

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0216

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1019** - 01/24/2003

Introduced by: The Committee on Judiciary at the request of the Department of Health

1 FOR AN ACT ENTITLED, An Act to permit disclosure of certain information related to
2 intentional exposure to human immunodeficiency virus.

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

4 Section 1. That § 34-22-12.1 be amended to read as follows:

5 34-22-12.1. ~~The reports~~ Any report required to be submitted pursuant to § 34-22-12 ~~shall~~
6 ~~be~~ is strictly confidential medical information. ~~Such reports may not~~ No report may be released,
7 shared with any agency or institution, or made public, upon subpoena, search warrant, discovery
8 proceedings, or otherwise ~~and are not~~. No report is admissible as evidence in any action of any
9 kind in any court or before any tribunal, board, agency, or person, ~~except that~~. However, the
10 Department of Health may release ~~of~~ medical or epidemiological information ~~may be made or~~
11 ~~authorized by the Department of Health~~ under any of the following circumstances:

- 12 (1) For statistical purposes in such a manner that no person can be identified;
- 13 (2) With the written consent of the person identified in the information released;
- 14 (3) To the extent necessary to enforce the provisions of this chapter and rules
15 promulgated ~~thereunder~~ pursuant to this chapter concerning the prevention,



1 treatment, control, and investigation of communicable diseases; ~~and~~

2 (4) To the extent necessary to protect the health or life of a named person;

3 (5) To the extent necessary to comply with a proper judicial order requiring release of
4 human immunodeficiency virus test results and related information to a prosecutor for
5 an investigation of a violation of § 22-18-31; and

6 (6) To the attorney general or an appropriate state's attorney if the secretary of the
7 Department of Health has reasonable cause to suspect that a person violated § 22-18-
8 31.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

474I0330

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1104** - 02/26/2003

Introduced by: Representatives Peterson (Bill), Adelstein, Bartling, Begalka, Burg, Frost, Hanson, Juhnke, Lange, Madsen, Miles, Pederson (Gordon), Sebert, Sigdestad, Teupel, and Thompson and Senators McCracken, Apa, de Hueck, Dennert, Duxbury, Jaspers, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal
2 communications system, wireless, and cellular telecommunications companies.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,
10 receiver, or municipality providing any telecommunications service as defined in
11 section 2 of this Act;

12 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

13 Section 2. The term, telecommunications service, as used in this Act, means wireless personal
14 communications services, wireless local loop services, enhanced special mobile radio services,



1 fixed wireless services, and cellular services that provide two-way communication. The term,
2 telecommunications service, does not include the provision of terminal equipment used to
3 originate or terminate such service. The term, telecommunications service, does not include
4 specialized mobile radio service, non-network two-way radio telephone service, private mobile
5 radio service, one-way cable television service, or two-way cable system subscriber interaction
6 that may be required for the selection of video or other programming services.

7 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a
8 telecommunications company from the sale at retail of intrastate and interstate
9 telecommunications services. Sale at retail does not include special access or toll-free incoming
10 calls or the sale of any telecommunications service by a telecommunications company to another
11 telecommunications company if the service is resold or becomes a component part of the sale by
12 the second telecommunications company. Any hospital, hotel, motel, or place that provides
13 temporary accommodations selling telecommunications services to its patients or guests is not
14 a telecommunications company for the purposes of this Act.

15 Section 4. There is hereby imposed a tax of four percent upon the gross receipts of
16 telecommunications services, as defined in section 2 of this Act, that originate and terminate in
17 the same state and are billed to a customer with a place of primary use in this state or are deemed
18 to have originated or been received in this state and to be billed or charged to a service address
19 in this state if the customer's place of primary use is located in this state regardless of where the
20 service actually originates or terminates. Notwithstanding any other provision of this Act and for
21 purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication
22 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as of July 28, 2000.

23 Section 5. The secretary shall deposit any revenue collected from the tax imposed by this Act
24 into the property tax reduction fund.

1 Section 6. Any telecommunications company engaging in a business in this state whose gross
2 receipts from telecommunications services are subject to the telecommunications gross receipts
3 tax shall file with the department, an application for a telecommunications gross receipts tax
4 license. An application for a license shall be made upon a form prescribed by the secretary and
5 shall set forth the name under which the applicant transacts or intends to transact business, the
6 location of the place of business, and such other information as the secretary may require. The
7 application shall be signed by the owner, if a natural person; in the case of an association or
8 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
9 by an executive officer thereof or some person specifically authorized by the corporation or the
10 municipality to sign the application, to which shall be attached the written evidence of the
11 person's authority.

12 Section 7. The secretary shall grant and issue to each applicant a telecommunications gross
13 receipts tax license. A license is not assignable and is valid only for the telecommunications
14 company to which it was issued. Any license issued is valid and effective without further payment
15 of fees until canceled or revoked.

16 Section 8. The secretary may refuse to issue a telecommunications gross receipts tax license
17 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
18 The secretary may also require an applicant to furnish to the state a bond, or other adequate
19 security, as security for payment of any gross receipts tax that may become due, or require a
20 bond or security as a condition precedent to remaining in business as a telecommunications
21 company.

22 Section 9. Any person who is the holder of a telecommunications gross receipts tax license
23 or is a telecommunications company whose receipts are subject to telecommunications gross
24 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the

1 month following each monthly period. If the telecommunications company files the return and
2 remits the tax by electronic transfer to the state, the telecommunications company shall file the
3 return and remit the tax on or before the last day of the month following each monthly period.

4 The secretary may grant an extension of not more than five days for filing a return and
5 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
6 a return or remittance is not made on time.

7 Section 10. Any telecommunications company that is the holder of a telecommunications
8 gross receipts tax license and that has failed to file a return, or that has filed a return and has
9 failed to pay the tax due the state under this law on or before the fifteenth of the second month
10 following the reporting period authorized, may no longer continue as a telecommunications
11 company and its telecommunications gross receipts tax license shall be revoked and canceled.

12 Section 11. Any appeal from a decision of the secretary in a contested case shall be taken in
13 accordance with chapter 1-26.

14 Section 12. The secretary may not reinstate the license of a telecommunications company,
15 which has been canceled or revoked as provided in this Act, until all the telecommunications
16 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
17 may also require the telecommunications company to file a bond as security for any future
18 liability.

19 Section 13. Any refund or allowance made by any telecommunication service or any amount
20 written off the books of a telecommunications company reporting financial information on an
21 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
22 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
23 is subject to the telecommunications gross receipts tax and shall be reported to the department
24 in the month of collection.

1 Section 14. Any telecommunications company subject to the telecommunications gross
2 receipts tax shall keep records of all receipts and telecommunications service sales. The records
3 are, at all times during business hours of the day, subject to inspection by the department to
4 determine the amount of tax due. The records shall be preserved for a period of three years
5 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

6 Section 15. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 7 (1) Telecommunications tax licensing, including bonding and filing license applications;
- 8 (2) The filing of returns and payment of the tax;
- 9 (3) Determining the application of the telecommunications tax and exemptions;
- 10 (4) Taxpayer record-keeping requirements; and
- 11 (5) Determining auditing methods.

12 Section 16. Any person who:

- 13 (1) Makes any false or fraudulent return in attempting to defeat or evade the
14 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 15 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
16 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 17 (3) Fails to keep the records required by this Act or refuses to exhibit these records to the
18 department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 19 (4) Fails to file a return required by this Act within thirty days from the date the return is
20 due is guilty of a Class 1 misdemeanor;
- 21 (5) Engages in business as a telecommunications company under this Act without
22 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
23 misdemeanor;
- 24 (6) Engages in business as a telecommunications company under this Act after the

1 company's telecommunications gross receipts tax license has been revoked or
2 canceled by the secretary is guilty of a Class 6 felony;

3 (7) Willfully violates any rule of the secretary for the administration and enforcement of
4 the provisions of this Act is guilty of a Class 1 misdemeanor;

5 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in
6 any twelve-month period is guilty of a Class 6 felony; or

7 (9) Engages in business as a telecommunications company under this Act without
8 obtaining a telecommunications gross receipts tax license after having been notified
9 in writing by the secretary that the telecommunications company is subject to the
10 provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of
11 this subdivision if the telecommunications company providing any telecommunications
12 service files an application for a telecommunications gross receipts tax license and
13 meets all lawful prerequisites for obtaining such license within three days from receipt
14 of written notice from the secretary.

15 For purposes of this section, the term, telecommunications company, includes corporate
16 officers having control, supervision of, or charged with the responsibility for making tax returns
17 or payments pursuant to this Act.

18 Section 17. If a corporation subject to the gross receipts tax under this Act fails for any
19 reason to file the required returns or to pay the tax due, any of its officers having control, or
20 supervision of, or charged with the responsibility for making such returns and payments are
21 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
22 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
23 for such a liability may be assessed and collected as provided by law.

24 If any responsible corporate officer elects not to be personally liable for the failure to file the

1 required returns or to pay the tax due, the corporation shall provide the department with a surety
2 bond or certificate of deposit as security for payment of any tax that may become due. The bond
3 or certificate of deposit provided for in this section shall be in an amount equal to the estimated
4 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
5 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
6 §§ 9-14-6 and 9-14-6.1.

7 Section 18. Any real and personal property owned by a telecommunications company that
8 is used or intended for use in furnishing and providing telecommunication services is exempt
9 from real and personal property taxes levied by the state, counties, municipalities, townships, or
10 other political subdivisions of the state.

11 Section 19. The provisions of this Act do not apply to any property exempt from taxation
12 pursuant to S.D. Const., Art. XI, § 5.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

168I0073

HOUSE ENGROSSED NO. **HB 1176** - 02/22/2003

Introduced by: Representatives McCaulley, Begalka, Buckingham, Christensen, Craddock, Cutler, Davis, Dykstra, Frost, Garnos, Hackl, Haverly, Heineman, Hennies, Hunhoff, Juhnke, Klaudt, Koistinen, Konold, Kraus, LaRue, Lintz, Madsen, McCoy, McLaughlin, Murschel, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Rave, Rhoden, Rounds, Schafer, Sebert, Smidt, Solum, Teupel, Van Etten, Weems, Wick, and Williamson and Senators Bogue, Abdallah, Albers, Apa, Diedrich (Larry), Duniphan, Greenfield, Ham, Jaspers, Kelly, Koetzle, Koskan, LaPointe, McCracken, Moore, Napoli, Olson (Ed), Schoenbeck, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to require voters to provide identification before voting or
2 obtaining an absentee ballot.

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

4 Section 1. That chapter 12-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Before a person makes an application for ballots, the voter shall present a valid form of
7 personal identification. The personal identification that may be presented shall be either:

- 8 (1) A South Dakota driver's license or nondriver identification card;
- 9 (2) A passport or an identification card, including a picture, issued by an agency
10 of the United States government;
- 11 (3) A tribal identification card, including a picture; or
- 12 (4) An identification card, including a picture, issued by an accredited institution



1 of higher education, including a university, college, or technical school, located
2 within the state of South Dakota.

3 Section 2. That chapter 12-18 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If a voter is not able to present a form of personal identification as required by section 1 of
6 this Act, the voter may complete an affidavit in lieu of the personal identification. The State
7 Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the form of the
8 affidavit. The affidavit shall require the voter to provide his or her name and address. The voter
9 shall sign the affidavit under penalty of perjury.

10 Section 3. That § 12-19-2 be amended to read as follows:

11 12-19-2. An absentee voter desiring to vote by mail may apply to the person in charge of the
12 election for an absentee ballot. The application or request shall be made in writing and be signed
13 by the applicant and state the applicant's ~~place of voting residence and the reason for which the~~
14 ~~ballot is requested~~ voter registration address. The application or request shall contain an oath
15 verifying the validity of the information contained in the application or request. The oath shall
16 be administered by a notary public or other officer authorized by statute to administer an oath.
17 If the application or request does not contain an oath, the application or request shall be
18 accompanied by a copy of the voter's identification card as required by section 1 of this Act. The
19 application or request may be used to obtain an absentee ballot for all elections in that calendar
20 year conducted by the jurisdiction receiving the application or request if so indicated. The ballot
21 shall be sent to the voter's residence, as shown in the voter registration file or any temporary
22 residence address designated in writing by the voter, at the time of applying for the absentee
23 ballot. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, to
24 prescribe a ~~form which delineates the reasons for an absentee ballot request and allows the voter~~

1 ~~to indicate the proper reason for the request~~ the application or request form. The person in
2 charge of the election shall stamp the application with the date it was received. The application
3 may be made by letter or upon any form containing the required information or upon any form
4 prescribed by the State Board of Elections or the postcard form referred to in § 12-4-8.1,
5 executed by persons authorized in accordance with the Uniformed and Overseas Citizens
6 Absentee Voting Act (UOCAVA) (42 U.S.C. § 1973ff) as of January 1, 2003. The person in
7 charge of the election shall preserve a record of the name, post office address, and voting
8 precinct of each applicant and, except as provided by § 12-19-45, deliver the record to the
9 superintendent of the election board of the home precinct of the applicant.

10 Section 4. That § 12-19-2.1 be amended to read as follows:

11 12-19-2.1. At anytime prior to an election, a voter may apply in person to the person in
12 charge of the election for an absentee ballot during regular office hours up to 3:00 p.m. of the
13 day of the election. If the voter applies in person, the voter shall show the person in charge of
14 the election the voter's identification card as required in section 1 of this Act or complete the
15 affidavit as provided in section 2 of this Act.

16 In the event of sickness or confinement, a qualified voter may apply pursuant to the
17 provisions of § 12-19-2 in writing for and obtain an absentee ballot by authorized messenger so
18 designated over the signature of the voter. The person in charge of the election may deliver to
19 the authorized messenger a ballot to be delivered to the qualified voter. An application for a
20 ballot by authorized messenger must be received by the person in charge of the election before
21 3:00 p.m. the day of the election.

22 Section 5. That § 12-19-9.1 be amended to read as follows:

23 12-19-9.1. If there is any nursing facility, assisted living center, or hospital as defined in
24 § 34-12-1.1 within any county from which there might reasonably be expected to be five or more

1 absentee applications, the county auditor shall notify the person in charge of that facility and the
2 chairman of the county central committee of each party and any other person who has filed a
3 request to be notified of the date and time at which representatives of the auditor's office will be
4 present to assist the residents of that facility to vote, utilizing the absentee procedure. Any
5 political party, independent candidate, and nonpolitical candidate may assign a person to
6 accompany the auditor's representatives. At the date and time announced, the auditor's
7 representative and the representatives of the parties, independent candidates, and nonpolitical
8 candidates shall deliver ballots to and assist all persons at that facility who desire such assistance
9 and who have applied for absentee ballots. This section applies only to a general election.

10 If a person in charge of an election conducts absentee voting at a nursing facility, assisted
11 living center, or hospital as defined in § 34-12-1.1, the identification and affidavit requirements
12 provided in section 4 of this Act are waived.

13 Section 6. That § 12-19-1 be amended to read as follows:

14 12-19-1. A registered voter who ~~expects to be or may be absent outside the county, state,~~
15 ~~or the United States on the day an election is held or who may be within the county on the day~~
16 ~~of an election but, because of permanent and total disability, illness or temporary physical~~
17 ~~disability, the observance of a religious holiday pursuant to the tenets of his religion, resident~~
18 ~~attendance at a school, college, or university or because of the nature and hours of his~~
19 ~~employment, will be unable to cast his ballot at the polling place in his election district on the day~~
20 ~~of the election and is not otherwise disqualified by law from voting in the election may vote by~~
21 ~~absentee ballot. A member of the armed forces or of the merchant marine of the United States,~~
22 ~~and citizens of this state temporarily residing outside the territorial limits of the United States and~~
23 ~~the District of Columbia, and the spouses and dependents of any such persons, when residing~~
24 ~~with or accompanying them, as those terms are defined by the Uniformed and Overseas Citizens~~

1 ~~Absentee Voting Act (UOCAVA) (42 U.S.C. § 1973ff-6), hereinafter referred to as a federal~~
2 ~~service voter, if registered as a voter pursuant to chapter 12-4, are entitled to vote by absentee~~
3 ~~ballot.~~

4 Section 7. The person making an application for ballots shall announce his or her name and
5 present his or her personal identification. A member of the precinct election board shall then
6 verify that the picture on the personal identification presented under section 1 of this Act matches
7 such person and that the name on the personal identification appears on the voter registration list
8 pursuant to § 12-18-7.1. If the member cannot determine from the personal identification
9 presented that the person making an application for ballots is the person listed on the voter
10 registration list, the member may consider other forms of identification, personal knowledge and
11 an explanation from the person making an application for ballots to match that person's name to
12 a name on the registration list. If identity cannot be proven to the satisfaction of the member of
13 the precinct election board or if the person making an application for ballots is challenged on the
14 basis of identity by a member or a poll watcher, the person may vote a provisional ballot.

15 Section 8. This Act is effective on January 1, 2004.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

904I0295

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1183 - 02/19/2003

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

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

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

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

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

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

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



1 operation requires independent salespersons to purchase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0707

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1191 - 02/27/2003

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

Introduced by: Representative McCaulley and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for the distribution of certain money
2 appropriated as state aid to general education.

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

4 Section 1. The secretary of the Department of Education and Cultural Affairs shall distribute
5 any money, not to exceed seven million three hundred seven thousand eight hundred ninety-six
6 dollars (\$7,307,896) appropriated as state aid to general education by section 12 of chapter 4
7 of the 2002 Session Laws which is not distributed as state aid to general education pursuant to
8 the formula in chapter 13-13 to South Dakota's public school districts.

9 Section 2. For purposes of this Act, average daily membership means average daily
10 membership as defined in § 13-13-10.1 for school fiscal year 2002.

11 Section 3. Each school district's share of the distribution provided for in section 1 of this Act
12 is determined according to the following calculations:

13 (1) Divide each school districts average daily membership by the statewide average daily
14 membership;

15 (2) Multiply the quotient obtained by calculation (1) by the total amount of money



1 identified for distribution pursuant to section 1 of this Act.

2 Section 4. This Act is effective on June 25, 2003.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

273I0366

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1208 - 02/21/2003

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

Introduced by: Representatives Garnos and McCaulley and Senator Napoli

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

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

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

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

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

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

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

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



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

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

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

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

517I0627

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1210** -
02/19/2003

Introduced by: Representatives Bradford, Elliott, Glenski, Hanson, Hundstad, Nesselhuf, and Sigdestad and Senators Moore and Kloucek

1 FOR AN ACT ENTITLED, An Act to allow for a nursing facility to be constructed on an
2 American Indian reservation under certain circumstances.

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

4 Section 1. That chapter 34-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of §§ 34-12-35.3 and 34-12-39.1, a new nursing facility as
7 defined in § 34-12-1.1 may be constructed, operated, and maintained in an area if the facility is
8 to be located on an American Indian reservation and is required to serve a local population
9 previously unserved through lack of nursing facilities within a forty-five-mile radius. No more
10 than one such nursing facility may be located within the same American Indian reservation, and
11 the number of beds in the nursing facility may not exceed fifty. The nursing facility shall meet the
12 specifications of chapter 34-12 for a licensed nursing facility in order to participate in the
13 medicaid program.

14 Section 2. No state funds may be used for the construction of a nursing facility built pursuant



1 to section 1 of this Act.

2 Section 3. This Act is repealed on June 30, 2005.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

264I0720

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1221** - 02/18/2003

Introduced by: Representatives Teupel and Madsen and Senator Apa

1 FOR AN ACT ENTITLED, An Act to revise the requirement for the classification of certain
2 structures for taxation.

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

4 Section 1. That § 10-6-54 be amended to read as follows:

5 10-6-54. Any new residential structure, or any addition to or renovation of an existing
6 structure, located within a redevelopment neighborhood established pursuant to § 10-6-56 which
7 new structure ~~or, addition, or renovation~~ has a true and full value of ~~fifteen~~ five thousand dollars
8 or more, added to real property is specifically classified for the purpose of taxation. The structure
9 shall be located in an area defined and designated as a redevelopment neighborhood based on
10 conditions provided in § 11-7-2 or 11-7-3.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

445I0703

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1232** - 02/13/2003

Introduced by: Representatives Madsen, Michels, and Teupel and Senator Apa

1 FOR AN ACT ENTITLED, An Act to permit meeting organizers to deduct from gross receipts
2 certain charges to clients.

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

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

6 In determining the amount of tax due under this chapter, a meeting planner may deduct from
7 gross receipts amounts which represent charges to clients for tangible personal property or
8 services purchased by the meeting planner on behalf of a client. However, the sale of the
9 property or service to the meeting planner is not a sale for resale if this deduction is taken. This
10 deduction may only be taken if the amount to be deducted represents an expense specifically
11 incurred for a particular client and the amount is itemized and separately billed as a reimbursable
12 expense by the meeting planner.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

814I0734

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

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

Introduced by: Representative Williamson and Senator Dempster

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

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

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

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



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

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

177I0719

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1261** - 02/13/2003

Introduced by: Representatives Dykstra and Gillespie and Senator Albers

1 FOR AN ACT ENTITLED, An Act to restrict public corporations from making purchases from
2 any retailer that fails to collect and remit sales and use taxes.

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

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No public corporation may purchase any goods or services from any retailer that meets the
7 definition of a retailer or a retailer maintaining a place of business in the state, pursuant to
8 subdivisions 10-46-1(8) and (9), if the retailer or any affiliate of the retailer fails or refuses to
9 collect and remit the sales and use tax on any sale delivered by any means to a location within
10 this state. The Department of Revenue shall provide a list to public corporations of any retailer
11 that fails to collect and remit the sales and use tax. For the purposes of this section, the term,
12 affiliate, is any person who directly or indirectly owns or controls, is owned or controlled by, or
13 is under common ownership or control with, another person. No public corporation is liable for
14 the breach of any duty required of the public corporation by the provisions of this Act if the
15 breach, error, act, or omission is made in good faith. The provisions of this Act do not apply to



1 any emergency purchase made pursuant to § 5-18-3.1, or to any purchase made pursuant to § 5-
2 18-18.1, 5-18-18.2, or 5-18-9.4, or to any contract for the construction of a new building or the
3 remodeling or addition to an existing building or a contract for any other public improvement
4 which involves the expenditure of twenty-five thousand dollars or more made pursuant to § 5-
5 18-3.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

292I0733

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1277** -
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: Representatives Van Etten, Christensen, Craddock, Hunhoff, Kraus, McCoy, Miles, and Rave and Senators Brown and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to create a pharmaceutical prior authorization program for
2 eligible individuals receiving medicaid.

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

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

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



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

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

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

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

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

- 1 (1) Analyze and consider the recommendations of the interested parties and the potential
2 impact of a decision to require prior authorization of a drug on the clinical care likely
3 to be received by individuals covered under chapter 28-6;
- 4 (2) Make recommendations to the Department of Social Services for the establishment
5 and maintenance of an outpatient prescription drug prior authorization program; and
- 6 (3) Review on at least an annual basis whether drugs placed on prior authorization are to
7 remain on prior authorization.

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

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

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

1 prescriber to furnish any documentation required to support a prior authorization
2 request, including the name, title, address, and telephone number of the prescriber
3 making the request, date of the request, the product name of the requested drug, a
4 description of the circumstances and basis for the request, and whether the request is
5 an emergency.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0766

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

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

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

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

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

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

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

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

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

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

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

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



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

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

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

14 11-2-58. In exercising the powers mentioned in § 11-2-53, ~~the board of adjustment may, in~~
15 ~~conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify~~
16 ~~the order, requirement, decision, or determination appealed from and may make such order,~~
17 ~~requirement, decision, or determination as ought to be made, and to that end has all the powers~~
18 ~~of the officer from whom the appeal is taken~~ all decisions of the board of adjustment to grant
19 variances or conditional uses or in hearing appeals from any administrative order, requirement,
20 decision, or determination may be appealed to the board of county commissioners in accordance
21 with the county ordinance, and any final decision of the board of adjustment or county
22 commission shall be deemed a final administrative decision not subject to referendum or review,
23 except that any aggrieved person or legal entity shall have the right to appeal as allowed in § 11-
24 2-61.

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

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

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

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

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

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

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

824I0768

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1282** - 02/28/2003

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

Introduced by: Representatives Peterson (Bill), Madsen, Michels, and Olson (Mel) and Senators Bogue, Brown, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the official records
2 and the notification requirements relating to a pardon.

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

4 Section 1. That § 24-14-11 be amended to read as follows:

5 24-14-11. Any person who has been granted a pardon under the provisions of this chapter
6 shall be released from all disabilities consequent on ~~such~~ the person's conviction. Upon the
7 granting of a pardon under the provisions of this chapter, the Governor shall order that all official
8 records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt,
9 and receipt of a pardon shall be sealed. ~~The effect of such order is to restore such~~ The receipt
10 of any pardon, which was granted without following the provisions of this chapter, may not be
11 sealed. The pardon restores the person, in the contemplation of the law, to the status the person
12 occupied before arrest, indictment, or information. No person as to whom such order has been
13 entered may be held thereafter under any provision of any law to be guilty of perjury or of giving
14 a false statement by reason of such person's failure to recite or acknowledge such arrest,



1 indictment, information, or trial in response to any inquiry made of such person for any purpose.

2 For the sole purpose of consideration of the sentence of a defendant for subsequent offenses
3 or the determination of whether the defendant is a habitual offender under chapter 22-7 or 32-23,
4 the pardoned offense shall be considered a prior conviction.

5 The court shall forward a nonpublic record of disposition to the Division of Criminal
6 Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies,
7 prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in
8 determining whether or not, in any subsequent proceeding, the person is an habitual offender
9 under chapter 22-7 or 32-23.

10 Section 2. That § 24-14-4 be amended to read as follows:

11 24-14-4. Any applicant shall, upon notice of hearing from the board for clemency
12 consideration, ~~publish once, at a time between one and two weeks prior to the hearing, in some~~
13 ~~newspaper of general circulation in~~ each week for three consecutive weeks in all official
14 newspapers designated by the county where the offense was committed or, if no such newspaper
15 ~~exists, shall post in a conspicuous place on the door of the courthouse of such county, the name~~
16 of the person on whose behalf the application is made, the public offense for which he was
17 convicted, the time of his conviction, and the term of imprisonment. The last publication shall
18 be published at least twenty days before the hearing. The affidavit of the publisher of the paper
19 or the person posting the notice showing that notice has been published or posted shall
20 accompany the application. This notice requirement does not apply to an inmate who has been
21 released from the state penitentiary for at least five years and who was convicted of not more
22 than one felony, if the felony for which he was convicted is not punishable by life imprisonment.

23 Section 3. That chapter 24-14 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Upon receipt of an application for clemency, the board of pardons and paroles shall make a
2 good faith effort to notify, in writing, any victim as defined in § 23A-28C-4.

3 Section 4. That § 24-14-9 be amended to read as follows:

4 24-14-9. Applications for exceptional pardons shall be in accordance with §§ 24-14-3 ~~and,~~
5 24-14-5, and section 3 of this Act. The notice requirement contained in § 24-14-4 ~~shall~~ does not
6 apply to exceptional pardons.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0332

HOUSE ENGROSSED NO. **SB 41** - 02/28/2003

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 may make an unsolicited telephone call to any number listed on the register. The commission
5 may promulgate rules, pursuant to chapter 1-26, concerning procedures and requirements
6 regarding the implementation of a register, setting of fees for purchase of the register, form of
7 the application, requirements for acquiring a copy of the register, requirements for enrollment
8 on and removal from the register, procedures for maintaining a register, setting of fees to enroll
9 or renew enrollment on the register, procedures for operating the register, standards concerning
10 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. The commission may provide to the Federal Trade Commission, for inclusion in the
16 national "do-not-call" registry, the telephone numbers listed in the register. The commission may
17 include South Dakota residential telephone subscribers listed in the national "do-not-call" registry
18 in the register.

19 Section 4. 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 to South Dakota residential
22 telephone subscribers shall obtain a copy of the register.

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

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

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

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

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

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

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

1 Notwithstanding any other provision of this Act, the commission may use the national "do-
2 not-call" registry established and maintained by the Federal Trade Commission as the register.

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

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

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

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

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

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

1 Act.

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.

