



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0195

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1013** - 02/02/2004

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

1 FOR AN ACT ENTITLED, An Act to require notice to the attorney general of appeals in certain  
2 juvenile proceedings regarding abuse and neglect, children in need of supervision, or  
3 delinquency.

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

5 Section 1. That § 26-7A-112 be amended to read as follows:

6 26-7A-112. An intermediate appeal or an appeal may be taken from a judgment, decree, or  
7 order under the provisions of this chapter and chapters 26-8A, 26-8B, and 26-8C according to  
8 the rules of procedure governing civil appeals. The appellant shall also serve the written notice  
9 of appeal and docketing statement upon the attorney general. However, the failure to serve  
10 notice of the appeal on the attorney general does not constitute a jurisdictional bar to the appeal.  
11 Initials shall appear on the appeal record documents in place of the names of the child and the  
12 child's parents, guardian, or custodian who are parties to the action.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

348J0574

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1183** - 02/05/2004

Introduced by: Representatives Novstrup, Kraus, LaRue, McCaulley, Rhoden, and Weems  
and Senator Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide the temporary replacement of any elected official  
2 incapacitated by illness or accident.

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

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

6 If any member of a governing body of a county, municipality, school district, township, or  
7 special purpose district, who is incapacitated by illness or an accident which causes the member  
8 to be unable to attend meetings of the governing body, the member may elect to temporarily  
9 resign from the governing body. Notice of temporary resignation may be given in the same  
10 manner as giving notice of resignation from such governing body. If the member is unable to  
11 give notice, the member's spouse or guardian or any person who has durable power of attorney  
12 for the member may give notice of resignation from such governing body. A temporary  
13 replacement may be made in accordance with the provisions of statute applying to the governing  
14 body. The temporary member shall serve until the member is able to fulfill the requirements of  
15 office or until the expiration of the member's term, whichever occurs first.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

617J0190

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1194** -

02/05/2004

Introduced by: Representatives Lintz, Burg, Deadrick (Thomas), Gassman, Hanson, Hargens, Hundstad, Juhnke, Olson (Mel), Olson (Ryan), Pederson (Gordon), Peterson (Jim), Sigdestad, and Teupel and Senators Duenwald, Bogue, Koskan, and Symens

1 FOR AN ACT ENTITLED, An Act to limit the terms of certain conservation easements.

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

3 Section 1. That § 1-19B-57 be amended to read as follows:

4 1-19B-57. A conservation easement may be created, conveyed, recorded, assigned, released,

5 modified, terminated, or otherwise altered or affected in the same manner as other easements.

6 However, no conservation easement created after July 1, 2004, except for a wetlands easement,

7 may be for a period of more than thirty years. No right or duty in favor of or against a holder and

8 no right in favor of a person having a third-party right of enforcement arises under a

9 conservation easement before its acceptance by the holder and recording the acceptance. An

10 interest in real property in existence at the time a conservation easement is created is not

11 impaired by it unless the owner of the interest is a party to the conservation easement or

12 consents to it.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

942J0696

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1239** - 02/05/2004

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

Introduced by: Representative Hennies

1 FOR AN ACT ENTITLED, An Act to regulate short-term vehicle secured loans.

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

3 Section 1. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 A short-term vehicle secured loan is any nonpurchase money regulated consumer loan with  
6 an original term of not more than one month wherein, at consummation, a consumer provides  
7 to the creditor, as security for the loan, physical possession of the consumer's title to a motor  
8 vehicle and a security interest in such motor vehicle. The term does not include any loan with  
9 an original term greater than one month, nor does the term include any loan made for the  
10 purchase of a motor vehicle.

11 Section 2. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any creditor that makes short-term vehicle secured loans shall immediately take into  
14 possession evidence of the consumer's ownership in the motor vehicle being used as collateral  
15 and shall note on the face of the loan agreement the vehicle's make, model, year of manufacture,



1 and vehicle identification number.

2 Section 3. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Within twenty-four hours of receiving payment in full of the amount due under a short-term  
5 vehicle secured loan, the creditor shall release any filed or recorded liens, provide evidence of  
6 the release of lien to the consumer, and return the title to the consumer. If payment has been  
7 made by a personal or business check, the creditor may delay the release of lien or return of title  
8 by five business days for the purpose of confirming availability of funds.

9 Section 4. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any creditor shall issue the proceeds of any short-term vehicle secured loan in the form of  
12 a check drawn on the creditor's bank account, or in cash, or by money order, or by debit card.  
13 If the proceeds are issued in the form of a check drawn on the creditor's bank account or by  
14 money order, the creditor may not charge a fee for cashing the check or money order if a cashing  
15 service is offered by the lender. If the proceeds are issued in cash, the creditor shall provide the  
16 consumer with a written verification of the cash transaction and shall maintain a record of the  
17 transaction.

18 Section 5. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 The creditor shall document each short-term vehicle secured loan transaction by a written  
21 agreement signed by the consumer. The written agreement shall contain the name of the  
22 creditor, the transaction date, and a statement of the total amount of fees charged, expressed  
23 both as a dollar amount and as an annual percentage rate. The written agreement shall also  
24 contain a description of the motor vehicle being used as collateral, including its year, make,

1 model, and vehicle identification number.

2 Section 6. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any creditor providing a short-term vehicle secured loan shall display a notice in a  
5 prominent place on each short-term vehicle secured loan agreement, in at least 10-point bold  
6 type, and post a notice in a prominent place at the location where the short-term vehicle secured  
7 loan is transacted, in at least 20-point bold type, in substantially the following form:

8 (1) A SHORT-TERM VEHICLE SECURED LOAN IS NOT INTENDED TO MEET  
9 LONG-TERM FINANCIAL NEEDS.

10 (2) YOU SHOULD USE A SHORT-TERM VEHICLE SECURED LOAN ONLY TO  
11 MEET SHORT-TERM CASH NEEDS.

12 (3) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF YOU RENEW  
13 THE SHORT-TERM VEHICLE SECURED LOAN RATHER THAN PAY THE  
14 DEBT IN FULL WHEN DUE.

15 (4) A SHORT-TERM VEHICLE SECURED LOAN IS A HIGHER INTEREST LOAN.  
16 YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS ARE  
17 AVAILABLE TO YOU.

18 (5) YOU ARE PLACING CONTINUED OWNERSHIP OF YOUR MOTOR VEHICLE  
19 AT RISK BY TAKING OUT THIS LOAN.

20 Section 7. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Any consumer may void any short-term vehicle secured loan agreement at no cost if the  
23 consumer returns the full amount of the loan no later than the close of business on the day  
24 following the transaction.

1 Section 8. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 No consumer may have more than one short-term vehicle secured loan agreement  
4 outstanding on any one vehicle. No creditor may make a subsequent short-term vehicle secured  
5 loan on a second vehicle as long as the consumer has any previous short-term vehicle secured  
6 loan which is still outstanding with the creditor.

7 Section 9. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 No creditor may lend any consumer more than one-third of the value of the vehicle secured  
10 by the short-term vehicle secured loan.

11 Section 10. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 No creditor may charge interest after obtaining, upon default, possession of the motor  
14 vehicle securing the short-term vehicle secured loan.

15 Section 11. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Any short-term vehicle secured loan shall be for an original term of no less than one month.  
18 A creditor may allow a short-term vehicle secured loan to be renewed no more than eleven  
19 additional periods each equal to the original term. However, at each such renewal the consumer  
20 must pay at least five percent of the loan's original principal balance, in addition to any finance  
21 charge owed, to reduce the principal balance outstanding. If the consumer cannot pay this  
22 principal reduction at any renewal, the creditor may either declare the consumer in default or  
23 allow the loan to be renewed. If the loan is renewed, the creditor shall reduce the current  
24 principal amount of the loan by five percent of the original principal amount for the purpose of

1 calculating interest thereafter. This reduction in principal shall continue to be owed by the  
2 consumer, but such amount may not accrue interest thereafter.

3 For the purpose of this section, a renewal is any extension of a short-term vehicle secured  
4 loan for an additional period without any change to the short-term vehicle secured loan or its  
5 terms other than a reduction in principal. No accrued interest may be capitalized or added to the  
6 principal of a short-term vehicle secured loan at the time of any renewal. A renewal may either  
7 be in a separate written agreement, or the original loan agreement may allow for renewals to  
8 occur automatically or as otherwise agreed between the parties.

9 Section 12. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any creditor offering short-term vehicle secured loans shall post a notice of the charges  
12 imposed by the creditor on such loans at the location where the short-term vehicle secured loan  
13 is transacted. The notice shall disclose the charges imposed, as a dollar amount and an annual  
14 percentage rate, using as an example a five hundred dollar loan for a thirty-day period. The  
15 notice shall also provide the following statement: "Should you wish to file a complaint against  
16 this lender, you may contact the South Dakota Division of Banking at (telephone number)." The  
17 Division of Banking shall inform all creditors offering short-term vehicle secured loans of the  
18 telephone number that they must use on this notice.

19 Section 13. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 With respect to a short-term vehicle secured loan, any interest or fees which are undisclosed  
22 or in excess of those agreed upon by the parties may be recovered by the consumer in a private  
23 civil action or other proceeding as may be agreed upon by the parties.

24 Before pursuing any action or proceeding against a creditor related to a short-term vehicle

1 secured loan, each consumer shall provide the creditor with a written notice via certified mail  
2 that such an action or proceeding is contemplated, identifying with specificity, including the  
3 dollar amount thereof, the interest, fees, or charges of the loan which the consumer contends  
4 were undisclosed or excessive. Upon receipt of this notice from the consumer, the creditor shall  
5 respond in writing, via certified mail, within fifteen days with either an explanation of the  
6 method of charging and disclosure and the creditor's response or a full refund of all excessive  
7 or undisclosed charges along with an explanation of the calculation of such refund. If the  
8 creditor shall, within fifteen days of receipt of the notice from the consumer, tender to the  
9 consumer the allegedly excessive or undisclosed interest, fees, or charges such tender shall be  
10 a complete defense to any further action or proceeding.

11 Each creditor shall include information regarding the notice provided within this section,  
12 and the creditor's obligation to respond, in the short-term vehicle secured loan agreement.

13 Section 14. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 No creditor may consummate any short-term vehicle secured loan until the creditor has  
16 drawn the attention of the consumer to the information displayed pursuant to section 6 of this  
17 Act and to the disclosures posted pursuant to section 12 of this Act. All such information and  
18 disclosures shall be reduced to writing, and the consumer shall sign such writing, attesting that  
19 he or she has read and understands the information and disclosures.

20 The signed document provided for in this section shall be separate from the written  
21 agreement provided for in section 5 of this Act.

22 Section 15. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Any creditor who makes short-term vehicle secured loans shall maintain and make available

1 for inspection by the Division of Banking all documentation required to evidence compliance  
2 with the provisions of this Act.

3 Section 16. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 No person who is a licensed motor vehicle dealer, or otherwise engages in the business of  
6 selling motor vehicles to the general public, may offer or make short-term vehicle secured loans.  
7 Nothing in this section restricts or prohibits a creditor's right to sell any motor vehicle serving  
8 as collateral for a short-term vehicle secured loan, possession of which is obtained after default  
9 according to law, if the creditor sells the vehicles in a commercially reasonable manner and does  
10 not sell the vehicles from the same office or location at which the loans are offered or made.

11 Section 17. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Except in the event of fraud by the consumer, if a consumer defaults in the repayment of a  
14 short-term vehicle secured loan, the creditor's sole remedy is to seek possession and sale of the  
15 motor vehicle securing the loan, and the creditor may not pursue the consumer personally in any  
16 action or proceeding for repayment of the loan or for any deficiency after sale. Notwithstanding  
17 this section, the creditor shall still return to the consumer any surplus obtained after sale in  
18 excess of the amount owed on the loan and any reasonable expenses of repossession, storage,  
19 and sale, including court costs and attorney's fees.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

447J0247

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 13** - 02/05/2004

Introduced by: The Committee on Local Government at the request of the Office of the  
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise the residency requirements for voting purposes  
2 and to revise the criteria for determining if any person has voted more than once at any  
3 election.

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

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

6 12-1-4. For the purposes of this title, the term, residence, means the place in which a person  
7 has fixed his or her habitation and to which the person, whenever absent, intends to return.

8 A person who has left home and gone into another state or territory or county of this state  
9 for a temporary purpose only has not changed his or her residence.

10 A person is considered to have gained a residence in any county or municipality of this state  
11 in which the person actually lives, if the person has no present intention of leaving ~~and has~~  
12 ~~actually resided in South Dakota for at least thirty consecutive days.~~

13 If a person moves to another state, or to any of the other territories, with the intention of  
14 making it his or her permanent home, the person thereby loses residence in this state.

15 Section 2. That § 12-26-8 be amended to read as follows:



1           12-26-8. A person who votes more than once at any election or who offers to vote after  
2   having once voted, either in the same or in another election precinct in South Dakota or  
3   elsewhere, is guilty of a Class 1 misdemeanor.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

447J0252

## SENATE ENGROSSED NO. **SB 15** - 01/27/2004

Introduced by: The Committee on Local Government at the request of the Office of the  
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain miscellaneous procedures at the polling  
2 place and to provide certain penalties.

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

4 Section 1. That § 12-15-9 be amended to read as follows:

5 12-15-9. Before performing election day duties, each precinct superintendent and precinct  
6 deputy of the election and counting boards shall severally take an oath in the following form:

7 I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct  
8 superintendent (or precinct deputy) according to law and the best of my ability and that I will  
9 studiously endeavor to prevent fraud, deceit, and abuse and that I will act in an impartial manner  
10 in conducting the election about to be held.

11 The members of the precinct election board may administer the oath to each other. The  
12 person administering the oaths shall cause an entry thereof to be made and signed by the person  
13 and prefixed to the pollbook. A violation of this oath is a Class 1 misdemeanor.

14 Section 2. That § 12-17B-7 be amended to read as follows:

15 12-17B-7. Before entering the voting booth, ~~each~~ any voter ~~shall be offered~~ may request



1 instruction in the proper procedure for marking the ballot to ensure that the tabulating equipment  
2 is able to read the vote cast. No instructions may be given after the voter has entered the voting  
3 booth. No precinct official or person assisting a voter may in any manner request, suggest, or  
4 seek to persuade or induce any voter to cast a vote for any particular ticket, candidate, or  
5 measure to be voted on. All instructions shall be given in such a manner that it may be observed  
6 by other persons in the polling place.

7 Section 3. That § 12-18-6.1 be amended to read as follows:

8 12-18-6.1. ~~Before a person makes an application for ballots~~ When a voter is requesting a  
9 ballot, the voter shall present a valid form of personal identification. The personal identification  
10 that may be presented shall be either:

- 11 (1) A South Dakota driver's license or nondriver identification card;
- 12 (2) A passport or an identification card, including a picture, issued by an agency of the  
13 United States government;
- 14 (3) A tribal identification card, including a picture; or
- 15 (4) An identification card, including a picture, issued by a high school or an accredited  
16 institution of higher education, including a university, college, or technical school,  
17 located within the State of South Dakota.

18 Section 4. That § 12-18-9 be amended to read as follows:

19 12-18-9. Any person, ~~except a candidate who is on the ballot being voted on at that polling~~  
20 place, may be present at any polling place for the purpose of observing the voting ~~and counting~~  
21 process. Any person may be present to observe the counting process. A candidate who is on the  
22 ballot being voted on at a polling place may only be present to cast the candidate's vote during  
23 voting hours. A number of poll watchers shall be permitted for each candidate at a primary  
24 election or political party and independent candidate at a general election pursuant to

1 § 12-18-8.1. ~~Poll watchers shall be allowed to position themselves~~ Each polling place shall be  
2 arranged in a manner that permits each poll watcher to be positioned in a location where they  
3 the poll watcher can plainly see and hear what is done within the polling place, ~~and such polling~~  
4 ~~place shall be arranged that poll watchers shall be so accommodated.~~