a substantial right, in which event the court may dismiss any or all members of the panel from  
18 the trial of such case or the consideration of such matter or for the term and may make such  
19 order respecting the drawing of additional names from the list or a new panel or a special venire  
20 as ~~he~~ the court may deem proper.

21 Section 11. That § 16-13-34 be amended to read as follows:

22 16-13-34. ~~After~~ Unless processed electronically, after the panel or panels of jurors have been  
23 drawn, the clerk of courts shall mail to each juror, at least sixty days prior to the time the juror  
24 is to serve, a notice that ~~he~~ such person has been drawn as a juror.

1 The notice shall state the time and place the juror shall serve; and shall have attached thereto  
2 an acceptance of service to be signed by each juror. There shall also be enclosed with the notice  
3 a stamped envelope addressed to the clerk of courts for the return of the acceptance of service.  
4 ~~It shall be the duty of the jurors to~~ Each juror shall sign the acceptance of service of the notice,  
5 ~~to answer any questionnaires enclosed with the acceptance, and to mail it to the clerk of courts~~  
6 ~~within ten days after receipt~~ or respond electronically using the court's juror website within ten  
7 days after receipt.

8 Section 12. That § 16-13-42 be amended to read as follows:

9 16-13-42. If ~~all persons~~ any person summoned as grand and petit ~~jurors to~~ juror does not  
10 appear before the court, or if for any cause the panel of grand or petit jurors is not complete, or  
11 if no jury is drawn as provided by § 16-13-27, the court shall order the clerk of courts to  
12 summon without delay persons having the qualifications of jurors, whose names appear upon the  
13 master jury list, and if the jury list is exhausted then the clerk of courts shall ~~place~~ request from  
14 the state court administrator's office additional names on the master list pursuant to § 16-13-9.2.  
15 ~~Using a random number the clerk of courts shall choose additional persons to be summoned for~~  
16 ~~jury duty from the master jury list.~~ The trial court shall designate the persons authorized to assist  
17 the clerk of courts in contacting those summoned. The clerk and authorized assistants shall make  
18 and file with the court a memorandum of the manner in which attempts to contact additional  
19 jurors were made, responses or lack thereof, and the name of each additional juror contacted.  
20 ~~The~~ Each person ~~or persons~~ so summoned shall forthwith appear before the court, and, if  
21 competent, shall serve on the grand or petit jury as the case may be unless excused or lawfully  
22 challenged.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

385I0027

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1055** - 01/24/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the authority of magistrate courts and to revise  
2 certain provisions pertaining thereto.

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

4 Section 1. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 As used in this chapter, the term, magistrate, means a clerk magistrate or a magistrate judge  
7 appointed under the authority of this chapter. Any magistrate judge appointed under the  
8 authority of this chapter shall be licensed to practice law in the State of South Dakota.

9 Section 2. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 Pursuant to the provisions of S.D. Const., Art. V, § 4, there is hereby established within each  
12 judicial circuit a magistrate court.

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

15 Any magistrate court with a magistrate judge presiding is a court of record. However, no



1 magistrate court with a clerk magistrate presiding is a court of record.

2 Section 4. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 Subject to such rules as may be promulgated by the Supreme Court, the presiding circuit  
5 judge in each judicial circuit shall appoint a sufficient number of magistrates as may be necessary  
6 to provide adequate and qualified judicial personnel for each county and municipality in the  
7 circuit.

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

10 Each magistrate shall be appointed by the presiding judge of the circuit court and serve at  
11 the pleasure of the presiding judge. However, the Supreme Court may, by rule, provide that  
12 magistrates may be appointed for a definite term.

13 Section 6. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The compensation of a magistrate shall be fixed by law and for such purpose the Supreme  
16 Court in its annual consolidated budget for the Unified Judicial System shall make  
17 recommendations relating thereto. The state shall provide from funds appropriated therefor for  
18 the salaries and travel expenses of the magistrates of the circuit court.

19 Section 7. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final  
22 order or judgment of the magistrate court, and such appeal shall be taken in the manner  
23 prescribed by law or rule for appeals to the circuit court.

24 Section 8. That chapter 16-12A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Each county in the state shall provide suitable and adequate facilities for the magistrate court,  
3 including the facilities necessary to make the space provided functional for its intended use.

4 Section 9. That chapter 16-12A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 Any municipality in the state may, at its discretion, and in cooperation with the presiding  
7 judge of the circuit, provide suitable and adequate quarters for a magistrate court assigned  
8 principally to serve the municipality, including the facilities necessary to make the space provided  
9 functional for its intended use.

10 Section 10. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 If the business of a magistrate court with a magistrate judge presiding becomes congested  
13 or if a magistrate judge is, for any cause, unable to act, the Chief Justice of the Supreme Court  
14 may, by order, temporarily transfer to such magistrate court a magistrate judge from another  
15 circuit. The magistrate judge acting in a county other than one in his or her own circuit shall have  
16 all the powers and duties of a magistrate judge regularly appointed and qualified therein.

17 Section 11. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 Retired justices and judges, with their consent, may be authorized by the Chief Justice of the  
20 Supreme Court to preside in any action or proceeding, or over any term of court, in the  
21 magistrate court. If so authorized and acting, the orders, judgments, and decrees of that court  
22 entered by such retired justice or judge are as effectual for all purposes as though made by a  
23 regularly elected or appointed magistrate. The Supreme Court shall provide for the  
24 reimbursement of their expenses.

1 Section 12. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
2 as follows:

3 A magistrate judge appointed pursuant to this chapter may solemnize marriages. The clerk  
4 of courts shall collect a fee of twenty dollars for a magistrate's performance of a marriage. The  
5 clerk of courts shall remit fees collected under this section to the state treasurer for deposit in  
6 the state general fund.

7 Section 13. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 A magistrate judge appointed pursuant to this chapter may administer oaths, take  
10 acknowledgments, and depositions.

11 Section 14. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
14 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

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

17 No party may be deprived of the assistance of an attorney, at the party's expense, in small  
18 claims or magistrate court.

19 Section 16. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
22 circuit courts to fix bond or take personal recognizance of persons charged with an offense.

23 Section 17. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
24 as follows:

1 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
2 circuit courts:

- 3 (1) To accept defaults for petty offenses;
- 4 (2) To try contested cases involving a petty offense;
- 5 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- 6 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,  
7 bylaw, or other police regulation of a political subdivision;

8 if the punishment is a fine not exceeding one thousand dollars or imprisonment for a period not  
9 exceeding one year, or both such fine and imprisonment and to impose sentence upon a plea of  
10 guilty or nolo contendere. Acceptance of not guilty or nolo contendere pleas shall be in  
11 accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

12 Section 18. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
15 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or  
16 other police regulation of a political subdivision.

17 Section 19. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
20 circuit courts to act as a committing magistrate for all purposes.

21 Section 20. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
24 circuit courts to try and determine all cases of misdemeanor and actions or proceedings for

1 violation of any ordinance, bylaw, or other police regulation of a political subdivision.

2 Section 21. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
5 circuit courts to try and determine all small claim proceedings.

6 Section 22. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the  
9 circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the  
10 property involved does not exceed ten thousand dollars. Any magistrate court with a magistrate  
11 judge presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value  
12 of the property involved does not exceed eight thousand dollars.

13 Section 23. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 A magistrate court with a magistrate judge presiding has jurisdiction, upon assignment of the  
16 presiding judge of the circuit, to act in lieu of a circuit judge having jurisdiction heretofore  
17 granted to county courts or district county courts or judges thereof in relation to the enforcement  
18 or administration of the provisions of Titles 27A and 27B.

19 Section 24. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 Except in small claims proceedings, a verbatim record of all proceedings and evidence at  
22 trials before a magistrate court with a magistrate judge presiding shall be maintained either by  
23 electrical devices or by stenographic means, as the magistrate may direct. However, if any party  
24 to the action requests stenographic reporting of the proceedings, the reporting shall be done

1 stenographically. The requesting party in a civil matter shall pay the costs of reporting the  
2 proceedings. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in  
3 circuit court.

4 Section 25. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final  
7 order or judgment of the magistrate court with a magistrate judge presiding, and such appeal  
8 shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

9 Section 26. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 Any attorney who is a part-time magistrate judge may practice law under such conditions as  
12 the circuit judges sitting en banc in the judicial circuit may provide, subject to Supreme Court  
13 rule.

14 Section 27. That chapter 16-12B be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 No magistrate judge appointed on a full-time basis may act as counsel or be associated with  
17 others as counsel in any court of this state. Each magistrate judge is bound by the Code of  
18 Judicial Conduct adopted by the Supreme Court.

19 Section 28. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 Any duly appointed clerk or any deputy clerk who meets the qualifications of a clerk  
22 magistrate may be appointed as a clerk magistrate. Any clerk or deputy clerk who has been  
23 appointed a clerk magistrate may act as such in any circuit of this state if placed on temporary  
24 duty assignment in another circuit.

1 Section 29. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
2 as follows:

3 No person is eligible for appointment to the office of clerk magistrate unless such person is  
4 a graduate of a high school or has attained the equivalent of a high school education as indicated  
5 by the possession of a certificate of equivalency issued by the State Department of Education or  
6 the former Department of Public Instruction or the former Division of Elementary and Secondary  
7 Education based upon the record made on the general education development test.

8 Section 30. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 No clerk magistrate may take office for the first time as a magistrate until such person has  
11 attended an institute on the duties and functioning of the magistrate's office to be held under the  
12 supervision of the Supreme Court, unless such attendance is waived by the Supreme Court.

13 Section 31. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The Supreme Court shall establish the institute and shall provide that the institute be held at  
16 least once every two years. It may establish an institute at such other times and for such other  
17 purposes as it deems necessary and may require the attendance of any clerk magistrate.

18 Section 32. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 A clerk magistrate appointed pursuant to this chapter may solemnize marriages. The clerk  
21 of courts shall collect a fee of twenty dollars for a clerk magistrate's performance of a marriage.  
22 The clerk of courts shall remit fees collected under this section to the state treasurer for deposit  
23 in the state general fund.

24 Section 33. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A clerk magistrate appointed pursuant to this chapter has authority to administer oaths, take  
3 acknowledgments, and depositions.

4 Section 34. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
7 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

8 Section 35. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 No party may be deprived of the assistance of an attorney, at the party's expense, in small  
11 claims or magistrate court.

12 Section 36. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
15 circuit courts to act as a committing magistrate if voluntary and knowledgeable waiver of  
16 preliminary hearing has been given before the court. The magistrate court may conduct  
17 preliminary hearings as a committing magistrate unless demand is made by the defendant prior  
18 to such hearing to have the hearing conducted before a magistrate judge or a circuit judge to be  
19 assigned by the presiding judge.

20 Section 37. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
23 circuit courts to fix bond or take personal recognizance of persons charged with an offense in  
24 accordance with the schedule adopted pursuant to subdivision 16-2-21(8).

1 Section 38. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
2 as follows:

3 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
4 circuit courts:

- 5 (1) To accept defaults for petty offenses;
- 6 (2) To try contested cases involving a petty offense;
- 7 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- 8 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,  
9 bylaw, or other police regulation of a political subdivision;

10 if the punishment is a fine not exceeding two hundred dollars or imprisonment for a period not  
11 exceeding thirty days, or both such fine and imprisonment and to impose sentence upon a plea  
12 of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or  
13 schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not  
14 covered by said schedules, the magistrate court may impose a sentence of a fine as authorized  
15 by statute, ordinance, bylaw, or police regulation or two hundred dollars, whichever is less.  
16 Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and  
17 23A-7-8, as applicable.

18 Section 39. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
21 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or  
22 other police regulation of a political subdivision in accordance with schedules adopted pursuant  
23 to subdivision 16-2-21(8).

24 Section 40. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the  
3 circuit courts, in noncontested civil actions or noncontested small claims proceedings where the  
4 amount of money or damage does not exceed eight thousand dollars, to take the necessary  
5 evidence and to enter a judgment.

6 Section 41. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 Except in small claims proceedings, a verbatim record of all proceedings and evidence at  
9 trials before a clerk magistrate shall be maintained either by electrical devices or by stenographic  
10 means, as the magistrate may direct. However, if any party to the action requests stenographic  
11 reporting of the proceedings, the reporting shall be done stenographically. The requesting party  
12 in a civil matter shall pay the costs of reporting the proceedings. If no record is kept, the appeal,  
13 if appeal is authorized by law, shall be de novo in circuit court.

14 Section 42. That chapter 16-12C be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final  
17 order or judgment of the magistrate court with a clerk magistrate presiding, and such appeal shall  
18 be taken in the manner prescribed by law or rule for appeals to the circuit court.

19 Section 43. That §§ 16-12A-1 to 16-12A-3, inclusive, 16-12A-3.2, 16-12A-4, 16-12A-5 to  
20 16-12A-7, inclusive, and 16-12A-8 to 16-12A-30, inclusive, be repealed.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

770I0290

SENATE APPROPRIATIONS COMMITTEE

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

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

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

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

5 Section 1. The South Dakota Board of Regents may contract for the construction,  
6 completion, finishing, equipping, and maintaining of an addition to the Darold "Dud" King  
7 Physical Education Center at the South Dakota School of Mines and Technology in Rapid City,  
8 including utilities, furnishings, architectural and engineering services, asbestos abatement, site  
9 preparation, and the construction of sidewalks and driveways and landscaping the grounds of  
10 that facility at the estimated cost of five hundred ninety thousand three hundred dollars  
11 (\$590,300).

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



1       Section 3. The design and construction of the facilities approved by this Act shall be under  
2 the general supervision of the Bureau of Administration as provided in chapter 5-14.

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

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

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

529I0294

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB 32** - 01/29/2003

Introduced by: The Committee on Legislative Procedure at the request of the Investment Council

1 FOR AN ACT ENTITLED, An Act to exempt the higher education savings program accounts  
2 from certain claims of creditors.

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

4 Section 1. That § 13-63-20 be amended to read as follows:

5 13-63-20. Notwithstanding any other provision of law, any amount in or credited to any  
6 account is exempt from and is not susceptible to any levy, execution or judgment, or other  
7 operation of law, garnishment, or other judicial enforcement. Amounts in an account are not an  
8 asset or property of the account owner, contributor, or designated beneficiary for the purposes  
9 of paying any debt or liability of any account owner, contributor, or designated beneficiary. No  
10 account is subject to involuntary transfer or alienation. Neither an account owner nor a  
11 designated beneficiary may use an interest in an account as security for a loan. Any pledge of an  
12 interest in an account is of no force and effect. Amounts in an account may not be included in  
13 the gross estate of the account owner or contributor for purposes of state tax law, except to the  
14 extent that amounts in an account may be includable in the gross estate of the account owner or  
15 contributor for purposes of federal tax law. However, any funds in an account that have been



1 contributed within one year prior to the account owner or contributor filing a petition under any  
2 chapter of Title 11 of the United States Bankruptcy Code are not exempt by the provisions of  
3 this section.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

70710298

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 33** - 01/29/2003

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to telemarketing.

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

3 Section 1. That § 37-30A-8 be amended to read as follows:

4 37-30A-8. The provisions of this chapter do not apply to a transaction:

5 (1) Made by a merchant who operates an established business that has a fixed permanent  
6 location~~and~~, who displays or offers consumer goods or services for sale on a  
7 continuing basis, and who makes less than two hundred unsolicited consumer  
8 telephone calls per year;

9 (2) In which the business establishment making the solicitation is establishing a  
10 business-to-business relationship or has a clear, preexisting business relationship with  
11 the consumer, if that relationship resulted in the consumer becoming aware of the full  
12 name, business address, and telephone number of the establishment;

13 (3) In which the consumer purchases goods or services pursuant to an examination of a  
14 television, radio, or print advertisement or a sample, brochure, catalog, or other  
15 mailing material of the telemarketer that contains:



- 1           (a)    The name, address, and telephone number of the telemarketer;
- 2           (b)    A full description of the goods or services being sold along with a list of all
- 3                 prices or fees being requested, including any handling, shipping, sales tax, or
- 4                 delivery charges; and
- 5           (c)    Any limitations or restrictions that apply to the offer.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

707I0332

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 41** - 01/29/2003

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 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors and  
14 assigns, which was providing local exchange service within a defined service area in  
15 this state on or before February 8, 1996;
- 16 (10) "Interexchange telecommunications service," telecommunications service between  
17 points in two or more exchanges;
- 18 (11) "LATA," a local access and transport area;
- 19 (12) "Local exchange area," a any geographic area established by a local exchange carrier  
20 as filed with or approved by the commission for the administration of local  
21 telecommunications service which may consist of one or more central offices or wire  
22 centers together with associated facilities used in furnishing telecommunications  
23 service in that area;
- 24 (13) "Local exchange service," the access to and transmission of two-way switched

- 1 telecommunications service within a local exchange area;
- 2 (14) "Narrowband network," a fully switched digital network covering the transport range  
3 from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B  
4 (Bearer) channels and a 16 Kbps signaling D (Delta) channel;
- 5 (15) "New products and services," any new product or service introduced after July 1,  
6 1988, which is not functionally required to provide local exchange service.  
7 Repackaging of any product or service which is fully competitive with any service  
8 regulated as emerging competitive or noncompetitive is not considered a new product  
9 or service;
- 10 (16) "Optional service," a any limited or discretionary service offered by a  
11 telecommunications company which is not functionally required for the provision of  
12 noncompetitive services and which the customer has the option to purchase;
- 13 (17) "Private," ensuring confidentiality and integrity of network transport of messages  
14 without dependency on specialized customer premise security devices;
- 15 (18) "Rate of return regulation," the procedure used by the commission to approve the  
16 charge for a service which gives due consideration to the public need for adequate,  
17 efficient, and reasonable service and to the need of the public utility for revenues  
18 sufficient to enable it to meet its total current cost of furnishing such service, including  
19 taxes and interest, and including adequate provision for depreciation of its utility  
20 property used and necessary in rendering service to the public, and to earn a fair and  
21 reasonable return upon the value of its property;
- 22 (19) "Register," a list of names, addresses, and telephone numbers of residential telephone  
23 subscribers who have properly enrolled to prevent unsolicited telephone calls;
- 24 (20) "Residential telephone subscriber," any person residing in the state who has residential

1           telephone service;

2       (21) "Robust," easily and economically sustaining the rigors of growth and extensive public  
3           use;

4       ~~(20)~~(22) "Rural telephone company," a any local exchange company as defined in 47  
5           U.S.C. § 153(37) as of January 1, 1998;

6       ~~(21)~~(23) "Secure," physically precluding unwanted access to network and information;

7       ~~(22)~~(24) "Service area," a geographic area established by the commission for the  
8           purpose of determining universal service obligations and support mechanisms.  
9           For a rural telephone company, the service area is the company's study area or  
10          any other area designated jointly by the commission and the Federal  
11          Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of  
12          January 1, 1998;

13       ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and  
14          protocols of generally accepted standards setting bodies;

15       ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited  
16          to specific application requirements;

17       ~~(25)~~(27) "Switched access," ~~an~~ any exchange access service purchased for the  
18          origination and termination of interexchange telecommunications services  
19          which includes central office switching and signaling, local loop facility, or  
20          local transport;

21       ~~(26)~~(28) "Telecommunications company," any person or municipal corporation owning,  
22          operating, reselling, managing, or controlling in whole or in part, any  
23          telecommunications line, system, or exchange in this state, directly or  
24          indirectly, for public use. For purposes of this definition the term, for public

1 use, means for the use of the public in general or for a specific segment of the  
2 public, or which connects to the public in general or for a specific segment of  
3 the public, or which connects to the public switched network for access to any  
4 telecommunications service;

5 ~~(27)~~(29) "Telecommunications service," the transmission of signs, signals, writings,  
6 images, sounds, messages, data, or other information of any nature by wire,  
7 radio, lightwaves, electromagnetic means, or other similar means. It does not  
8 include the provision of terminal equipment used to originate or terminate such  
9 service, broadcast transmissions by radio, television, and satellite stations  
10 regulated by the Federal Communications Commission and one-way cable  
11 television service;

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

19 (31) "Telephone solicitor," any person or organization who individually or through  
20 salespersons, makes or causes to be made a telephone solicitation call. This term does  
21 not include any not-for-profit or charitable organization exempt from federal income  
22 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of  
23 January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

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

- 1           (a) In response to an express request of the person called;
- 2           (b) Primarily in connection with an existing debt or contract, payment or  
3           performance of which has not been completed at the time of such call;
- 4           (c) To any person with whom the telephone solicitor, or any business on whose  
5           behalf the telephone call is being made has an established business relationship  
6           or a business relationship that existed within the immediately preceding twelve  
7           months; or
- 8           (d) To any person for the purpose of obtaining information and establishing a date  
9           and time for an appointment with the telephone solicitor which will take place  
10           at the solicitor's place of business or the consumer's home and the call is not  
11           made by an automated telephone dialing system. For purposes of this  
12           subsection, an automated telephone dialing system is any automatic terminal  
13           equipment that stores or produces numbers to be called randomly or  
14           sequentially;
- 15       ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully  
16           switched, digital, addressable information transport from the 144 Kbps to the  
17           DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and  
18           6.312 Mbps, respectively.

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

21           Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that  
22 comply with the provisions of this Act for obtaining a list of persons who do not wish to receive  
23 unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor  
24 who makes unsolicited telephone calls may call any number listed on the register. The

1 commission may promulgate rules, pursuant to chapter 1-26, concerning procedures and  
2 requirements regarding the implementation of a register, setting of fees for purchase of the  
3 register, form of the application, requirements for acquiring a copy of the register, requirements  
4 for enrollment on and removal from the register, procedures for maintaining a register, setting  
5 of fees to enroll or renew enrollment on the register, procedures for operating the register,  
6 standards concerning the use of the register, and application of the civil fines.

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

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

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

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

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

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

1 which is hereby established in the state treasury. Any interest earned on money in the fund shall  
2 be deposited in the fund. The money is continuously appropriated to the use of the commission  
3 to implement and administer the provisions of this Act.

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

6 The commission shall establish or provide for the operation of a register. The register may  
7 be operated by the commission or by another entity under contract with the commission. A  
8 residential telephone subscriber may enroll on the register in accordance with procedures  
9 prescribed by the commission. A subscriber shall pay to the commission a fee, set pursuant to  
10 section 2 of this Act, of not more than five dollars to be listed on the register. Fees collected  
11 under this section shall be credited to the telephone solicitation account established in section 5  
12 of this Act.

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

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

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

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

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

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

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0520

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 63** - 01/31/2003

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

1 FOR AN ACT ENTITLED, An Act to repeal the sales tax exemption for certain interstate  
2 telecommunication services and to declare an emergency.

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

4 Section 1. That § 10-45-6.1 be amended to read as follows:

5 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed ~~on amounts paid for~~  
6 ~~local telephone services, toll telephone services, and teletypewriter services,~~ a tax of four percent  
7 ~~of the amount so paid. The taxes imposed by this section shall be paid by the person paying for~~  
8 ~~the services. If a bill is rendered the taxpayer for local telephone service or toll telephone service,~~  
9 ~~the amount on which the tax with respect to such services shall be based shall be the sum of all~~  
10 ~~charges for such services included in the bill; except that if a person who renders the bill groups~~  
11 ~~individual items for purposes of rendering the bill and computing the tax, then the amount on~~  
12 ~~which the tax for each such group shall be based shall be the sum of all items within that group,~~  
13 ~~and the tax on the remaining items not included in any such group shall be based on the charge~~  
14 ~~for each item separately. If the tax imposed by this section with respect to toll telephone service~~  
15 ~~is paid by inserting coins in coin operated telephones, the tax shall be computed to the nearest~~



1 ~~multiple of five cents, except that, where the tax is midway between multiples of five cents, the~~  
2 ~~next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales~~  
3 ~~tax imposed by this chapter upon the gross receipts from providing any telecommunication~~  
4 ~~service that originates or terminates in this state and that is billed or charged to a service address~~  
5 ~~in this state, or that both originates and terminates in this state. However, the tax imposed by this~~  
6 ~~section does not apply to:~~

- 7       (1) Any eight hundred or eight hundred type service unless the service both originates and  
8           terminates in this state; or
- 9       (2) Any sale of a telecommunication service to a provider of telecommunication services,  
10           including access service, for use in providing any telecommunication service.

11       For the purposes of this section, the term, telecommunication service, is the transmission of  
12 signs, signals, writings, images, sounds, messages, data, or other information of any nature by  
13 wire, radio, lightwaves, electromagnetic means.

14       Section 2. That § 10-45-12.1 be amended to read as follows:

15       10-45-12.1. The following services enumerated in the Standard Industrial Classification  
16 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and  
17 Budget, Office of the President are exempt from the provisions of this chapter: health services  
18 (major group 80); educational services (major group 82) except schools and educational services  
19 not elsewhere classified (industry no. 8299); social services (major group 83); agricultural  
20 services (major group 07) except veterinarian services (group no. 074) and animal specialty  
21 services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and  
22 television broadcasting (group no. 483); railroad transportation (major group 40); local and  
23 suburban passenger transportation (group no. 411) except limousine services; school buses  
24 (group no. 415); farm product warehousing and storage (industry no. 4221); establishments

1 primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily  
2 engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged  
3 in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no.  
4 4522) and airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing;  
5 pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group  
6 no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad  
7 cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952);  
8 security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers  
9 and dealers (group no. 622); credit counseling services provided by individual and family social  
10 services (industry no. 8322); construction services (division C) except industry no. 1752 and  
11 locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting  
12 agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred  
13 out-of-state and the client does not reside within the state. The following are also specifically  
14 exempt from the provisions of this chapter: financial services of institutions subject to tax under  
15 chapter 10-43 including loan origination fees, late payment charges, nonsufficient fund check  
16 charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers  
17 checks, charges for administration of trusts, interest charges, and points charged on loans;  
18 commissions earned or service fees paid by an insurance company to an agent or representative  
19 for the sale of a policy; services of brokers and agents licensed under Title 47; the sale of trading  
20 stamps; rentals of motor vehicles as defined by § 32-5-1 leased under a single contract for more  
21 than twenty-eight days; advertising services; services provided by any corporation to another  
22 corporation which is centrally assessed having identical ownership and services provided by any  
23 corporation to a wholly owned subsidiary which is centrally assessed; continuing education  
24 programs; tutoring; vocational counseling, except rehabilitation counseling; and motion picture

1 rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures;  
2 ~~and charges made by a telecommunications company for the origination, transmission, switching,~~  
3 ~~reception, or termination of an interstate telephone or telegraph communication.~~

4 Section 3. That § 10-45-6.2 be amended to read as follows:

5 10-45-6.2. There is hereby imposed a tax of four percent upon the gross receipts of mobile  
6 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that  
7 originate and terminate in the same state and are billed to a customer with a place of primary use  
8 in this state or are deemed to have originated or been received in this state and to be billed or  
9 charged to a service address in this state if the customer's place of primary use is located in this  
10 state regardless of where the service actually originates or terminates. Notwithstanding any other  
11 provision of this chapter and for purposes of the tax imposed by this section, the tax imposed  
12 upon mobile telecommunication services shall be administered in accordance with 4 U.S.C.  
13 §§ 116-126 as in effect on July 28, 2000.

14 Section 4. Whereas, this Act is necessary for the support of the state government and its  
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
16 force and effect from and after April 1, 2003.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0561

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 76** - 01/31/2003

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

1 FOR AN ACT ENTITLED, An Act to bring the state into compliance with the Streamline Sales

2 Tax Agreement.

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

4 Section 1. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as  
5 follows:

6 "Tangible personal property," personal property that can be seen, weighed, measured, felt,  
7 or touched, or that is in any other manner perceptible to the senses. The term includes electricity,  
8 water, gas, steam, and prewritten computer software.

9 Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purposes of the tax imposed by this chapter, the term, lease or rental, means any  
12 transfer of possession or control of tangible personal property for a fixed or indeterminate term  
13 for consideration. A lease or rental may include future options to purchase or extend. Lease or  
14 rental does not include:

15 (1) A transfer of possession or control of property under a security agreement or deferred



1 payment plan that requires the transfer of title upon completion of the required  
2 payments;

3 (2) A transfer or possession or control of property under an agreement that requires the  
4 transfer of title upon completion of required payments and payment of an option price  
5 does not exceed the greater of one hundred dollars or one percent of the total  
6 required payments; or

7 (3) Providing tangible personal property along with an operator for a fixed or  
8 indeterminate period of time. A condition of this exclusion is that the operator is  
9 necessary for the equipment to perform as designed. For the purpose of this  
10 subdivision, an operator shall do more than maintain, inspect, or set-up the tangible  
11 personal property.

12 Section 3. That § 10-45-12.3 be repealed.

13 ~~10-45-12.3. The tax imposed by this chapter upon persons performing services does not~~  
14 ~~apply to transactions if the use of the service occurs entirely outside the state. In instances of~~  
15 ~~services performed on tangible personal property, use of the service occurs in this state if repair,~~  
16 ~~refurbishment, adjustment, calibration, cleaning, maintenance, or other services are performed~~  
17 ~~on tangible personal property in this state.~~

18 Section 4. That § 10-45-14.1 be amended to read as follows:

19 10-45-14.1. There are specifically exempted from the provisions of this chapter and from the  
20 computation of the amount of tax imposed by it, gross receipts from the sale of nutritional  
21 supplements, as defined by rule promulgated by the secretary of revenue pursuant to chapter  
22 1-26, if dispensed by a ~~chiropractor~~, ~~insulin that is not sold by prescription~~, ~~all drugs and~~  
23 ~~medicines as those terms are defined by § 36-11-2 and medical devices as that term is defined~~  
24 ~~in this section to the extent used by humans, when such drugs, medicines, or medical devices are~~

1 ~~prescribed by prescription, dispensed, or administered by a physician, chiropractor, optometrist,~~  
2 ~~dentist, or podiatrist.~~

3 ~~—"Medical device," as used in this section and § 10-46-15.1, means an instrument, apparatus,~~  
4 ~~implement, machine, contrivance, implant, in vitro reagent, or other similar or related article,~~  
5 ~~including any component, part, or accessory, which is prescribed for use by a particular patient~~  
6 ~~and which is:~~

7 ~~—(1)— Intended for use in the diagnosis of disease or other conditions, or in the cure,~~  
8 ~~mitigation, treatment, detection, or prevention of illness or disease, or in the~~  
9 ~~prevention of death; or~~

10 ~~—(2)— Intended to affect the structure or any function of the human body; or~~

11 ~~—(3)— Intended for use to assist in the mobility of persons: physician, chiropractor,~~  
12 ~~optometrist, dentist, podiatrist, or audiologist.~~

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

15 There are specifically exempted from the provisions of this chapter and from the computation  
16 of the amount of tax imposed by it, gross receipts from the sale of insulin, to the extent used by  
17 humans, that is not sold by prescription.

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

20 There are specifically exempted from the provisions of this chapter and from the computation  
21 of the amount of tax imposed by it, gross receipts from the sale of drugs as defined by rule  
22 promulgated by the secretary of revenue pursuant to chapter 1-26 to the extent used by humans,  
23 if the drugs are prescribed by prescription, dispensed, or administered by a physician,  
24 chiropractor, optometrist, dentist, podiatrist, or audiologist.

1 Section 7. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 There are specifically exempted from the provisions of this chapter and from the computation  
4 of the amount of tax imposed by it, gross receipts from the sale of durable medical equipment,  
5 mobility enhancing equipment, and prosthetic devices as defined by rule promulgated by the  
6 secretary of revenue pursuant to chapter 1-26 to the extent used by humans, if the durable  
7 medical equipment, mobility enhancing equipment, and prosthetic devices are prescribed by  
8 prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

9 Section 8. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 There are specifically exempted from the provisions of this chapter and from the computation  
12 of the amount of tax imposed by it, gross receipts from the sale of any medical device, as that  
13 term is defined in this section, to the extent used by humans, if the medical device is prescribed  
14 by prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The  
15 term, medical device, means any instrument, apparatus, implement, contrivance, or other similar  
16 or related article, including a component, part, or accessory, that is prescribed for use on a single  
17 patient and that is:

- 18 (1) Recognized in the official National Formulary, or the United States Pharmacopoeia,  
19 or any supplement to them;
- 20 (2) Intended for use in the diagnosis of disease or other conditions, or in the cure,  
21 mitigation, treatment, detection, or prevention of disease, of the human body; or
- 22 (3) Intended to affect the structure or any function of the human body, and that does not  
23 achieve any of it's primary intended purposes through chemical action within or on the  
24 human body and that is not dependent upon being metabolized for the achievement

1 of any of its primary intended purposes.

2 A medical device is not durable medical equipment, mobility enhancing equipment, or a  
3 prosthetic device.

4 Section 9. That § 10-45-24 be amended to read as follows:

5 10-45-24. Each retailer or person engaging in a business in this state whose receipts are  
6 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each  
7 application shall be made on a form prescribed by the secretary of revenue and shall require the  
8 name under which the applicant transacts or intends to transact business, the location of each  
9 business, and other information as the secretary of revenue may require. ~~The application shall be  
10 signed by the owner, if a natural person, by a member or partner, if an association or partnership;  
11 or by an executive officer or a person specifically authorized by the corporation to sign the  
12 application, if a corporation, to which shall be attached the written evidence of the person's  
13 authority.~~ The applicant shall have a permit for each place of business, unless the secretary of  
14 revenue grants a request for a statewide permit. A statewide permit may be granted if the  
15 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping  
16 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified  
17 in the application.

18 Any seller registering under the agreement as defined in § 10-45C-1 shall be registered in this  
19 state, provided this state has entered into the agreement as provided in § 10-45C-3. ~~Any seller  
20 who is registered under such agreement is not required to sign the registration application and  
21 may register through an agent.~~ Any seller who is registered under such agreement may cancel  
22 its registration at any time, but is liable for remitting any sales tax previously collected.

23 Section 10. That subdivision (12) of § 10-46-1 be amended to read as follows:

24 (12) "Tangible personal property," ~~tangible goods, wares, merchandise, gas, and electricity~~

1           personal property that can be seen, weighed, measured, felt, or touched, or that is in  
2           any other manner perceptible to the senses if furnished or delivered to consumers or  
3           users within this state. The term includes electricity, water, gas, steam, and prewritten  
4           computer software;

5           Section 11. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7           For the purpose of the tax imposed by this chapter, the term, lease or rental, means any  
8 transfer of possession or control of tangible personal property for a fixed or indeterminate term  
9 for consideration. A lease or rental may include future options to purchase or extend. Lease or  
10 rental does not include:

11           (1) A transfer of possession or control of property under a security agreement or deferred  
12 payment plan that requires the transfer of title upon completion of the required  
13 payments;

14           (2) A transfer or possession or control of property under an agreement that requires the  
15 transfer of title upon completion of required payments and payment of an option price  
16 does not exceed the greater of one hundred dollars or one percent of the total  
17 required payments; or

18           (3) Providing tangible personal property along with an operator for a fixed or  
19 indeterminate period of time. A condition of this exclusion is that the operator is  
20 necessary for the equipment to perform as designed. For the purpose of this  
21 subdivision, an operator shall do more than maintain, inspect, or set-up the tangible  
22 personal property.

23           Section 12. That § 10-46-15.1 be amended to read as follows:

24           10-46-15.1. The use in this state of insulin, to the extent used by humans, that is not sold by

1 ~~prescription and drugs and medicines, as those terms are defined by § 36-11-2 and medical~~  
2 ~~devices as that term is defined in § 10-45-14.1 to the extent used by humans, when such drugs,~~  
3 ~~medicines, or medical devices are prescribed by prescription, dispensed, or administered by a~~  
4 ~~physician, chiropractor, optometrist, dentist, or podiatrist is specifically exempted exempt from~~  
5 the tax imposed by this chapter.

6 Section 13. That § 10-46-18.1 be amended to read as follows:

7 10-46-18.1. For the purposes of proper administration of this chapter and to prevent evasion  
8 of tax, evidence that a service is used in this state shall be prima facie evidence that the service  
9 ~~was performed in this state, and that the service~~ is subject to tax.

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

12 The use in this state of drugs as defined by rule promulgated by the secretary of revenue  
13 pursuant to chapter 1-26 to the extent used by humans, if the drugs are prescribed by  
14 prescription, dispensed, or administered by a physician, chiropractor, optometrist, dentist,  
15 podiatrist, or audiologist, is specifically exempt from the tax imposed by this chapter.

16 Section 15. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 The use in this state of durable medical equipment, mobility enhancing equipment, and  
19 prosthetic devices as defined by rule promulgated by the secretary of revenue pursuant to chapter  
20 1-26 to the extent used by humans, if the durable medical equipment, mobility enhancing  
21 equipment, and prosthetic devices are prescribed by prescription by a physician, chiropractor,  
22 optometrist, dentist, podiatrist, or audiologist, is specifically exempt from the tax imposed by this  
23 chapter.

24 Section 16. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 There are specifically exempted from the provisions of this chapter and from the computation  
3 of the amount of tax imposed by it, the use of any medical device, as that term is defined in this  
4 section, to the extent used by humans, if the medical device is prescribed by prescription by a  
5 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The term, medical device,  
6 means any instrument, apparatus, implement, contrivance, or other similar or related article,  
7 including a component, part, or accessory, that is prescribed for use on a single patient and that  
8 is:

- 9 (1) Recognized in the official National Formulary, or the United States Pharmacopoeia,  
10 or any supplement to them;
- 11 (2) Intended for use in the diagnosis of disease or other conditions, or in the cure,  
12 mitigation, treatment, detection, or prevention of disease, of the human body; or
- 13 (3) Intended to affect the structure or any function of the human body, and that does not  
14 achieve any of it's primary intended purposes through chemical action within or on  
15 the human body and that is not dependent upon being metabolized for the  
16 achievement of any of its primary intended purposes.

17 A medical device is not durable medical equipment, mobility enhancing equipment, or a  
18 prosthetic device.

19 Section 17. That § 10-52-3 be amended to read as follows:

20 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the  
21 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval  
22 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal  
23 ordinance which was in effect on December 31, ~~2005~~ 2003, is continued under the provisions  
24 of this chapter if:

1 (1) The governing board of the municipality has reviewed the existing tax ordinance to  
2 determine compliance with the provisions of this chapter; and

3 (2) The governing board of the municipality documents the review, any amendment, and  
4 the intent to continue the tax in the official minutes of the governing board.

5 Any amendment made by the municipality to comply with the provisions of chapter 10-45C,  
6 §§ 10-1-44.3, 10-45-1 to 10-45-1.4, inclusive, 10-45-2.3, 10-45-3, 10-45-3.4, 10-45-5,  
7 10-45-5.3, 10-45-8, 10-45-24, 10-45-30, 10-45-61, 10-45-108 and 10-45-109, 10-46-1,  
8 10-46-17.6, 10-52-2, 10-52-2.10, 10-52-3, 10-52-9, 10-52-13 to 10-52-16, inclusive, and  
9 10-59-27 or the determination to continue the tax under the provisions of this chapter is deemed  
10 to be an administrative decision pursuant to § 9-20-19 and is not subject to referendum.

11 Section 18. That § 10-52-2.10 be amended to read as follows:

12 10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance  
13 with § 10-52-2 may issue municipal non-ad valorem tax revenue bonds pursuant to this section  
14 and chapter 6-8B in anticipation of the collection of the taxes. The bonds shall be payable solely  
15 from the collections of the taxes imposed by the municipality under § 10-52-2, as determined by  
16 the governing body. The governing body shall, in the resolution or ordinance authorizing the  
17 bonds, agree that it will continue to impose and collect the taxes so long as the bonds are  
18 outstanding. The governing body shall also pledge so much of the collections of the taxes as may  
19 be necessary to pay the principal premium and interest on the bonds and to maintain any debt  
20 service reserve established for the bonds. For bonds issued prior to January 1, ~~2006~~ 2004, the  
21 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and  
22 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer  
23 licensed beds and other public health care facilities or nonprofit health care facilities with fifty  
24 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt

1 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the  
2 bonds.

3 No election is required to authorize the issuance of municipal non-ad valorem tax revenue  
4 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

5 Section 19. That § 10-52-13 be amended to read as follows:

6 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a  
7 municipality ~~which~~ that changes the boundaries of the municipality is effective on the first day  
8 of the first ~~month~~ calendar quarter following at least ninety days notification by the municipality  
9 to the secretary of revenue that the resolution or amendment has been enacted unless the  
10 ordinance or amendment is suspended by operation of a referendum. If a resolution or  
11 amendment enacted pursuant to chapter 9-4 is referred and the referred resolution or amendment  
12 is approved, the effective date is the first day of the first ~~month~~ calendar quarter following at  
13 least ninety days notification by a municipality to the secretary of revenue that the resolution or  
14 amendment has been approved. The municipality shall provide written notification of the  
15 enactment or approval of the resolution or amendment, along with a copy of the resolution or  
16 amendment by registered or certified mail or by any electronic means to the secretary of revenue.  
17 The municipality shall also provide any changes or additions to streets and addresses.

18 Section 20. That § 10-52-15 be amended to read as follows:

19 10-52-15. The Legislature hereby finds that the amendments to chapter 10-52 contained in  
20 SL 2002, ch 64, ~~shall~~ will result in a broader and more uniform tax base for the sales tax levied  
21 by municipalities under this chapter, and that, absent a reduction in the current tax levy of a  
22 municipality, it is anticipated that total sales tax revenues of a municipality may increase as a  
23 result of these amendments. However, so long as a municipality has any bonds or other  
24 obligations outstanding which are secured directly or indirectly by the pledge or collection and

1 application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to  
2 January 1, ~~2006~~ 2004, no municipality may reduce its tax levy under chapter 10-52 to a rate  
3 which, in the exercise of the sound discretion of the governing body, would be expected to  
4 produce less total revenue than was collected in the immediately preceding year.

5 Section 21. That section 46 of chapter 64 of the 2002 Session Laws be amended to read as  
6 follows:

7 Section 46. Sections 18, 19, 20, 21, 30, ~~32, 33, 34~~, 35, 36, 41, 42, and 44 are effective on  
8 January 1, 2006. Sections 32, 33, 34, and 36 are effective on January 1, 2004.

9 Section 22. That section 48 of chapter 64 of the 2002 Session Laws be amended to read as  
10 follows:

11 Section 48. Section 47 of this Act is repealed on January 1, ~~2007~~ 2005.

12 Section 23. The secretary of revenue may enter into contracts with certified service providers  
13 for the collection and reporting of the tax imposed under chapters 10-45, 10-46, and 10-52. The  
14 secretary may enter into such contracts in conjunction with other states.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0554

SENATE APPROPRIATIONS COMMITTEE

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

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

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

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

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

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



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

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

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

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

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

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

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

4 (1) Maintain a cumulative 2.5 grade point average on a 4.0 grade point scale;

5 (2) Be continuously enrolled for the fall and spring semesters in a public or nonpublic  
6 accredited university, college, or technical institution; and

7 (3) Complete the equivalent of at least fourteen credit hours of instruction per semester.

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

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

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

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

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