

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

229J0160

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. HB 1111 -
02/07/2004

Introduced by: Representatives Van Etten, Buckingham, Christensen, Cradduck, Elliott, Frost, Fryslic, Glenski, Hunhoff, Konold, LaRue, McCoy, McLaughlin, Michels, Murschel, Olson (Mel), Rave, Sebert, Thompson, and Weems and Senators Olson (Ed), Albers, Dempster, Duniphan, Ham-Burr, Knudson, Kooistra, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to clarify the regulation of ephedrine and to declare an
2 emergency.

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

4 Section 1. For the purposes of § 34-20B-19, the term, ephedrine includes ephedra, herbs and
5 herbal products that contain ephedrine alkaloids, including ma huang, Chinese ephedra, ephedra
6 sinica, ephedra herb powder, epitonin, or any extract of those substances, but the term does not
7 include any drug that contains ephedrine and is lawfully sold, transferred, or furnished over the
8 counter with or without a prescription pursuant to § 34-20B-21.

9 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
10 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
11 effect from and after its passage and approval.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

940J0730

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. HB 1267 -
02/09/2004

Introduced by: Representatives Van Etten, Haverly, Hennies, Kraus, McCoy, Pederson (Gordon), Rave, and Thompson and Senators Ham-Burr, Earley, Kooistra, Napoli, Olson (Ed), and Reedy

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding blood samples taken
2 after violent or accidental deaths.

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

4 Section 1. That § 34-25-22.1 be amended to read as follows:

5 34-25-22.1. The county coroner of each county shall take or cause to be taken blood samples
6 of any person who has died from apparent violence, fire, suicide, or motor vehicle, agricultural,
7 or industrial accident. The samples shall be taken as soon as practicable after the death has been
8 discovered and forthwith transmitted to ~~the office of laboratory services~~ a laboratory certified
9 to examine the sample for toxicology levels.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

394J0073

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 1 - 01/21/2004

Introduced by: Senators Schoenbeck, Abdallah, Ham, Kelly, Moore, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Fryslie, Garnos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to provide for a Criminal Code Revision Commission and
2 to declare an emergency.

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

4 Section 1. The Executive Board of the Legislative Research Council shall establish a
5 Criminal Code Revision Commission during the 2004 legislative interim. The commission shall
6 consist of fifteen members. Thirteen members shall be appointed by the Executive Board. Three
7 shall be state senators, no more than two of whom shall be members of the same party. Six shall
8 be state representatives, no more than four of whom shall be members of the same party. Two
9 shall be distinguished current members of the State Bar of South Dakota with extensive
10 experience as a state's attorney or criminal prosecutor. Two shall be distinguished current
11 members of the State Bar of South Dakota with extensive experience as a public defender,
12 court-appointed attorney for indigent defendants, or criminal defense attorney. No more than
13 three of the nonlegislator members of the commission, who are appointed by the Executive
14 Board, shall be from the same party. Before making the appointments of the nonlegislators, the



1 Executive Board shall solicit the advice and recommendations of the State Bar of South Dakota,
2 the South Dakota Trial Lawyers Association, the South Dakota States Attorney's Association,
3 and other organizations that may wish to participate in the appointment process.

4 Section 2. Two members of the commission shall be appointed by the Chief Justice of the
5 Supreme Court. Each shall be either a current or retired circuit court judge or a retired Supreme
6 Court Justice. Each shall have extensive experience in criminal law.

7 Section 3. The Criminal Code Revision Commission shall carefully examine the crimes, the
8 elements of crimes, and the punishment of crimes, with special reference to legislative revisions
9 made since the conclusion of the work of the previous Criminal Code Revision Commission,
10 to ensure that the elements of each crime are clearly and precisely described, that each crime is
11 necessary and appropriate to the maintenance of public order and a well regulated society, and
12 that the punishment prescribed for each crime is just and proportionate. The scope of authority
13 of the commission is not limited to Title 22, but specifically includes all drug offenses and
14 driving under the influence offenses. Moreover, the commission may, at its discretion, examine
15 any offense, whether inherently criminal, procedural, or administrative, if the offense is
16 punishable as a felony or misdemeanor, or by the imposition of any fine or civil penalty.

17 Section 4. The Criminal Code Revision Commission shall embody its recommendations for
18 amendment of the criminal code in draft legislation and submit its recommendations to the
19 Executive Board no later than the Executive Board's final interim meeting.

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

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

178J0045

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 2 - 01/21/2004

Introduced by: Senators Schoenbeck, Abdallah, Kelly, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Garnos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions relating
2 to the Department of Corrections and to correct certain errors and omissions.

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

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

5 24-1-1. The state penitentiary ~~shall be~~ is the general prison of this state for the punishment
6 and reformation of offenders ~~wherein to which~~ such offenders as may be committed ~~thereto~~,
7 according to law, by any court of this state, shall be confined, employed, and governed in the
8 manner ~~hereinafter~~ provided by law.

9 Section 2. That § 24-1-12 be amended to read as follows:

10 24-1-12. All process to be served within the precincts of the state penitentiary, either upon
11 ~~convicts~~ inmates or upon persons or officers employed within the precincts thereof, except upon
12 the warden, shall be served and returned by the warden, ~~or his~~ personally or by a designee. All
13 officers and employees of the penitentiary ~~shall be~~ are exempt from serving upon juries in any
14 state court.



1 Section 3. That § 24-1-16 be amended to read as follows:

2 24-1-16. The warden ~~shall have power to~~ may make all purchases for the penitentiary on
3 such conditions and in such manner as in ~~his~~ the warden's opinion will best promote the interest
4 of the state, ~~except as may be otherwise specifically provided by law.~~

5 Section 4. That § 24-2-9 be amended to read as follows:

6 24-2-9. Any inmate violating the rules or institutional policies ~~may be~~ is subject to any one
7 or more of the following disciplinary sanctions:

- 8 (1) Withholding of statutory time for good conduct;
- 9 (2) Punitive confinement;
- 10 (3) Imposition of fines;
- 11 (4) Restriction of privileges;
- 12 (5) Loss of work or school privileges;
- 13 (6) Additional labor without compensation;
- 14 (7) Referral to various programs;
- 15 (8) Transfer to a more secure housing unit;
- 16 (9) Change in classification status.

17 ~~There may be no~~ No corporal punishment may be inflicted upon inmates in the penitentiary.

18 Section 5. That § 24-2-10 be amended to read as follows:

19 24-2-10. Any person sentenced to imprisonment in the state penitentiary is under the
20 protection of the law, and any injury to ~~him~~ such person not authorized by law is punishable in
21 the same manner as if ~~he~~ the person were not convicted or sentenced.

22 Section 6. That § 24-2-12 be amended to read as follows:

23 24-2-12. ~~Every~~ Any inmate against whom the disciplinary sanction of punitive confinement
24 has been given for violating any of the rules or policies of the Department of Corrections, unless

1 otherwise determined by the secretary of corrections, shall be housed in ~~the adjustment center~~
 2 a segregation section of the penitentiary for a such period ~~deemed~~ as may be necessary for the
 3 best interests of discipline, justice, rehabilitation, and the protection of ~~self~~ the inmate and
 4 others. The disciplinary board, established by rules promulgated by the Department of
 5 Corrections, may take away time granted for good conduct pursuant to § 24-5-1 for violating
 6 any of the rules or policies of the Department of Corrections, following a hearing and subject
 7 to the approval of the warden.

8 Section 7. That § 24-2-14 be amended to read as follows:

9 24-2-14. No alcoholic ~~beverages, beverage,~~ beverage, marijuana, or weapon, as defined in subdivision
 10 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or
 11 nonprescription ~~drugs~~ drugs, controlled ~~substances~~ substance as defined by chapter 34-20B,
 12 ~~marijuana, weapons as defined in subdivision 22-1-2(10);~~ or any article of indulgence may be
 13 possessed by any inmate of the state penitentiary except by order of a physician, physician
 14 assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively,
 15 which order shall be in writing and for a definite period. ~~Any~~ Any violation of this section
 16 constitutes a felony pursuant to the following schedule:

- 17 (1) Possession of any alcoholic ~~beverages~~ beverage or marijuana is a Class 6 felony;
- 18 (2) Possession of any prescription or nonprescription ~~drugs~~ drug or controlled ~~substances~~
 19 substance is a Class 4 felony;
- 20 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

21 Section 8. That § 24-2-15 be amended to read as follows:

22 24-2-15. ~~Any~~ If any inmate, convicted under the laws of this state, ~~who, by~~ has demonstrated
 23 continued exceptional good behavior, or is in failing health, or for some other good and
 24 sufficient reason in the interest of justice ~~may be compensated therefor in the discretion of,~~ the

1 Governor, upon the recommendation of the secretary of corrections ~~by diminishing his period~~
2 ~~of confinement,~~ may diminish the inmate's period of confinement.

3 Section 9. That § 24-2-17 be amended to read as follows:

4 24-2-17. The warden of the penitentiary shall keep a true record of the conduct of each
5 inmate, ~~specifying therein~~ and shall specify each infraction of the rules of discipline. Each
6 inmate shall be notified of every entry on ~~his~~ the inmate's record of each such infraction of the
7 rules of discipline and shall have thirty days to challenge the validity of the entry or the
8 disciplinary sanction imposed by notifying the warden ~~thereof to that effect.~~ After investigation,
9 the warden may remove the entry or modify the imposed disciplinary sanction. Such record shall
10 be used whenever the question of any inmate's eligibility for parole or discharge ~~shall arise~~
11 ~~under and by virtue of~~ arises pursuant to § 24-5-1.

12 Section 10. That § 24-2-18 be amended to read as follows:

13 24-2-18. The warden may, at any time prior to an inmate's final discharge, consider
14 recommendations of the disciplinary committee pertaining to the withholding of statutory time
15 granted for good conduct and may recommend to the secretary of corrections that the reduction
16 of time for good conduct ~~under and by virtue of~~ pursuant to § 24-5-1 be withheld in full or in
17 part. The warden may also, at any time prior to the inmate's final discharge, recommend to the
18 secretary of corrections that the reduction of time for good conduct ~~under~~ pursuant to § 24-5-1
19 be withheld in full or in part for conduct evincing an intent to reoffend or commit further
20 offenses when discharged or for any person convicted of a sex crime within the meaning of
21 § 22-22-30 who fails to fully cooperate with all treatment offered.

22 The secretary shall, after hearing, fix the amount of time earned by good conduct to be
23 withheld. ~~The, which~~ decision of the secretary is final.

24 Section 11. That § 24-2-20 be amended to read as follows:

1 24-2-20. Notwithstanding the provisions of § 24-1-26, ~~the records and any other facts that~~
2 ~~may have come to the knowledge of the warden and the warden's opinion,~~ when requested,
3 regarding the fitness of any inmate, sentenced as an adult, for a modification of sentence, parole,
4 pardon, or early release ~~shall be furnished only,~~ the warden shall furnish only to the sentencing
5 court, the secretary of corrections, the Board of Pardons and Parole, or the Governor,
6 respectively, any requested record, fact, or opinion in the warden's possession or knowledge.
7 The Department of Corrections may release the following information on any inmate or parolee
8 sentenced as an adult for purposes of community and victim notification pursuant to
9 subdivisions 23A-28C-1(10) and (12), §§ 23A-28C-5, 24-15-8.1, 24-15-8.2, and 24-15A-22,
10 and to other governmental entities as defined in § 24-2-20.1:

- 11 (1) Name and any known aliases;
- 12 (2) Date of birth;
- 13 (3) Race and gender;
- 14 (4) Location of incarceration;
- 15 (5) Community of residence;
- 16 (6) Custody status and conditions of supervision;
- 17 (7) Any Department of Corrections sentence identification number;
- 18 (8) Any crime of conviction;
- 19 (9) Number of felony convictions;
- 20 (10) Sentence, time suspended, jail time credit, and revoked good-time credits;
- 21 (11) Offense, sentence, admission, release, and parole eligibility dates;
- 22 (12) Dates of pending hearings and final determinations of parole, suspended sentence,
23 pardon, and commutation hearings;
- 24 (13) Status as an inmate, parolee, or person who has completed a prison term;

- 1 (14) County of conviction;
- 2 (15) Plea;
- 3 (16) Citizenship status; and
- 4 (17) Birth town, state, and country.

5 Section 12. That § 24-2-20.1 be amended to read as follows:

6 24-2-20.1. As used in § 24-2-20, the term, governmental entities, means any department,
7 division, or other public agency of ~~a municipality~~ any municipal, county, state, or ~~nation~~
8 national government.

9 Section 13. That § 24-2-22 be amended to read as follows:

10 24-2-22. Any employee or other person who delivers or procures to be delivered, or ~~shall~~
11 ~~have in his possession~~ possesses with the intention to deliver, to any inmate in the state
12 penitentiary, or deposits or conceals in or around any facility or place used to house inmates, or
13 in any mode of transport entering upon the grounds of any facility or place and its ancillary
14 facilities used to house inmates, any article ~~or thing whatever contrary~~ which is unlawful for an
15 inmate to possess pursuant to state law or the rules of the Department of Corrections with the
16 intent that any inmate ~~shall~~ obtain or receive ~~the same~~ such article, is guilty of a Class 6 felony.

17 Section 14. That § 24-2-25 be amended to read as follows:

18 24-2-25. The warden of the state penitentiary may extend the limits of the place of
19 confinement of an inmate, ~~who he~~ if the warden has reasonable cause to believe that the inmate
20 will honor ~~his trust by authorizing him under~~ the warden's prescribed conditions to visit or be
21 housed in specifically designated places within the state.

22 Section 15. That § 24-2-26 be amended to read as follows:

23 24-2-26. ~~Any article or item which is not specifically authorized by law or by the~~ The
24 ~~warden and in the personal possession or effects of any inmate shall be confiscated and disposed~~

1 may confiscate and dispose of, in the manner as in the opinion of the secretary of corrections
2 will best promote the interest of the state, any article in the personal possession of any inmate
3 which is unlawful for an inmate to possess pursuant to state law or the rules of the Department
4 of Corrections. ~~Unauthorized~~ Any unauthorized money which ~~has been~~ is confiscated shall be
5 deposited in the state general fund.

6 Section 16. That § 24-2-27 be amended to read as follows:

7 24-2-27. The Department of Corrections may establish and maintain facilities, programs,
8 or services outside the precincts of the penitentiary proper and contract with other governmental
9 entities for the care and maintenance of inmates committed to the penitentiary. However, the
10 court may not order that an inmate be housed in any particular facility nor may the court order
11 that an inmate be placed in a specific program or receive specific services. No inmate has any
12 implied right or expectation to be housed in any particular facility, participate in any specific
13 program, or receive any specific service, and ~~all inmates are~~ each inmate is subject to transfer
14 from any one facility, program, or service at the discretion of the warden of the penitentiary. ~~An~~
15 Any escape from the penitentiary or from a facility, program, or service maintained outside the
16 penitentiary is ~~considered~~ a violation of § 22-11A-2. Venue for a prosecution for an escape from
17 any facility ~~shall be in~~ is the county where the acts constituting the escape take place, ~~unless~~
18 ~~otherwise provided by law.~~

19 Section 17. That § 24-2-28 be amended to read as follows:

20 24-2-28. ~~An~~ Each inmate under the jurisdiction of the Department of Corrections is liable
21 for the cost of the inmate's confinement which includes: room and board charges; medical,
22 dental, optometric, and psychiatric services charges; vocational education training; and
23 alcoholism treatment charges.

24 ~~Consideration may be given the following factors:~~ However, if the secretary of corrections

1 determines after considering the net income, net worth, number of dependents, and any existing
2 obligations. ~~If the secretary of corrections determines~~ of the inmate, that the inmate is unable
3 to pay, the secretary may waive all or part of the payment for the costs of the inmate's
4 confinement.

5 Section 18. That § 24-2-29 be amended to read as follows:

6 24-2-29. ~~An~~ Each inmate is liable for ~~court-ordered~~ court-ordered fines, costs, fees,
7 sanctions, and restitution and any obligation incurred while under the jurisdiction of the
8 Department of Corrections including those provided for in §§ 24-2-28, 24-7-3, 24-8-9,
9 24-11A-19, 24-15-11, 24-15A-24, and 23A-35B-4 and any other charge owed to the state.
10 Disbursement shall be made from an inmate's institutional account to defray the inmate's
11 obligation, regardless of the source of the inmate's funds, including moneys in the inmate's
12 institutional account pursuant to § 24-2-5 and wages earned by the inmate pursuant to §§ 24-4-9,
13 24-7-3(3), 24-7-6, 24-8-8, and 24-11A-20.

14 Section 19. That § 24-2-30 be amended to read as follows:

15 24-2-30. It is ~~hereby declared to be a~~ the policy of the State of South Dakota that each
16 inmate of a Department of Corrections facility shall be employed or work in some productive
17 capacity ~~provided~~ if there is a suitable work situation. ~~An~~ Any inmate may be required to work
18 without compensation as a condition of confinement.

19 Section 20. That § 24-4-8 be amended to read as follows:

20 24-4-8. Any person who has ~~been given~~ custody of an inmate pursuant to § 24-4-7 shall
21 immediately report the unauthorized absence of any inmate and shall promptly return any inmate
22 to the custody of the warden if ordered to do so.

23 Section 21. That § 24-5-1 be amended to read as follows:

24 24-5-1. Every inmate sentenced for any term less than life, or who has had an indeterminate

1 sentence set at a term of years, or who has had a life sentence commuted to a term of years, and
2 subject to the provisions of §§ 24-2-17 and 24-2-18, is entitled to a deduction of four months
3 from his or her sentence for each year and pro rata for any part of a year for the first year to the
4 tenth, and six months for the tenth year and for each year thereafter until the expiration of the
5 period of the sentence as pronounced by the court, for good conduct.

6 Section 22. That § 24-5-2 be amended to read as follows:

7 24-5-2. Whenever any inmate has been discharged under the provisions of § 24-5-1, ~~he~~ the
8 inmate shall at the time of ~~his~~ discharge be considered as restored to the full rights of
9 citizenship. At the time of the discharge of any inmate under the provisions of this chapter, ~~he~~
10 the inmate shall receive from the secretary of corrections a certificate stating that ~~he~~ the inmate
11 has been restored to the full rights of a citizen. If an inmate is on parole at the time ~~he~~ the inmate
12 becomes eligible for discharge, the secretary of corrections shall issue a like certificate, ~~which~~
13 ~~shall be due notice that such~~ stating that the inmate has been restored to the full rights of a
14 citizen.

15 The secretary of corrections shall mail a copy of the certificate to the clerk of court for the
16 county from which the inmate was sentenced.

17 Section 23. That § 24-5-3 be amended to read as follows:

18 24-5-3. Every inmate, when discharged from the penitentiary, whether by parole, suspended
19 sentence, or final discharge, shall be provided with suitable clothing, a sum of money to be
20 determined by the secretary of corrections, and transportation to the place where the inmate
21 received sentence. Any inmate who has received such money and transportation, and who is
22 returned to the penitentiary upon revocation of ~~his~~ parole or suspended sentence, is not eligible
23 to receive such payment or transportation upon final discharge.

24 Section 24. That § 24-5-7 be amended to read as follows:

1 24-5-7. Upon recommendation of the supervising agent, the Board of Pardons and Paroles
2 may grant an early final discharge from supervision for a parolee or person serving a suspended
3 sentence under supervision of the board if the board is satisfied that an early final discharge
4 would be in the best interests of society and the inmate. At the time of early final discharge from
5 supervision, the secretary of corrections shall issue a certificate of discharge pursuant to
6 § 24-5-2. ~~An~~ No inmate is ~~not~~ entitled to an early final discharge. Neither this section nor its
7 application may be the basis for establishing a constitutionally protected liberty, property, or due
8 process interest in any inmate.

9 Section 25. That § 24-6A-1 be amended to read as follows:

10 24-6A-1. The ~~Springfield Correctional Facility~~ Mike Durfee State Prison, located at
11 Springfield in Bon Homme County, is under the control of the Department of Corrections. The
12 secretary of corrections shall appoint and set a salary for the warden of the facility. The warden
13 of the ~~Springfield Correctional Facility~~ Mike Durfee State Prison, under the supervision of the
14 secretary, shall have charge and custody of the facility, with all lands, buildings, furniture, tools,
15 equipment, implements, stock, and provisions, and all other property pertaining thereto or within
16 the precincts thereof. All officers and employees of the ~~Springfield Correctional Facility~~ Mike
17 Durfee State Prison shall perform duties as may be required of them by the warden of the
18 facility.

19 Section 26. That § 24-6A-2 be repealed.

20 ~~24-6A-2. The Department of Corrections, established pursuant to chapter 1-15, as previously~~
21 ~~enacted, may provide for architectural services, engineering services, or other planning for the~~
22 ~~construction of a housing unit for female inmates at the Springfield Correctional Facility.~~

23 Section 27. That § 24-6A-3 be repealed.

24 ~~24-6A-3. The Department of Corrections may accept and expend for the purposes of~~

1 ~~§§ 24-6A-2 to 24-6A-4, inclusive, any funds which it may obtain from federal sources, gifts,~~
2 ~~contributions, or any other source, provided such acceptance and expenditure is approved in~~
3 ~~accordance with § 4-8B-10.~~

4 Section 28. That § 24-6A-4 be repealed.

5 ~~— 24-6A-4. The design and construction of this project shall be under the general charge and~~
6 ~~supervision of the Bureau of Administration as provided in § 5-14-2. The funds obtained in~~
7 ~~§ 24-6A-3 shall be paid on warrants drawn by the state auditor on vouchers approved by the~~
8 ~~state engineer and the secretary of the Department of Corrections.~~

9 Section 29. That § 24-6A-5 be repealed.

10 ~~— 24-6A-5. Pursuant to the provisions of § 5-12-46, the Legislature hereby authorizes the sale~~
11 ~~and lease-back of the Springfield Correctional Facility by the South Dakota Building Authority~~
12 ~~as described in §§ 5-12-42 and 5-12-43.~~

13 Section 30. That § 24-7-1 be amended to read as follows:

14 24-7-1. The South Dakota State Prison Industries ~~shall constitute~~ constitutes the operating
15 organization for all of the industries now established at the state penitentiary, including the
16 license plate plant, furniture shop, bookbindery, and sign shop, ~~and farm operations~~. The same
17 prison industries shall also embrace ~~all such~~ any new industries ~~as may be~~ industry that is
18 established by the Department of Corrections at the state penitentiary or any other facilities
19 facility for the employment of inmate labor.

20 Section 31. That § 24-7-18 be amended to read as follows:

21 24-7-18. In the collection of past-due accounts of the prison industries, the attorney general
22 may institute probate proceedings as a creditor of any deceased person or institute other court
23 actions to collect ~~same~~ the past-due account, enter into any stipulation or agreement to
24 compromise or settle ~~same~~ the past-due account, whether paid in full or not, if, in ~~his~~ the

1 attorney general's judgment, it is for the best interests of the state to do so, and make any such
2 settlement or compromise and execute any release, partial release, discharge, satisfaction, or
3 partial satisfaction of any lien if necessary to the settlement of the account. However, before
4 making such settlement, ~~he~~ the attorney general shall secure the approval of the secretary of
5 corrections to ~~same~~ the settlement.

6 Section 32. That § 24-7-19 be amended to read as follows:

7 24-7-19. The attorney general may employ such special assistant attorney or collector as ~~he~~
8 ~~may deem~~ may be necessary to collect any delinquent accounts of the prison industries and to
9 pay ~~him~~ such special assistant attorney or collector on a salary, fee, or contingent fee basis as
10 ~~he the attorney general~~ may deem best ~~and determine; all.~~ All of such expense, including filing
11 fees, sheriff's fees, court costs, traveling, expenses, and other necessary expenses of collection
12 ~~to~~ shall be paid out of the sums collected, or out of the prison industries revolving fund on
13 itemized claims approved by the attorney general and the secretary of corrections; but the
14 amount expended for such purposes from the prison industries funds may not exceed the sum
15 of five hundred dollars.

16 Section 33. That § 24-7-32 be amended to read as follows:

17 24-7-32. All state departments shall buy license plates and licensing decals from the prison
18 industries ~~as it may be~~ if the prison industries are able to furnish such license plates and
19 licensing decals. The prison industries shall furnish ~~the same~~ such license plates and licensing
20 decals at the actual cost of production, plus fifteen percent.

21 Section 34. That § 24-7-33 be amended to read as follows:

22 24-7-33. ~~The state departments~~ Any state department contracting for any of the products
23 ~~herein~~ provided for by prison industries shall pay for such goods as provided by law, ~~and all.~~
24 All money received for the manufacturing of products ~~as herein provided~~ shall be deposited to

1 the credit of the revolving fund provided for in this chapter.

2 Section 35. That § 24-8-1 be amended to read as follows:

3 24-8-1. The Department of Corrections may conditionally release selected inmates and may
4 extend the limits of the place of confinement of such inmates of the state penitentiary. If the
5 warden determines that the character and attitude of an inmate reasonably indicate that ~~he~~ the
6 inmate may be so trusted, the warden may release and provide for continued supervision of such
7 an inmate to work at paid employment, to seek employment, or to participate in vocational
8 training or other educational programs in the community after such employment or program has
9 been investigated and approved pursuant to rules promulgated by the Department of
10 Corrections. The warden ~~at his discretion~~ may, with or without cause, terminate or suspend any
11 such release.

12 Section 36. That § 24-8-3 be amended to read as follows:

13 24-8-3. ~~An~~ Any inmate released pursuant to § 24-8-1 shall be confined in the institution
14 from which released or some other suitable place of confinement approved by the warden. Such
15 confinement shall be for such periods of time that such inmate is not actually working at his or
16 her employed job, seeking employment, or ~~engaged~~ engaging in a vocational training or other
17 educational program.

18 Section 37. That § 24-8-6 be amended to read as follows:

19 24-8-6. The failure of an inmate to report to or return from planned employment, the seeking
20 of employment, or vocational training ~~shall be considered as an~~ constitutes escape, and such
21 inmate shall be ~~tried~~ charged therefor.

22 Section 38. That § 24-8-9 be amended to read as follows:

23 24-8-9. The warden shall place all earnings in the inmate's account and make disbursements
24 therefrom in the priority set forth below:

- 1 (1) The board and room charges of the inmate;
- 2 (2) Necessary travel expenses and other incidental expenses of the inmate related to ~~his~~
3 the inmate's release program;
- 4 (3) ~~Assist in the support~~ Support of the inmate's legal dependents;
- 5 (4) Payments on fines and restitution;
- 6 (5) ~~The inmate shall have the discretion of directing payments to be made upon proper~~
7 proof Payments of personal debts and obligations upon proper proof and at the
8 discretion of the inmate;
- 9 (6) The balance, if any, to be retained in the inmate's account and paid to the inmate
10 upon parole or discharge.

11 Section 39. That § 24-8-9.1 be amended to read as follows:

12 24-8-9.1. No ~~prisoner~~ inmate engaged in work-release activities may drive or operate a
13 motor vehicle unless ~~he~~ the inmate has established to the satisfaction of the sheriff or warden
14 that ~~he~~ the inmate is in compliance with § 32-35-113.

15 Section 40. That § 24-8-10 be amended to read as follows:

16 24-8-10. The earnings of inmates under this chapter ~~shall~~ are not ~~be~~ subject to garnishment,
17 attachment, or execution either in the hands of the employer or an agent authorized to hold or
18 transmit such moneys.

19 Section 41. That § 24-13-4 be amended to read as follows:

20 24-13-4. At the first meeting in each year, the board shall select one of its members as
21 ~~chairman~~ chair. The board shall meet at the times and places prescribed by its rules and
22 whenever called together by the ~~chairman~~ chair.

23 Section 42. That § 24-13-4.2 be amended to read as follows:

24 24-13-4.2. The ~~chairman~~ chair of the board may designate individual parole board members

1 as hearing officers who may conduct hearings, hear applications, take testimony, and make
2 recommendations to the board regarding the granting, denial, revocation, rescission, or an
3 administrative continuance of a parole. The recommendation shall be in writing and reviewed
4 by the board or a panel of the board who may adopt, modify, or reject the recommendations.

5 Section 43. That § 24-13-4.3 be amended to read as follows:

6 24-13-4.3. The ~~chairman~~ chair of the board may designate panels of two or more board
7 members to conduct hearings, hear applications, take testimony, and take final action regarding
8 the granting, denial, revocation, rescission, or an administrative continuance of a parole.

9 Section 44. That § 24-13-4.4 be amended to read as follows:

10 24-13-4.4. The decisions made by a panel of two or more board members are not appealable
11 to the Board of Pardons and Paroles. Panels as designated by the ~~chairman~~ chair shall exercise
12 the same authority and assume the same responsibilities as the full Board of Pardons and Paroles
13 in those actions that panels are authorized to take pursuant to § 24-13-4.3.

14 Section 45. That § 24-13-4.6 be amended to read as follows:

15 24-13-4.6. No recommendation for the commutation of a sentence or for a pardon ~~other than~~
16 including an exceptional pardon authorized by § 24-14-8, may be made by less than the majority
17 vote of all members of the Board of Pardons and Paroles.

18 Section 46. That § 24-13-7 be amended to read as follows:

19 24-13-7. Pursuant to chapter 1-26, the Board of Pardons and Paroles may promulgate
20 procedural rules for the effective enforcement of chapters 24-13 to 24-15, inclusive, and for the
21 exercise of powers and duties conferred upon it. Additionally, the Board of Pardons and Paroles
22 may utilize the following standards in granting or denying paroles or in assisting inmates in an
23 assessment of their rehabilitation needs:

24 (1) The inmate's personal and family history;

- 1 (2) The inmate's attitude, character, capabilities, and habits;
- 2 (3) The nature and circumstances of the inmate's offense;
- 3 (4) The number, nature, and circumstances of the inmate's prior offenses;
- 4 (5) The successful completion or revocation of previous probation or parole granted to
- 5 the inmate;
- 6 (6) The inmate's conduct in the institution, including efforts directed towards
- 7 self-improvement;
- 8 (7) The inmate's understanding of his or her own problems and ~~his~~ the willingness to
- 9 work towards overcoming them;
- 10 (8) The inmate's total personality as it reflects on the possibility that ~~he~~ the inmate will
- 11 lead a law-abiding life without harm to society;
- 12 (9) The inmate's family and marital circumstances and the willingness of the family and
- 13 others to help the inmate upon release on parole from the institution;
- 14 (10) The soundness of the parole program and whether it will promote the rehabilitation
- 15 of the inmate;
- 16 (11) The inmate's specific employment and plans for further formal education or training;
- 17 (12) The inmate's plan for additional treatment and rehabilitation while on parole;
- 18 (13) The effect of the inmate's release on the community;
- 19 (14) The effect of the inmate's release on the administration of justice; and
- 20 (15) The effect of the inmate's release on the victims of crimes committed by the inmate.

21 Neither this section or its application may be the basis for establishing a constitutionally
22 protected liberty, property, or due process interest in any prisoner.

23 Section 47. That § 24-14-1 be amended to read as follows:

24 24-14-1. The Governor may, by executive order, delegate to the Board of Pardons and

1 Paroles the authority to hear applications for pardon, commutation, reprieve, or remission of
2 fines and forfeitures, and to make its recommendations to ~~him~~ the Governor.

3 Section 48. That § 24-14-2 be amended to read as follows:

4 24-14-2. The term "clemency" means either a pardon, commutation, reprieve, or remission
5 of a fine or forfeiture.

6 Section 49. That § 24-14-3 be amended to read as follows:

7 24-14-3. The applicant shall, upon notice of hearing from the board for clemency
8 consideration, serve the attorney who prosecuted the person applying for clemency, or ~~his~~ the
9 attorney's successor in office, a notice of the hearing ~~thereon~~, at least fifteen days before it
10 considers the application.

11 Section 50. That § 24-14-5 be amended to read as follows:

12 24-14-5. The Governor may submit an application for clemency to the Board of Pardons and
13 Paroles for its recommendation. The Governor may, by executive order, delegate to the board
14 the authority to consider applications for clemency and make recommendations to ~~him~~ the
15 Governor. The Governor is not bound to follow a any recommendation returned by the board.

16 Section 51. That § 24-15-1 be amended to read as follows:

17 24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections
18 shall develop a file which shall contain a complete history of ~~the defendant~~ that person. The
19 executive director of the Board of Pardons and Paroles shall generate an adequate case history
20 of each inmate of the state penitentiary to enable ~~him~~ the executive director to make
21 recommendations to the Board of Pardons and Paroles. The case history shall be transferred and
22 kept as a permanent record of the Department of Corrections, solely for the proper supervision
23 of the inmate by the Department of Corrections and as a guide to ~~his~~ the inmate's needs. Except
24 for the information authorized for release pursuant to § 24-2-20, ~~such file shall not be inspected~~

1 ~~by anyone~~ no person other than members of the Board of Pardons and Paroles, its executive
2 director, the secretary of corrections ~~and~~, or any person specifically delegated for such access
3 by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court.

4 Section 52. That § 24-15-1.1 be amended to read as follows:

5 24-15-1.1. Parole is the discretionary conditional release of an inmate from actual
6 penitentiary custody before the expiration of ~~his~~ the inmate's term of imprisonment. The
7 prisoner remains an inmate under the legal custody of the Department of Corrections until the
8 expiration of ~~his~~ the inmate's term of imprisonment. A prisoner is not required to accept a
9 conditional parole. A prisoner is never entitled to parole. However, parole may be granted if in
10 the judgment of the Board of Pardons and Paroles granting a parole would be in the best
11 interests of society and the prisoner.

12 Neither this section or its application may be the basis for establishing a constitutionally
13 protected liberty, property, or due process interest in any prisoner.

14 Section 53. That § 24-15-2 be amended to read as follows:

15 24-15-2. The executive director of the Board of Pardons and Paroles in preparing each case
16 history shall:

- 17 (1) Adopt and implement a procedure by which a report shall be completed to contain
18 the life history of each inmate;
- 19 (2) Receive from the Department of Corrections a copy of the true record of each inmate
20 which specifies each infraction of rules and the disciplinary action taken; and
- 21 (3) Enlist the services of any sheriff, state's attorney, circuit judge, or other officer who
22 may have knowledge concerning each inmate, or circumstances surrounding the
23 commission of the crime for which ~~he~~ the inmate was sentenced, or ~~his~~ the inmate's
24 previous history.

1 Section 54. That § 24-15-3 be amended to read as follows:

2 24-15-3. ~~If~~ Whenever any person becomes an inmate of the penitentiary, the director shall
3 immediately establish in the record the date when the inmate will be eligible for consideration
4 for parole. Such consideration for a parole eligibility date ~~shall be~~ is subject to change upon
5 receipt of information regarding a change in the number of prior felony convictions or any
6 subsequent felony convictions. Any inmate who is aggrieved by the established parole
7 consideration eligibility date may apply for a hearing before the Board of Pardons and Paroles
8 for a final determination of the true and correct parole consideration eligibility date. Between
9 the date a person becomes an inmate of the penitentiary and the date on which such person
10 becomes eligible for consideration for parole, the director shall complete the history of the
11 inmate and shall study the life, habits, previous environment, and nature of the inmate to
12 determine the advisability of recommending ~~him~~ the inmate for parole when ~~he~~ the inmate
13 becomes eligible to be considered. At least ten days before the date of eligibility the director
14 shall submit to the board the findings regarding the inmate.

15 If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons
16 and Parole when the inmate will be eligible for consideration for parole, the director shall send
17 a notice at least ten days before the date of eligibility, of the inmate's parole consideration
18 eligibility by first class mail to the address provided by the victim. The notice shall provide the
19 inmate's parole consideration eligibility date; and the parole hearing date, and ~~it~~ the board shall
20 advise the victim that he or she may be present at the hearing and may state his or her opinion
21 regarding the possible parole of the inmate.

22 Section 55. That § 24-15-4 be amended to read as follows:

23 24-15-4. ~~A person~~ No inmate sentenced to life imprisonment is ~~not~~ eligible for parole by the
24 Board of Pardons and Paroles.

1 Section 56. That § 24-15-5 be amended to read as follows:

2 24-15-5. ~~A person~~ An inmate is eligible for parole, subject to § 24-15-4, after deducting
3 from ~~his~~ the inmate's sentence the statutory time granted for good conduct pursuant to § 24-5-1:

4 (1) If convicted of a felony for the first time, when ~~he~~ the inmate has served one-fourth
5 of the time remaining;

6 (2) If convicted of a felony for the second time, when ~~he~~ the inmate has served
7 three-eighths of the time remaining; or

8 (3) If convicted of a felony three or more times, when ~~he~~ the inmate has served one-half
9 of the time remaining.

10 Section 57. That § 24-15-8.1 be amended to read as follows:

11 24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and
12 Parole when an inmate who was convicted of committing the crime is granted parole, the
13 inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is
14 recommended. The board shall send the notice by first class mail to the address provided by the
15 victim. However, the board is not liable for any damages to the victim if ~~it~~ the board fails to
16 mail the notice.

17 Section 58. That § 24-15-8.2 be amended to read as follows:

18 24-15-8.2. The victim or the sentencing judge may request in writing to be notified by the
19 Department of Corrections if the inmate who was convicted of committing the crime escapes
20 or is released from the penitentiary, or placed on regularly scheduled furlough or work release
21 pursuant to chapter 24-2, 24-4, or 24-5, or is returned from escape or removed from work
22 release. The Department of Corrections may either telephone the victim or the sentencing judge
23 or send the notice by first class mail to the address provided by the victim or the sentencing
24 judge. However, the Department of Corrections is not liable for any damages to the victim or

1 the sentencing judge if ~~it~~ the board fails either to notify the victim or the sentencing judge by
2 telephone or to mail the notice.

3 Section 59. That § 24-15-10 be amended to read as follows:

4 24-15-10. If ~~his~~ an inmate's application for parole is denied, ~~an~~ the inmate may not again
5 present ~~his~~ an application before the board for a period of eight months. A continuance of an
6 application for parole ~~shall~~ is not ~~be considered~~ a denial. An application for clemency may not
7 be heard for one year after the date of the judgment. If an application for clemency is denied,
8 an inmate may not again present an application for clemency for a period of one year.

9 Section 60. That § 24-15-12 be amended to read as follows:

10 24-15-12. When the Board of Pardons and Paroles grants a parole to an inmate, the
11 Department of Corrections shall provide the parolee, if ~~he is~~ not already provided for, with
12 necessary clothing not exceeding a cost of one hundred dollars, with necessary traveling
13 expenses not exceeding fifty dollars, and with transportation to the county of commitment or
14 an equivalent distance.

15 Section 61. That § 24-15-13 be amended to read as follows:

16 24-15-13. ~~Parolees~~ Each parolee shall at all times be considered confined, in the legal
17 custody of the Department of Corrections, and shall remain under conviction for the crime for
18 which ~~they were~~ the parolee was convicted and sentenced.

19 Section 62. That § 24-15-15 be amended to read as follows:

20 24-15-15. The Board of Pardons and Paroles; may, in its the board's discretion, permit a
21 parolee to leave this state and go to any other state, if satisfied that suitable employment or
22 beneficial occupation of the parolee's time has been secured in the other state where ~~he~~ the
23 parolee will be free from criminal influences, and that a parole agency or department of the
24 other state will undertake supervision of the parolee within the other state in conformity with

1 the laws of South Dakota relating to parolees. The parolee ~~shall be~~ is subject to all the laws of
2 South Dakota relating to parolees, in the same manner and to the same extent as if ~~he~~ the parolee
3 had not been permitted to leave this state.

4 Section 63. That § 24-15-16 be amended to read as follows:

5 24-15-16. Nothing in this chapter ~~shall affect~~ affects the authority of the Governor to enter
6 into compacts with other states, through their duly constituted authorities, for reciprocal
7 supervision of persons placed on probation or released on parole and for the reciprocal return
8 of such persons to the contracting states for violation of the terms of their parole or probation.

9 Section 64. That § 24-15-20 be amended to read as follows:

10 24-15-20. The executive director of the Board of Pardons and Paroles may issue an order
11 to show cause why parole should not be revoked whenever ~~he~~ the executive director or the
12 board is satisfied that:

- 13 (1) A parolee is violating or has violated the regulations or restrictions ~~that are~~ placed
14 upon ~~him~~ the parolee by the board;
- 15 (2) A parolee has failed to report ~~himself~~ to his or her assigned parole agent;
- 16 (3) A parolee has failed to answer inquiries made by a parole agent; or
- 17 (4) The purposes or objects of parole are not being served.

18 Section 65. That § 24-15-24 be amended to read as follows:

19 24-15-24. If the Board of Pardons and Paroles is satisfied that any provision of § 24-15-20
20 has been violated, it may revoke the parole and reinstate the terms of the original sentence and
21 conviction or it may modify conditions of parole and restore parole status. In addition, the board
22 ~~is authorized to~~ may order the reduction of time in full or in part for good conduct granted under
23 § 24-5-1. If the board does not find that the provisions of § 24-15-20 have been violated, it the
24 board may restore the parolee to the original or modified terms and conditions of ~~his~~ parole.

1 Section 66. That § 24-15-29 be amended to read as follows:

2 24-15-29. In order to obtain reimbursement pursuant to § 24-15-28, the ~~chairman~~ chair of
3 the board of county commissioners of the county shall present a claim on a voucher to be
4 approved by the secretary of corrections for detention expenses paid by the county, not to exceed
5 ~~forty~~ fifty dollars per day. When the voucher is presented to the state auditor, the state auditor
6 shall examine it and if the claim is just and valid, the state auditor shall issue a warrant for
7 payment to be made from funds appropriated for that purpose, and the state treasurer shall then
8 pay the sum to the treasurer of the county.

9 Section 67. That § 24-15A-9 be amended to read as follows:

10 24-15A-9. The ~~chairman~~ chair of the board may designate individual parole board members
11 as hearing officers who may conduct hearings pursuant to this chapter and chapters 24-13 and
12 24-15, take testimony, and make recommendations to the board regarding the granting, denial,
13 revocation, or rescission of a parole. The recommendation shall be in writing and reviewed by
14 the board or a panel of the board who may adopt, modify, or reject the recommendations.

15 Section 68. That § 24-15A-10 be amended to read as follows:

16 24-15A-10. The ~~chairman~~ chair of the board may designate panels of two or more board
17 members to conduct hearings pursuant to this chapter and chapters 24-13 and 24-15, take
18 testimony, and take final action regarding the granting, denial, revocation, or rescission of a
19 parole.

20 Section 69. That § 24-15A-14 be amended to read as follows:

21 24-15A-14. If a defendant is sentenced to prison, the department shall develop a file which
22 shall contain a complete history of ~~the defendant~~ that person. Except for the information
23 authorized for release pursuant to § 24-2-20, the record shall be a permanent record of the
24 department, solely for the proper supervision of the inmate by the department and as a guide to

1 the inmate's needs. ~~The file may not be inspected by anyone~~ No person other than members of
2 the board, its executive director, the secretary, and any person specifically delegated for such
3 access by the secretary, may inspect the file unless otherwise ordered by a circuit court.

4 Section 70. That § 24-15A-28 be amended to read as follows:

5 24-15A-28. If the board is satisfied that any provision of § 24-15A-27 has been violated, it
6 may revoke the parole and reinstate the terms of the original sentence and conviction or it may
7 modify conditions of parole and restore parole status. In addition, the board may order the denial
8 of credit for time served on parole. If the board does not find that the provisions of § 24-15A-27
9 have been violated, it the board may restore the parolee to the original or modified terms and
10 conditions of the parolee's parole.

11 Section 71. That § 24-15A-32 be amended to read as follows:

12 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
13 life or death, or an indeterminate sentence which is not yet set to a term of years by the board,
14 shall have an initial parole date set by the department. This date ~~will~~ shall be calculated by
15 applying the percentage indicated in the following grid to the full term of the inmate's sentence
16 pursuant to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit,
17 any of the following crimes shall be considered a violent crime for purposes of setting an initial
18 parole date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first
19 or second degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and
20 22-22-19.1, child abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as
21 defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony assault
22 as defined in § 22-18-26, felony simple assault as defined in § 22-18-1, commission of a felony
23 while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied
24 structure or motor vehicle as defined in § 22-14-20, discharging a firearm from a moving

1 vehicle as defined in § 22-14-21, and criminal pedophilia as defined in § 22-22-30.1:

2 Felony Convictions

3 Felony Class	First	Second	Third
4 Nonviolent			
5 Class 6	.25	.30	.40
6 Class 5	.25	.35	.40
7 Class 4	.25	.35	.40
8 Class 3	.30	.40	.50
9 Class 2	.30	.40	.50
10 Class 1	.35	.40	.50
11 Violent			
12 Class 6	.35	.45	.55
13 Class 5	.40	.50	.60
14 Class 4	.40	.50	.65
15 Class 3	.50	.60	.70
16 Class 2	.50	.65	.75
17 Class 1	.50	.65	.75
18 Class B	1.0	1.0	1.0
19 Class A	1.0	1.0	1.0

20 Each inmate shall serve at least sixty days prior to parole release. ~~Inmates with life sentences~~
 21 ~~are not~~ No inmate with a life sentence is eligible for parole. An initial parole date through the
 22 application of this grid may be applied to a life sentence only after the sentence is commuted
 23 to a term of years. A Class A or B felony commuted to a number of years shall be applied to the
 24 Class 1 violent column of the grid.

25 Section 72. That § 26-11A-1.1 be repealed.

26 ~~—26-11A-1.1. The Department of Corrections may establish and operate a program in Custer~~
 27 ~~County, for the rehabilitation of selected adjudicated female juveniles. The program is named~~

1 ~~the Lamont Youth Development Center.~~

2 Section 73. That § 26-11A-1.3 be repealed.

3 ~~—26-11A-1.3. The Department of Corrections may establish and operate two youth forestry~~
4 ~~camps in the Black Hills area of the State of South Dakota for the rehabilitation of selected~~
5 ~~youthful offenders.~~

6 Section 74. That § 1-15-1.4 be amended to read as follows:

7 1-15-1.4. The Department of Corrections, under the direction and control of the secretary
8 of corrections, shall govern the ~~state training school, the youth forestry camps, the Lamont~~
9 ~~Youth Development Center~~ juvenile corrections programs established subject to § 26-11A-1,
10 the state penitentiary, and other state correctional facilities, parole services, the Board of
11 Pardons and Paroles, and such other agencies as may be created by statute, executive order, and
12 administrative action and placed under the Department of Corrections.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

159J0083

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 3** - 01/21/2004

Introduced by: Senators Knudson, Albers, Dempster, Dennert, and Symens and Representatives Weems, Christensen, Davis, Hackl, Hanson, Hargens, Hundstad, Koistinen, McCoy, and Wick at the request of the Interim Committee on Property Tax Exemptions

1 FOR AN ACT ENTITLED, An Act to revise the criteria for congregate housing to be exempt
2 from property taxation.

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

4 Section 1. That § 10-4-9.3 be amended to read as follows:

5 10-4-9.3. Property owned by any corporation, organization, or society and used primarily
6 for human health care and health care related purposes is exempt from taxation. Such
7 corporation, organization or society ~~must~~ shall be nonprofit and recognized as an exempt
8 organization under section 501(c)(3) of the United States Internal Revenue Code ~~of 1954~~, as
9 amended, and in effect on January 1, ~~1986~~ 2004, and ~~may not have any~~ none of its assets may
10 be available to any private interest. ~~Such~~ The property ~~may~~ shall be a ~~hospital, sanitarium~~ health
11 care facility licensed pursuant to chapter 34-12, orphanage, mental health center or adjustment
12 training center regulated under chapter 27A-5, ~~asylum, home, resort, congregate housing~~ or
13 camp. ~~Congregate housing is health care related if it is an assisted, independent group-living~~
14 ~~environment operated by a health care facility licensed under chapter 34-12 which offers~~



1 ~~residential accommodations and supporting services primarily for persons at least sixty-two~~
2 ~~years of age or disabled as defined under chapter 10-6A. Supporting services must include the~~
3 ~~ability to provide health care and must include a food service which provides a balanced~~
4 ~~nutrition program. Such health care~~ The facility must shall admit all persons for treatment
5 consistent with the facility's ability to provide ~~medical~~ health care services required by the
6 patient until ~~such~~ the facility is filled to its ordinary capacity and ~~must~~ conform to all applicable
7 regulations of and permit inspections by the ~~South Dakota Department of Health~~ state as
8 otherwise provided by law.

9 Section 2. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any congregate housing facility owned by a corporation, organization, or society is exempt
12 from certain property taxes, if the facility provides certain health care services and is recognized
13 as an exempt nonprofit corporation, organization, or society under section 501(c)(3) of the
14 United States Internal Revenue Code, as of January 1, 2004, and if none of its assets are
15 available to any private interest. A congregate housing facility does provide health care services
16 if the facility is an independent group-living environment operated and owned by a health care
17 facility licensed pursuant to chapter 34-12 which offers a continuum of care, residential
18 accommodations, and supporting services primarily for persons at least sixty-two years of age
19 or disabled as defined pursuant to chapter 10-6A. Supporting services include the ability to
20 provide health care and a food service that satisfies a balanced nutrition program. As part of the
21 statement required by § 10-4-19, the owner of the congregate housing facility shall submit a
22 statement to the county director of equalization listing the health cares services provided and
23 method used to satisfy the balanced nutrition program.

24 In addition, no owner may apply for a property tax exemption for a congregate housing

1 facility constructed after July 1, 2004, unless the congregate housing facility:

2 (1) Consists of two or more individual housing units located within one structure; and

3 (2) Not more than twenty-five percent of the individual housing units exceed fifteen
4 hundred square feet.

5 Section 3. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 For the purposes of section 2 of this Act, the term, continuum of care, means the ability of
8 a licensed health care facility to provide living accommodations to any resident living in a
9 congregate housing facility owned by such health care facility. If the resident requires additional
10 health care services, the health care facility shall have sufficient facilities to permit residents to
11 move into another level of care. This section does not require such health care facility to
12 necessarily offer services normally provided by a hospital.

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

14 10-4-12. If property owned by any health care organization or charitable, benevolent, or
15 religious society described in section 2 of this Act and §§ 10-4-9 to 10-4-9.3, inclusive, other
16 than agricultural land, is used partly by such health care organization or charitable, benevolent,
17 or religious society for health care, charitable, benevolent, or religious purposes, and the
18 remaining part is occupied, rented, or used for other than health care, charitable, benevolent, or
19 religious purposes, ~~such~~ the portion of property as that is so occupied, rented, or used for other
20 ~~than health care, charitable, benevolent, or religious~~ purposes, shall be taxed as other property
21 of the same class is taxed. For the purpose of determining the value of the taxable portion of the
22 property, the appraised value of the entire property shall be multiplied by the percentage of the
23 entire property used for other than health care, charitable, benevolent, or religious purposes. The
24 resulting value shall be multiplied by the percentage of time ~~such~~ the property is used for other

- 1 than health care, charitable, benevolent, or religious purposes. The resulting value shall be the
- 2 assessed value for taxation purposes.

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.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0263

SENATE ENGROSSED NO. **SB 18** - 02/02/2004

Introduced by: The Committee on Transportation at the request of the Department of Public Safety

1 FOR AN ACT ENTITLED, An Act to update certain provisions pertaining to motor carrier
2 safety and transportation of hazardous materials.

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

4 Section 1. That § 49-28A-3 be amended to read as follows:

5 49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B,
6 chapter I, subchapter C, parts 107 (subparts F and G only) and 171 to 180, inclusive, as amended
7 through January 1, ~~2003~~ 2004, and Title 49 of the Code of Federal Regulations, subtitle B,
8 chapter III, subchapter B, parts 390 to 397, inclusive, as amended through January 1, ~~2003~~ 2004,
9 with the following modifications:

10 (1) All references to interstate operations shall also include intrastate operations except
11 that drivers and motor carriers operating intrastate vehicles and combinations of
12 vehicles with three axles or less or with a gross vehicle weight rating of not more
13 than twenty-six thousand pounds which are not used to transport hazardous materials
14 requiring placarding under part 177, or designed to transport more than fifteen
15 passengers, including the driver, are not subject to parts 390-397;



1 (2) For the purposes of part 391.11(b)(1), a driver shall be at least twenty-one years old
2 if engaged in interstate commerce, or transporting hazardous material of a type or
3 quantity requiring placarding under part 177, or operating a vehicle designed to
4 transport more than fifteen passengers, including the driver. All other drivers shall
5 be at least sixteen years of age;

6 (3) Intrastate drivers are exempt from the physical requirements of part 391.41.

7 Any violation of parts 390 to 396, inclusive, the motor carrier safety requirements governing
8 the qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe
9 operation, notification and reporting of accidents, assistance with investigations and special
10 studies, hours of service of drivers, inspection, repair, and maintenance is a Class 2
11 misdemeanor. Any violation of the hazardous materials regulations pertaining to registration of
12 cargo tank motor vehicles, registration of persons who offer or transport hazardous materials,
13 general information, regulations and definitions, hazardous materials tables, hazardous materials
14 communication regulations, and test and inspection marking requirements found in parts 107
15 (subparts F and G only), 171, 172, and 178 to 180, inclusive, is a Class 2 misdemeanor. Any
16 violation of the hazardous materials regulations pertaining to packaging, prohibited shipments,
17 loading and unloading, segregation and separation, retesting and inspection of cargo tanks, and
18 other carriage by regulations found in parts 173 to 180, inclusive, or violation of the driving and
19 parking rules in part 397, is a Class 1 misdemeanor.

20 Section 2. That chapter 49-28A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Hours-of-service regulations promulgated by the United States Department of
23 Transportation at 68 Federal Register 22456, in April 2003, (Federal hours-of-service
24 amendments) shall apply to utility service vehicles owned or operated by gas or electric utilities

1 while engaged in intrastate commerce within this state, on or after January 1, 2006. However,
2 hours-of-service regulations that were applicable in the State of South Dakota immediately prior
3 to January 4, 2004, shall remain applicable to gas or electric utility service vehicles until
4 January 1, 2006.

5 Section 3. That chapter 49-28A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 If the United States Department of Transportation issues an official formal finding that one
8 or more portions of this statute may result in the loss of Federal Motor Carrier Safety Assistance
9 Program funding, the Department of Public Safety may, by rule promulgated pursuant to chapter
10 1-26, implement the 2004 federal hours-of-service amendment as may be appropriate to
11 preserve such federal funding.

12 If federal law or regulations are amended, or otherwise altered under law, at any time to
13 cause to be exempted a class or group of vehicles, which class or group would include such gas
14 or electric utility service vehicles within this state, from the hours-of-service requirements, any
15 exemption shall be effective in this state immediately for the duration of the federal exemption.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0318

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 21** - 01/21/2004

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions of the South Dakota Family
2 Farm Act.

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

4 Section 1. That § 47-9A-3.1 be amended to read as follows:

5 47-9A-3.1. The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to the cultivation of
6 edible fruits, vegetables or mushrooms if such cultivation occurs within a greenhouse or other
7 enclosed or semi-enclosed structure.

8 Section 2. That § 47-9A-3.2 be amended to read as follows:

9 47-9A-3.2. The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to facilities acquired
10 by a corporation for the purpose of feeding poultry for the production of meat or eggs.

11 Section 3. That § 47-9A-5 be amended to read as follows:

12 47-9A-5. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall do~~ not apply to agricultural land
13 and land capable of being used for farming which:

14 (1) Was owned by a corporation as of July 1, 1974, including the normal expansion of
15 such ownership at a rate not to exceed twenty percent, measured in acres, in any



1 five-year period; or

2 (2) Is leased by a corporation in an amount, measured in acres, not to exceed the acreage
3 under lease to such corporation as of July 1, 1974, and the additional acreage required
4 for normal expansion at a rate not to exceed twenty percent in any five-year period;
5 and the additional acreage necessary to meet the requirements of pollution control regulations.

6 Section 4. That § 47-9A-6 be amended to read as follows:

7 47-9A-6. The restrictions provided in §§ 47-9A-1 and 47-9A-3 ~~shall do~~ not apply to a bona
8 fide encumbrance taken for purposes of security.

9 Section 5. That § 47-9A-7 be amended to read as follows:

10 47-9A-7. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall do~~ not apply to agricultural lands
11 acquired by a corporation by process of law in the collection of debts; or by any procedure for
12 the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; ~~provided,~~
13 ~~however, that all lands.~~ However, any land so acquired shall be disposed of within ten years
14 after acquiring the title thereto, ~~and further provided that the.~~ In addition, no land so acquired
15 ~~shall not~~ may be used for farming during the ten-year period except under a lease to a family
16 farm unit, a family farm corporation or an authorized farm corporation. The aforementioned
17 ten-year limitation period shall be deemed a covenant running with the title to the land against
18 any corporate grantee or assignee or the successor of such corporation.

19 Section 6. That § 47-9A-8 be amended to read as follows:

20 47-9A-8. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall do~~ not apply to gifts of
21 agricultural lands, either by grant or devise, to any corporation organized under chapter 47-22.

22 Section 7. That § 47-9A-9 be amended to read as follows:

23 47-9A-9. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall do~~ not apply to ~~a farm operated~~
24 ~~for research or experimental purposes; provided, that any commercial sales from such farm shall~~

1 ~~be incidental to the research or experimental objectives of the corporation~~ any entity that
2 engages in farming primarily for scientific, medical, research, or experimental purposes.
3 However, any commercial sales from such farming shall be incidental to the scientific, medical,
4 research, or experimental objectives of the entity.

5 Section 8. That § 47-9A-10 be amended to read as follows:

6 47-9A-10. The restrictions of §§ ~~47-9A-1 and 47-9A-3~~ shall do not apply to agricultural land
7 operated by a corporation for the purpose of raising breeding stock for resale to farmers or
8 operated for the purpose of growing seed, nursery plants, or sod.

9 Section 9. That § 47-9A-11 be amended to read as follows:

10 47-9A-11. The restrictions of §§ ~~47-9A-1 and 47-9A-3~~ shall do not apply to agricultural
11 lands acquired by a corporation solely for the purpose of feeding livestock.

12 Section 10. That § 47-9A-12 be amended to read as follows:

13 47-9A-12. The restrictions of §§ ~~47-9A-1 and 47-9A-3~~ shall do not apply to agricultural land
14 acquired by a corporation other than a family farm corporation or authorized farm corporation
15 for immediate or potential use in nonfarming purposes. A corporation may hold such
16 agricultural land in such acreage or such form of ownership as may be necessary to its nonfarm
17 business operation; ~~provided, however, that.~~ However, pending the development of agricultural
18 land for nonfarm purposes, such land may not be used for farming except under lease to a family
19 farm unit, a family farm corporation or an authorized farm corporation, or except when
20 controlled through ownership, options, leaseholds or other agreements by a corporation which
21 has entered into an agreement with the United States of America pursuant to the New
22 Community Act of 1968, (Title IV of the Housing and Urban Development Act of 1968, 42
23 U.S.C. 3901-3914), as amended, or a subsidiary or assign of such a corporation.

24 Section 11. That § 47-9A-13 be amended to read as follows:

1 47-9A-13. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to a family farm
2 corporation or an authorized farm corporation.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0352

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 25** - 02/10/2004

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the cancellation of
2 automobile insurance policies.

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

4 Section 1. That § 58-11-47 be amended to read as follows:

5 58-11-47. The provisions of § 58-11-46 ~~shall~~ do not apply to any policy or coverage ~~which~~
6 that has been in effect less than sixty days at the time notice of cancellation is mailed or
7 delivered by the insurer unless it is a renewal policy. The notice provisions of § 58-11-49 apply
8 to any policy for which notice to cancel is given prior to sixty days from the policy effective
9 date. A policy that has been in effect for less than sixty days may be cancelled for any reason
10 if the notice is given prior to the expiration of sixty days from the policy effective date.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0228

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 29 - 01/23/2004

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

1 FOR AN ACT ENTITLED, An Act to establish one rate for the telephone gross receipts tax and
2 to provide uniform methods to administer the tax.

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

4 Section 1. That § 10-33-21 be amended to read as follows:

5 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing
6 and providing telephone and exchange service comprising rental and toll service by means of
7 wired circuits and otherwise and whose annual gross receipts are less than fifty million dollars
8 shall be taxed on the basis of gross receipts, ~~according to one of the two following schedules at~~
9 the rate of four percent. Any person, corporation, cooperative, association, or other entity subject
10 to the tax imposed by this section may add the tax imposed, or the average equivalent thereof,
11 to its bill for the service. ~~Whichever schedule provides the lesser percentage of tax shall be~~
12 applied by the Department of Revenue:

13 _____ SCHEDULE A

14 _____ Percentage of



1	Average Number of Customers	Tax on
2	Per Mile of Line (Density)	Gross Revenue
3	Not more than 1	2
4	More than 1, but not more than 2	3
5	More than 2	4

6 ~~_____~~ SCHEDULE B

7		Percentage of
8		Tax on
9	Gross Annual Revenue	Gross Revenue
10	Not more than \$15,000	2
11	More than \$15,000, but not more than 20,000	3
12	More than \$20,000, but not more than 50,000,000	4

13 However, no telephone company operating in this state shall may be taxed less than an
 14 amount equal to fifty cents per year per telephone serviced. Further, each telephone company
 15 that was taxed in the five percent tax category for the calendar year 2001 shall pay an amount
 16 of tax to each school district of not less than the tax received by such school district in 2002 for
 17 the years 2003 and 2004; and each year thereafter, the tax paid shall be as provided in
 18 ~~SCHEDULE A or SCHEDULE B~~ of this section.

19 Section 2. That § 10-33-22 be amended to read as follows:

20 10-33-22. ~~The term, average number of customers per mile of line (density), as used in~~
 21 ~~§ 10-33-21 means total number of subscribers, customers, or patrons in this state, divided by~~
 22 ~~the total number of miles of line of such person, company, corporation, cooperative, or~~
 23 ~~association in this state. The term, line, as used in §§ 10-33-21 and 10-33-22 shall not~~
 24 ~~necessarily mean a single circuit but shall be the aggregate of all communications transmission~~
 25 ~~circuits, voice or otherwise, and associated attachments and appurtenances thereto. Such~~

1 ~~persons, corporations, cooperatives, and associations are herein referred to as "companies."~~ The
2 term, company, means any person, corporation, cooperative, association, or other entity
3 providing telephone and exchange service, rental and toll service.

4 Section 3. That § 10-33-27 be amended to read as follows:

5 10-33-27. If the tax levied under § 10-33-21 is not paid on the due date a penalty of up to
6 five percent of the amount of the tax ~~shall~~ may be imposed for each month of delinquency, and
7 if any telephone company ~~shall fail~~ fails to report its gross receipts to the secretary of revenue
8 and regulation, ~~said the~~ the company ~~shall~~ may be penalized up to twenty-five percent of the tax
9 due. ~~Provided, further, that such~~ Such tax may be enforced and collected by distress and sale of
10 the personal and real property of such company in the same manner as is now provided for the
11 collection of real property taxes and mobile home taxes pursuant to chapter 10-22. The tax
12 levied under § 10-33-21 shall be administered pursuant to chapter 10-59, unless a contrary
13 provision in this chapter applies.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0358

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 34 - 02/10/2004

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

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

1 FOR AN ACT ENTITLED, An Act to require health carriers to offer certain deductible options
2 for certain health benefit plans and to declare an emergency.

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

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any health carrier with any in force individual health benefit plan issued in accordance with
7 § 58-17-85 prior to August 1, 2003, shall offer, at the option of the insured, additional
8 deductible options of the following:

- 9 (1) One thousand dollars with a four thousand dollar out-of-pocket coinsurance
10 maximum;
- 11 (2) Three thousand dollars with a two thousand dollar out-of-pocket coinsurance
12 maximum;
- 13 (3) Five thousand dollars with no coinsurance; and
- 14 (4) Ten thousand dollars with a twelve thousand two hundred fifty dollar out-of-pocket



1 maximum, including the deductible.

2 Any additional deductible option, with the exception of the five thousand dollar option, shall
3 require that the insured be responsible for a twenty-five percent coinsurance. The premium rates
4 for these benefit plans shall be adjusted based upon the actuarial difference in benefits.

5 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
6 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
7 effect from and after its passage and approval.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0223

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 38** - 01/27/2004

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

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Securities Act, to repeal chapter 47-
2 31A, and to revise certain related provisions.

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

4 Section 1. Section 101. This Act may be cited as the Uniform Securities Act of 2002.

5 Section 2. Section 102. In this Act, unless the context otherwise requires:

6 (1) "Director," the director of securities;

7 (2) "Agent," an individual, other than a broker-dealer, who represents a broker-dealer in
8 effecting or attempting to effect purchases or sales of securities or represents an
9 issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

10 But a partner, officer, or director of a broker-dealer or issuer, or an individual having
11 a similar status or performing similar functions is an agent only if the individual
12 otherwise comes within the term. The term does not include an individual excluded
13 by rule adopted or order issued under this Act;

14 (3) "Bank,":

15 (A) A banking institution organized under the laws of the United States;



- 1 (B) A member bank of the Federal Reserve System;
- 2 (C) Any other banking institution, whether incorporated or not, doing business
- 3 under the laws of a state or of the United States, a substantial portion of the
- 4 business of which consists of receiving deposits or exercising fiduciary powers
- 5 similar to those permitted to be exercised by national banks under the
- 6 authority of the comptroller of the currency pursuant to Section 1 of Public
- 7 Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined
- 8 by a state or federal agency having supervision over banks, and which is not
- 9 operated for the purpose of evading this Act; and
- 10 (D) A receiver, conservator, or other liquidating agent of any institution or firm
- 11 included in subparagraph (A), (B), or (C);
- 12 (4) "Broker-dealer," a person engaged in the business of effecting transactions in
- 13 securities for the account of others or for the person's own account. The term does not
- 14 include:
- 15 (A) An agent;
- 16 (B) An issuer;
- 17 (C) A bank or savings institution if its activities as broker-dealer are limited to
- 18 those specified in subsection 3(a)(4) and 3(a)(5) of the Securities Exchange
- 19 Act of 1934 (15 U.S.C. Section 78c(a)(4) and (5), or a bank that satisfies the
- 20 conditions specified in Section 3(a)(4)(E) of the Securities Exchange Act of
- 21 1934 (15 U.S.C. 78c(a)(4));
- 22 (D) An international banking institution; or
- 23 (E) A person excluded by rule adopted or order issued under this Act;
- 24 (5) "Depository institution,"

- 1 (A) A bank; or
- 2 (B) A savings institution, trust company, credit union, or similar institution that
- 3 is organized or chartered under the laws of a state or of the United States,
- 4 authorized to receive deposits, and supervised and examined by an official or
- 5 agency of a state or the United States if its deposits or share accounts are
- 6 insured to the maximum amount authorized by statute by the Federal Deposit
- 7 Insurance Corporation, the National Credit Union Share Insurance Fund, or a
- 8 successor authorized by federal law. The term does not include:
 - 9 (i) An insurance company or other organization primarily engaged in the
 - 10 business of insurance;
 - 11 (ii) A Morris Plan bank; or
 - 12 (iii) An industrial loan company;
- 13 (6) "Federal covered investment adviser," a person registered under the Investment
- 14 Advisers Act of 1940;
- 15 (7) "Federal covered security," a security that is, or upon completion of a transaction will
- 16 be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C.
- 17 Section 77r(b)) or rules or regulations adopted pursuant to that provision;
- 18 (8) "Filing," the receipt under this Act of a record by the director or a designee of the
- 19 director;
- 20 (9) "Fraud," "deceit," and "defraud," are not limited to common law deceit;
- 21 (10) "Guaranteed," guaranteed as to payment of all principal and all interest;
- 22 (11) "Institutional investor," any of the following, whether acting for itself or for others
- 23 in a fiduciary capacity:
 - 24 (A) A depository institution or international banking institution;

- 1 (B) An insurance company;
- 2 (C) A separate account of an insurance company;
- 3 (D) An investment company as defined in the Investment Company Act of 1940;
- 4 (E) A broker-dealer registered under the Securities Exchange Act of 1934;
- 5 (F) An employee pension, profit-sharing, or benefit plan if the plan has total assets
6 in excess of ten million dollars or its investment decisions are made by a
7 named fiduciary, as defined in the Employee Retirement Income Security Act
8 of 1974, that is a broker-dealer registered under the Securities Exchange Act
9 of 1934, an investment adviser registered or exempt from registration under
10 the Investment Advisers Act of 1940, an investment adviser registered under
11 this Act, a depository institution, or an insurance company;
- 12 (G) A plan established and maintained by a state, a political subdivision of a state,
13 or an agency or instrumentality of a state or a political subdivision of a state
14 for the benefit of its employees, if the plan has total assets in excess of ten
15 million dollars or its investment decisions are made by a duly designated
16 public official or by a named fiduciary, as defined in the Employee Retirement
17 Income Security Act of 1974, that is a broker-dealer registered under the
18 Securities Exchange Act of 1934, an investment adviser registered or exempt
19 from registration under the Investment Advisers Act of 1940, an investment
20 adviser registered under this Act, a depository institution, or an insurance
21 company;
- 22 (H) A trust, if it has total assets in excess of ten million dollars, its trustee is a
23 depository institution, and its participants are exclusively plans of the types
24 identified in subparagraph (F) or (G), regardless of the size of their assets,

- 1 except a trust that includes as participants self-directed individual retirement
2 accounts or similar self-directed plans;
- 3 (I) An organization described in Section 501(c)(3) of the Internal Revenue Code
4 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar
5 business trust, limited liability company, or partnership, not formed for the
6 specific purpose of acquiring the securities offered, with total assets in excess
7 of ten million dollars;
- 8 (J) A small business investment company licensed by the Small Business
9 Administration under Section 301(c) of the Small Business Investment Act of
10 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million
11 dollars;
- 12 (K) A private business development company as defined in Section 202(a)(22) of
13 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with
14 total assets in excess of ten million dollars;
- 15 (L) A federal covered investment adviser acting for its own account;
- 16 (M) A qualified institutional buyer as defined in Rule 144A(a)(1), other than Rule
17 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R.
18 230.144A);
- 19 (N) A major United State institutional investor as defined in Rule 15a-6(b)(4)(i)
20 adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);
- 21 (O) Any other person, other than an individual, of institutional character with total
22 assets in excess of ten million dollars not organized for the specific purpose
23 of evading this Act; or
- 24 (P) Any other person specified by rule adopted or order issued under this Act;

1 (12) "Insurance company," a company organized as an insurance company whose primary
2 business is writing insurance or reinsuring risks underwritten by insurance companies
3 and which is subject to supervision by the insurance commissioner or a similar
4 official or agency of a state;

5 (13) "Insured," insured as to payment of all principal and all interest;

6 (14) "International banking institution," an international financial institution of which the
7 United States is a member and whose securities are exempt from registration under
8 the Securities Act of 1933;

9 (15) "Investment adviser," a person that, for compensation, engages in the business of
10 advising others, either directly or through publications or writings, as to the value of
11 securities or the advisability of investing in, purchasing, or selling securities or that,
12 for compensation and as a part of a regular business, issues or promulgates analyses
13 or reports concerning securities. The term includes a financial planner or other person
14 that, as an integral component of other financially related services, provides
15 investment advice to others for compensation as part of a business or that holds itself
16 out as providing investment advice to others for compensation. The term does not
17 include:

18 (A) An investment adviser representative;

19 (B) A lawyer, accountant, engineer, or teacher whose performance of investment
20 advice is solely incidental to the practice of the person's profession;

21 (C) A broker-dealer or its agents whose performance of investment advice is
22 solely incidental to the conduct of business as a broker-dealer and that does
23 not receive special compensation for the investment advice;

24 (D) A publisher of a bona fide newspaper, news magazine, or business or financial

- 1 publication of general and regular circulation;
- 2 (E) A federal covered investment adviser;
- 3 (F) A bank or savings institution;
- 4 (G) Any other person that is excluded by the Investment Advisers Act of 1940
- 5 from the definition of investment adviser; or
- 6 (H) Any other person excluded by rule adopted or order issued under this Act;
- 7 (16) "Investment adviser representative," an individual employed by or associated with
- 8 an investment adviser or federal covered investment adviser and who makes any
- 9 recommendations or otherwise gives investment advice regarding securities, manages
- 10 accounts or portfolios of clients, determines which recommendation or advice
- 11 regarding securities should be given, provides investment advice or holds herself or
- 12 himself out as providing investment advice, receives compensation to solicit, offer,
- 13 or negotiate for the sale of or for selling investment advice, or supervises employees
- 14 who perform any of the foregoing. The term does not include an individual who:
- 15 (A) Performs only clerical or ministerial acts;
- 16 (B) Is an agent whose performance of investment advice is solely incidental to the
- 17 individual acting as an agent and who does not receive special compensation
- 18 for investment advisory services;
- 19 (C) Is employed by or associated with a federal covered investment adviser, unless
- 20 the individual has a place of business in this state as that term is defined by
- 21 rule adopted under Section 203A of the Investment Advisers Act of 1940 (15
- 22 U.S.C. Section 80b-3a) and is:
- 23 (i) An investment adviser representative as that term is defined by rule
- 24 adopted under Section 203A of the Investment Advisers Act of 1940

1 (15 U.S.C. Section 80b-3a); or

2 (ii) Not a supervised person as that term is defined in Section 202(a)(25) of
3 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25));

4 or

5 (D) Is excluded by rule adopted or order issued under this Act;

6 (17) "Issuer," a person that issues or proposes to issue a security, subject to the following:

7 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
8 deposit for a security, or share in an investment company without a board of
9 directors or individuals performing similar functions is the person performing
10 the acts and assuming the duties of depositor or manager pursuant to the trust
11 or other agreement or instrument under which the security is issued;

12 (B) The issuer of an equipment trust certificate or similar security serving the
13 same purpose is the person by which the property is or will be used or to
14 which the property or equipment is or will be leased or conditionally sold or
15 that is otherwise contractually responsible for assuring payment of the
16 certificate;

17 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral
18 lease or in payments out of production under a lease, right, or royalty is the
19 owner of an interest in the lease or in payments out of production under a
20 lease, right, or royalty, whether whole or fractional, that creates fractional
21 interests for the purpose of sale;

22 (18) "Nonissuer transaction" or "nonissuer distribution," a transaction or distribution not
23 directly or indirectly for the benefit of the issuer;

24 (19) "Offer to purchase," an attempt or offer to obtain, or solicitation of an offer to sell,

1 a security or interest in a security for value. The term does not include a tender offer
2 that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C.
3 78n(d));

4 (20) "Person," an individual; corporation; business trust; estate; trust; partnership; limited
5 liability company; association; joint venture; government; governmental subdivision,
6 agency, or instrumentality; public corporation; or any other legal or commercial
7 entity;

8 (21) "Place of business," of a broker-dealer, an investment adviser, or a federal covered
9 investment adviser means:

10 (A) An office at which the broker-dealer, investment adviser, or federal covered
11 investment adviser regularly provides brokerage or investment advice or
12 solicits, meets with, or otherwise communicates with customers or clients; or

13 (B) Any other location that is held out to the general public as a location at which
14 the broker-dealer, investment adviser, or federal covered investment adviser
15 provides brokerage or investment advice or solicits, meets with, or otherwise
16 communicates with customers or clients;

17 (22) "Predecessor act," the act repealed by Section 702;

18 (23) "Price amendment," the amendment to a registration statement filed under the
19 Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus
20 supplement filed under the Securities Act of 1933 that includes a statement of the
21 offering price, underwriting and selling discounts or commissions, amount of
22 proceeds, conversion rates, call prices, and other matters dependent upon the offering
23 price;

24 (24) "Principal place of business," of a broker-dealer or an investment adviser means the

1 executive office of the broker-dealer or investment adviser from which the officers,
2 partners, or managers of the broker-dealer or investment adviser direct, control, and
3 coordinate the activities of the broker-dealer or investment adviser;

4 (25) "Record," except in the phrases "of record," "official record," and "public record,"
5 information that is inscribed on a tangible medium or that is stored in an electronic
6 or other medium and is retrievable in perceivable form;

7 (26) "Sale," includes every contract of sale, contract to sell, or disposition of, a security
8 or interest in a security for value, and offer to sell includes every attempt or offer to
9 dispose of, or solicitation of an offer to purchase, a security or interest in a security
10 for value. Both terms include:

11 (A) A security given or delivered with, or as a bonus on account of, a purchase of
12 securities or any other thing constituting part of the subject of the purchase and
13 having been offered and sold for value;

14 (B) A gift of assessable stock involving an offer and sale; and

15 (C) A sale or offer of a warrant or right to purchase or subscribe to another
16 security of the same or another issuer and a sale or offer of a security that
17 gives the holder a present or future right or privilege to convert the security
18 into another security of the same or another issuer, including an offer of the
19 other security;

20 (27) "Securities and Exchange Commission," the United States Securities and Exchange
21 Commission;

22 (28) "Security," a note; stock; treasury stock; security future; bond; debenture; evidence
23 of indebtedness; certificate of interest or participation in a profit-sharing agreement;
24 collateral trust certificate; preorganization certificate or subscription; transferable

1 share; investment contract; voting trust certificate; certificate of deposit for a
2 security; fractional undivided interest in oil, gas, or other mineral rights; put, call,
3 straddle, option, or privilege on a security, certificate of deposit, or group or index
4 of securities, including an interest therein or based on the value thereof; put, call,
5 straddle, option, or privilege entered into on a national securities exchange relating
6 to foreign currency; or, in general, an interest or instrument commonly known as a
7 security; or a certificate of interest or participation in, temporary or interim certificate
8 for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of
9 the foregoing. The term:

10 (A) Includes both a certificated and an uncertificated security;

11 (B) Does not include an insurance or endowment policy or annuity contract under
12 which an insurance company promises to pay a fixed sum of money either in
13 a lump sum or periodically for life or other specified period;

14 (C) Does not include an interest in a contributory or noncontributory pension or
15 welfare plan subject to the Employee Retirement Income Security Act of 1974;

16 (D) Includes as an investment contract an investment in a common enterprise with
17 the expectation of profits to be derived primarily from the efforts of a person
18 other than the investor and a common enterprise means an enterprise in which
19 the fortunes of the investor are interwoven with those of either the person
20 offering the investment, a third party, or other investors; and

21 (E) Includes as an investment contract, among other contracts, an interest in a
22 limited partnership and a limited liability company and an investment in a
23 viatical settlement or similar agreement;

24 (29) "Self-regulatory organization," a national securities exchange registered under the

1 Securities Exchange Act of 1934, a national securities association of broker-dealers
2 registered under the Securities Exchange Act of 1934, a clearing agency registered
3 under the Securities Exchange Act of 1934, or the Municipal Securities Rule-making
4 Board established under the Securities Exchange Act of 1934;

5 (30) "Sign," with present intent to authenticate or adopt a record:

6 (A) To execute or adopt a tangible symbol; or

7 (B) To attach or logically associate with the record an electronic symbol, sound,
8 or process;

9 (31) "State," a state of the United States, the District of Columbia, Puerto Rico, the United
10 States Virgin Islands, or any territory or insular possession subject to the jurisdiction
11 of the United States.

12 Section 3. Section 103. Securities Act of 1933 (15 U.S.C. Section 77a et seq.), Securities
13 Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), Public Utility Holding Company Act of
14 1935 (15 U.S.C. Section 79 et seq.), Investment Company Act of 1940 (15 U.S.C. Section 80a-1
15 et seq.), Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), Employee
16 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), National Housing
17 Act (12 U.S.C. Section 1701 et seq.), Commodity Exchange Act (7 U.S.C. Section 1 et seq.),
18 Internal Revenue Code (26 U.S.C. Section 1 et seq.), Securities Investor Protection Act of 1970
19 (15 U.S.C. Section 78aaa et seq.), Securities Litigation Uniform Standards Act of 1998 (112
20 Stat. 3227), Small Business Investment Act of 1958 (15 U.S.C. Section 661 et seq.), and
21 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.)
22 mean those statutes and the rules and regulations adopted under those statutes, as in effect on
23 the date of enactment of this Act, or as later amended.

24 Section 4. Section 104. A reference in this Act to an agency or department of the United

1 States is also a reference to a successor agency or department.

2 Section 5. Section 105. This Act modifies, limits, and supersedes the federal Electronic
3 Signatures in Global and National Commerce Act, but does not modify, limit, or supersede
4 Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any
5 of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act
6 authorizes the filing of records and signatures, when specified by provisions of this Act or by
7 a rule adopted or order issued under this Act, in a manner consistent with Section 104(a) of that
8 act (15 U.S.C. Section 7004(a)).

9 Section 6. Section 201. The following securities are exempt from the requirements of
10 Sections 301 through 306 and 504:

11 (1) A security, including a revenue obligation or a separate security as defined in Rule
12 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured,
13 or guaranteed by the United States; by a state; by a political subdivision of a state; by
14 a public authority, agency, or instrumentality of one or more states; by a political
15 subdivision of one or more states; or by a person controlled or supervised by and
16 acting as an instrumentality of the United States under authority granted by the
17 Congress; or a certificate of deposit for any of the foregoing;

18 (2) A security issued, insured, or guaranteed by a foreign government with which the
19 United States maintains diplomatic relations, or any of its political subdivisions, if
20 the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

21 (3) A security issued by and representing or that will represent an interest in or a direct
22 obligation of, or be guaranteed by:

23 (A) An international banking institution;

24 (B) A banking institution organized under the laws of the United States; a member

1 bank of the Federal Reserve System; or a depository institution a substantial
2 portion of the business of which consists or will consist of receiving deposits
3 or share accounts that are insured to the maximum amount authorized by
4 statute by the Federal Deposit Insurance Corporation, the National Credit
5 Union Share Insurance Fund, or a successor authorized by federal law or
6 exercising fiduciary powers that are similar to those permitted for national
7 banks under the authority of the Comptroller of Currency pursuant to Section
8 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

9 (C) Any other depository institution, unless by rule or order the director proceeds
10 under Section 204;

11 (4) A security issued by and representing an interest in, or a debt of, or insured or
12 guaranteed by, an insurance company authorized to do business in this state;

13 (5) A security issued or guaranteed by a railroad, other common carrier, public utility,
14 or public utility holding company that is:

15 (A) Regulated in respect to its rates and charges by the United States or a state;

16 (B) Regulated in respect to the issuance or guarantee of the security by the United
17 States, a state, Canada, or a Canadian province or territory; or

18 (C) A public utility holding company registered under the Public Utility Holding
19 Company Act of 1935 or a subsidiary of such a registered holding company
20 within the meaning of that act;

21 (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933
22 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security
23 listed or approved for listing on another securities market specified by rule under this
24 Act; a put or a call option contract; a warrant; a subscription right on or with respect

1 to such securities; or an option or similar derivative security on a security or an index
2 of securities or foreign currencies issued by a clearing agency registered under the
3 Securities Exchange Act of 1934 and listed or designated for trading on a national
4 securities exchange, a facility of a national securities exchange, or a facility of a
5 national securities association registered under the Securities Exchange Act of 1934
6 or an offer or sale, of the underlying security in connection with the offer, sale, or
7 exercise of an option or other security that was exempt when the option or other
8 security was written or issued; or an option or a derivative security designated by the
9 Securities and Exchange Commission under Section 9(b) of the Securities Exchange
10 Act of 1934 (15 U.S.C. Section 78i(b));

11 (7) A security issued by a person organized and operated exclusively for religious,
12 educational, benevolent, fraternal, charitable, social, athletic, or reformatory
13 purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the
14 net earnings of which inures to the benefit of a private stockholder or other person,
15 or a security of a company that is excluded from the definition of an investment
16 company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15
17 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a
18 note, bond, debenture, or other evidence of indebtedness issued by such a person, a
19 rule may be adopted under this Act limiting the availability of this exemption by
20 classifying securities, persons, and transactions, imposing different requirements for
21 different classes, specifying with respect to paragraph (B) the scope of the exemption
22 and the grounds for denial or suspension, and requiring an issuer:

23 (A) To file a notice specifying the material terms of the proposed offer or sale and
24 copies of any proposed sales and advertising literature to be used and provide

1 that the exemption becomes effective if the director does not disallow the
2 exemption within the period established by the rule;

3 (B) To file a request for exemption authorization for which a rule under this Act
4 may specify the scope of the exemption, the requirement of an offering
5 statement, the filing of sales and advertising literature, the filing of consent to
6 service of process complying with Section 611, and grounds for denial or
7 suspension of the exemption; or

8 (C) To register under Section 304;

9 (8) Any securities of any cooperative corporation organized in good faith and qualified
10 to do business as a cooperative under chapter 47-15 or chapter 47-21 and sold only
11 to members of such cooperative corporations for the purpose of conducting under the
12 cooperative plan among its stockholders any or all of the following businesses:

13 (A) Any agricultural, dairy, livestock, or produce business;

14 (B) The business of selling, marketing, or otherwise handling any agricultural,
15 dairy, or livestock products, or other produce raised or produced by the
16 stockholders of such corporation or by any cooperative corporation;

17 (C) The manufacture of any products from handling any agricultural, dairy, or
18 livestock products, or other produce by the members of such corporations;

19 (D) The funding of economic development projects in South Dakota;

20 (E) The operation of a rural telephone among its stockholders;

21 (F) Any business incidental to any of the above purposes; and

22 (G) A member's or owner's interest in, or a retention certificate or like security
23 given in lieu of a cash patronage dividend issued by, a cooperative organized
24 and operated as a nonprofit membership cooperative under the cooperative

1 laws of a state, but not a member's or owner's interest, retention certificate, or
2 like security sold to persons other than bona fide members of the cooperative;
3 and

4 (9) An equipment trust certificate with respect to equipment leased or conditionally sold
5 to a person, if any security issued by the person would be exempt under this section
6 or would be a federal covered security under Section 18(b)(1) of the Securities Act
7 of 1933 (15 U.S.C. Section 77r(b)(1)).

8 Section 7. Section 202. The following transactions are exempt from the requirements of
9 Sections 301 through 306 and 504:

10 (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or
11 not;

12 (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from
13 registration under this Act, and a resale transaction by a sponsor of a unit investment
14 trust registered under the Investment Company Act of 1940, in a security of a class
15 that has been outstanding in the hands of the public for at least ninety days, if, at the
16 date of the transaction:

17 (A) The issuer of the security is engaged in business, the issuer is not in the
18 organizational stage or in bankruptcy or receivership, and the issuer is not a
19 blank check, blind pool, or shell company that has no specific business plan
20 or purpose or has indicated that its primary business plan is to engage in a
21 merger or combination of the business with, or an acquisition of, an
22 unidentified person;

23 (B) The security is sold at a price reasonably related to its current market price;

24 (C) The security does not constitute the whole or part of an unsold allotment to,

1 or a subscription or participation by, the broker-dealer as an underwriter of the
2 security or a redistribution;

3 (D) A nationally recognized securities manual or its electronic equivalent
4 designated by rule adopted or order issued under this Act or a record filed with
5 the Securities and Exchange Commission that is publicly available contains:

6 (i) A description of the business and operations of the issuer;

7

8 (ii) The names of the issuer's executive officers and the names of the
9 issuer's directors, if any;

10 (iii) An audited balance sheet of the issuer as of a date within eighteen
11 months before the date of the transaction or, in the case of a
12 reorganization or merger when the parties to the reorganization or
13 merger each had an audited balance sheet, a pro forma balance sheet for
14 the combined organization; and

15 (iv) An audited income statement for each of the issuer's two immediately
16 previous fiscal years or for the period of existence of the issuer,
17 whichever is shorter, or, in the case of a reorganization or merger when
18 each party to the reorganization or merger had audited income
19 statements, a pro forma income statement; and

20 (E) Any one of the following requirements is met:

21 (i) The issuer of the security has a class of equity securities listed on a
22 national securities exchange registered under Section 6 of the Securities
23 Exchange Act of 1934 or designated for trading on the National
24 Association of Securities Dealers Automated Quotation System;

- 1 (ii) The issuer of the security is a unit investment trust registered under the
- 2 Investment Company Act of 1940;
- 3 (iii) The issuer of the security, including its predecessors, has been engaged
- 4 in continuous business for at least three years; or
- 5 (iv) The issuer of the security has total assets of at least two million dollars
- 6 based on an audited balance sheet as of a date within eighteen months
- 7 before the date of the transaction or, in the case of a reorganization or
- 8 merger when the parties to the reorganization or merger each had such
- 9 an audited balance sheet, a pro forma balance sheet for the combined
- 10 organization;
- 11 (3) A nonissuer transaction by or through a broker-dealer registered or exempt from
- 12 registration under this Act in a security of a foreign issuer that is a margin security
- 13 defined in regulations or rules adopted by the Board of Governors of the Federal
- 14 Reserve System;
- 15 (4) A nonissuer transaction by or through a broker-dealer registered or exempt from
- 16 registration under this Act in an outstanding security if the guarantor of the security
- 17 files reports with the Securities and Exchange Commission under the reporting
- 18 requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15
- 19 U.S.C. 78m or 78o(d));
- 20 (5) A nonissuer transaction by or through a broker-dealer registered or exempt from
- 21 registration under this Act in a security that:
- 22 (A) Is rated at the time of the transaction by a nationally recognized statistical
- 23 rating organization in one of its four highest rating categories; or
- 24 (B) Has a fixed maturity or a fixed interest or dividend, if:

- 1 (i) A default has not occurred during the current fiscal year or within the
- 2 three previous fiscal years or during the existence of the issuer and any
- 3 predecessor if less than three fiscal years, in the payment of principal,
- 4 interest, or dividends on the security; and
- 5 (ii) The issuer is engaged in business, is not in the organizational stage or
- 6 in bankruptcy or receivership, and is not and has not been within the
- 7 previous twelve months a blank check, blind pool, or shell company
- 8 that has no specific business plan or purpose or has indicated that its
- 9 primary business plan is to engage in a merger or combination of the
- 10 business with, or an acquisition of, an unidentified person;
- 11 (6) A nonissuer transaction by or through a broker-dealer registered or exempt from
- 12 registration under this Act effecting an unsolicited order or offer to purchase;
- 13 (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of
- 14 evading this Act;
- 15 (8) A nonissuer transaction by a federal covered investment adviser with investments
- 16 under management in excess of one hundred million dollars acting in the exercise of
- 17 discretionary authority in a signed record for the account of others;
- 18 (9) A transaction in a security, whether or not the security or transaction is otherwise
- 19 exempt, in exchange for one or more bona fide outstanding securities, claims, or
- 20 property interests, or partly in such exchange and partly for cash, if the terms and
- 21 conditions of the issuance and exchange or the delivery and exchange and the
- 22 fairness of the terms and conditions have been approved by the director after a
- 23 hearing;
- 24 (10) A transaction between the issuer or other person on whose behalf the offering is

- 1 made and an underwriter, or among underwriters;
- 2 (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured
- 3 by a mortgage or other security agreement if:
- 4 (A) The note, bond, debenture, or other evidence of indebtedness is offered and
- 5 sold with the mortgage or other security agreement as a unit;
- 6 (B) A general solicitation or general advertisement of the transaction is not made;
- 7 and
- 8 (C) A commission or other remuneration is not paid or given, directly or
- 9 indirectly, to a person not registered under this Act as a broker-dealer or as an
- 10 agent;
- 11 (12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver,
- 12 trustee in bankruptcy, guardian, or conservator;
- 13 (13) A sale or offer to sell to:
- 14 (A) An institutional investor;
- 15 (B) A federal covered investment adviser; or
- 16 (C) Any other person exempted by rule adopted or order issued under this Act;
- 17 (14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single
- 18 issue in which:
- 19 (A) Not more than twenty-five purchasers are present in this state during any
- 20 twelve consecutive months, other than those designated in paragraph (13);
- 21 (B) A general solicitation or general advertising is not made in connection with the
- 22 offer to sell or sale of the securities;
- 23 (C) A commission or other remuneration is not paid or given, directly or
- 24 indirectly, to a person other than a broker-dealer registered under this Act or

1 an agent registered under this Act for soliciting a prospective purchaser in this
2 state; and

3 (D) The issuer reasonably believes that all the purchasers in this state, other than
4 those designated in paragraph (13), are purchasing for investment;

5 (15) A transaction under an offer to existing security holders of the issuer, including
6 persons that at the date of the transaction are holders of convertible securities,
7 options, or warrants, if a commission or other remuneration, other than a standby
8 commission, is not paid or given, directly or indirectly, for soliciting a security holder
9 in this state;

10 (16) An offer to sell, but not a sale, of a security not exempt from registration under the
11 Securities Act of 1933 if:

12 (A) A registration or offering statement or similar record as required under the
13 Securities Act of 1933 has been filed, but is not effective, or the offer is made
14 in compliance with Rule 165 adopted under the Securities Act of 1933 (17
15 C.F.R. 230.165); and

16 (B) A stop order of which the offeror is aware has not been issued against the
17 offeror by the director or the Securities and Exchange Commission, and an
18 audit, inspection, or proceeding that is public and that may culminate in a stop
19 order is not known by the offeror to be pending;

20 (17) An offer to sell, but not a sale, of a security exempt from registration under the
21 Securities Act of 1933 if:

22 (A) A registration statement has been filed under this Act, but is not effective;

23 (B) A solicitation of interest is provided in a record to offerees in compliance with
24 a rule adopted by the director under this Act; and

- 1 (C) A stop order of which the offeror is aware has not been issued by the director
2 under this Act and an audit, inspection, or proceeding that may culminate in
3 a stop order is not known by the offeror to be pending;
- 4 (18) A transaction involving the distribution of the securities of an issuer to the security
5 holders of another person in connection with a merger, consolidation, exchange of
6 securities, sale of assets, or other reorganization to which the issuer, or its parent or
7 subsidiary and the other person, or its parent or subsidiary, are parties;
- 8 (19) A rescission offer, sale, or purchase under Section 510;
- 9 (20) An offer or sale of a security to a person not a resident of this state and not present
10 in this state if the offer or sale does not constitute a violation of the laws of the state
11 or foreign jurisdiction in which the offeree or purchaser is present and is not part of
12 an unlawful plan or scheme to evade this Act;
- 13 (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar
14 employees' benefit plan, including any securities, plan interests, and guarantees
15 issued under a compensatory benefit plan or compensation contract, contained in a
16 record, established by the issuer, its parents, its majority-owned subsidiaries, or the
17 majority-owned subsidiaries of the issuer's parent for the participation of their
18 employees including offers or sales of such securities to:
- 19 (A) Directors; general partners; trustees, if the issuer is a business trust; officers;
20 consultants; and advisors;
- 21 (B) Family members who acquire such securities from those persons through gifts
22 or domestic relations orders;
- 23 (C) Former employees, directors, general partners, trustees, officers, consultants,
24 and advisors if those individuals were employed by or providing services to

1 the issuer when the securities were offered; and

2 (D) Insurance agents who are exclusive insurance agents of the issuer, or the
3 issuer's subsidiaries or parents, or who derive more than fifty percent of their
4 annual income from those organizations;

5 (22) A transaction involving:

6 (A) A stock dividend or equivalent equity distribution, whether the corporation or
7 other business organization distributing the dividend or equivalent equity
8 distribution is the issuer or not, if nothing of value is given by stockholders or
9 other equity holders for the dividend or equivalent equity distribution other
10 than the surrender of a right to a cash or property dividend if each stockholder
11 or other equity holder may elect to take the dividend or equivalent equity
12 distribution in cash, property, or stock;

13 (B) An act incident to a judicially approved reorganization in which a security
14 issued in exchange for one or more outstanding securities, claims, or property
15 interests, or partly in such exchange and partly for cash; or

16 (C) The solicitation of tenders of securities by an offeror in a tender offer in
17 compliance with Rule 162 adopted under the Securities Act of 1933 (17
18 C.F.R. 230.162); or

19 (23) A nonissuer transaction in an outstanding security by or through a broker-dealer
20 registered or exempt from registration under this Act, if the issuer is a reporting
21 issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or
22 order issued under this Act; has been subject to continuous reporting requirements
23 in the foreign jurisdiction for not less than one hundred eighty days before the
24 transaction; and the security is listed on the foreign jurisdiction's securities exchange

1 that has been designated by this paragraph or by rule adopted or order issued under
2 this Act, or is a security of the same issuer that is of senior or substantially equal rank
3 to the listed security or is a warrant or right to purchase or subscribe to any of the
4 foregoing. For purposes of this paragraph, Canada, together with its provinces and
5 territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc.,
6 is a designated securities exchange. After an administrative hearing in compliance
7 with chapter 1-26, the director, by rule adopted or order issued under this Act, may
8 revoke the designation of a securities exchange under this paragraph, if the director
9 finds that revocation is necessary or appropriate in the public interest and for the
10 protection of investors.

11 Section 8. Section 203. A rule adopted or order issued under this Act may exempt a security,
12 transaction, or offer; a rule under this Act may exempt a class of securities, transactions, or
13 offers from any or all of the requirements of Sections 301 through 306 and 504; and an order
14 under this Act may waive, in whole or in part, any or all of the conditions for an exemption or
15 offer under Sections 201 and 202. A filing required by rules adopted pursuant to this section
16 shall include a fee of two hundred dollars, unless a fee is otherwise identified in this Act.

17 Section 9. Section 204. (a) Enforcement related powers. Except with respect to a federal
18 covered security or a transaction involving a federal covered security, an order under this Act
19 may deny, suspend application of, condition, limit, or revoke an exemption created under
20 Section 201(3)(C), (7) or (8) or 202 or an exemption or waiver created under Section 203 with
21 respect to a specific security, transaction, or offer. An order under this section may be issued
22 only pursuant to the procedures in Section 306(d) or 604 and only prospectively.

23 (b) Knowledge of order required. A person does not violate Section 301, 303 through 306,
24 504, or 510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an

1 order issued under this section if the person did not know, and in the exercise of reasonable care
2 could not have known, of the order.

3 Section 10. Section 301. It is unlawful for a person to offer or sell a security in this state
4 unless:

- 5 (1) The security is a federal covered security;
- 6 (2) The security, transaction, or offer is exempted from registration under Sections 201
7 through 203; or
- 8 (3) The security is registered under this Act.

9 Section 11. Section 302. (a) Required filing of records. With respect to a federal covered
10 security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section
11 77r(b)(2)), that is not otherwise exempt under Sections 201 through 203, a rule adopted or order
12 issued under this Act may require the filing of any or all of the following records:

- 13 (1) Before the initial offer of a federal covered security in this state, all records that are
14 part of a federal registration statement filed with the Securities and Exchange
15 Commission under the Securities Act of 1933 and a consent to service of process
16 complying with Section 611 signed by the issuer and the payment of a fee of five
17 hundred dollars for open-end management companies with total net assets of fifty
18 million dollars or less, or a filing fee of one thousand dollars for open-end
19 management companies with total net assets of more than fifty million dollars but
20 less than two hundred fifty million dollars, or a filing fee of two thousand dollars for
21 open-end management companies with total net assets equal to or greater than two
22 hundred fifty million dollars; two hundred and fifty dollars for closed end
23 management companies; or a filing fee of one hundred fifty dollars for unit
24 investment trusts. A renewal filing is required annually, including those documents

1 that the director by rule or order may require and a fee as provided in this
2 subparagraph a(1). An initial or renewal filing includes a separate fee for each
3 portfolio, series, class, or other designation. An initial or renewal filing shall include
4 the most recent financial statement showing the nets assets of each portfolio, series,
5 class, or other designation, unless the maximum fee of two thousand dollars is paid.

6 (2) After the initial offer of the federal covered security in this state, all records that are
7 part of an amendment to a federal registration statement filed with the Securities and
8 Exchange Commission under the Securities Act of 1933. Any amendment that
9 includes a name change to any filing, including any portfolio, series, class, or other
10 designation, must include a fifty dollar filing fee for each name change of each
11 portfolio, series, class, or other designation.

12 (b) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective
13 for one year commencing on the later of the notice filing or the effectiveness of the offering filed
14 with the Securities and Exchange Commission. On or before expiration, the issuer may renew
15 a notice filing by filing a copy of those records filed by the issuer with the Securities and
16 Exchange Commission that are required by rule or order under this Act to be filed and by paying
17 a renewal fee as set forth in subsection a(1). A previously filed consent to service of process
18 complying with Section 611 may be incorporated by reference in a renewal. A renewed notice
19 filing becomes effective upon the expiration of the filing being renewed.

20 (c) Notice filings for federal covered securities under Section 18(b)(4)(D). With respect to
21 a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of
22 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this Act may require a notice filing by or on
23 behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the
24 Securities and Exchange Commission, and a consent to service of process complying with

1 Section 611 signed by the issuer not later than fifteen days after the first sale of the federal
2 covered security in this state and the payment of a fee of two hundred fifty dollars; and the
3 payment of a fee of two hundred seventy five dollars for any late filing.

4 (d) Stop orders. Except with respect to a federal security under Section 18(b)(1) of the
5 Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the director finds that there is a failure
6 to comply with a notice or fee requirement of this section, the director may issue a stop order
7 suspending the offer and sale of a federal covered security in this state. If the deficiency is
8 corrected, the stop order is void as of the time of its issuance and no penalty may be imposed
9 by the director.

10 Section 12. Section 303. (a) Registration permitted. A security for which a registration
11 statement has been filed under the Securities Act of 1933 in connection with the same offering
12 may be registered by coordination under this section.

13 (b) Required records. A registration statement and accompanying records under this section
14 must contain or be accompanied by the following records in addition to the information
15 specified in Section 305 and a consent to service of process complying with Section 611:

- 16 (1) A copy of the latest form of prospectus filed under the Securities Act of 1933;
- 17 (2) A copy of the articles of incorporation and bylaws or their substantial equivalents
18 currently in effect; a copy of any agreement with or among underwriters; a copy of
19 any indenture or other instrument governing the issuance of the security to be
20 registered; and a specimen, copy, or description of the security that is required by rule
21 adopted or order issued under this Act;
- 22 (3) Copies of any other information or any other records filed by the issuer under the
23 Securities Act of 1933 requested by the director; and
- 24 (4) An undertaking to forward each amendment to the federal prospectus, other than an

1 amendment that delays the effective date of the registration statement, promptly after
2 it is filed with the Securities and Exchange Commission.

3 (c) Conditions for effectiveness of registration statement. A registration statement under this
4 section becomes effective simultaneously with or subsequent to the federal registration
5 statement when all the following conditions are satisfied:

6 (1) A stop order under subsection (d) or Section 306 or issued by the Securities and
7 Exchange Commission is not in effect and a proceeding is not pending against the
8 issuer under Section 306; and

9 (2) The registration statement has been on file for at least twenty days or a shorter period
10 provided by rule adopted or order issued under this Act.

11 (d) Notice of federal registration statement effectiveness. The registrant shall promptly
12 notify the director in a record of the date when the federal registration statement becomes
13 effective and the content of any price amendment and shall promptly file a record containing
14 the price amendment. If the notice is not timely received, the director may issue a stop order,
15 without prior notice or hearing, retroactively denying effectiveness to the registration statement
16 or suspending its effectiveness until compliance with this section. The director shall promptly
17 notify the registrant of an order by telegram, telephone, or electronic means and promptly
18 confirm this notice by a record. If the registrant subsequently complies with the notice
19 requirements of this section, the stop order is void as of the date of its issuance.

20 (e) Effectiveness of registration statement. If the federal registration statement becomes
21 effective before each of the conditions in this section is satisfied or is waived by the director,
22 the registration statement is automatically effective under this Act when all the conditions are
23 satisfied or waived. If the registrant notifies the director of the date when the federal registration
24 statement is expected to become effective, the director shall promptly notify the registrant by

1 telegram, telephone, or electronic means and promptly confirm this notice by a record,
2 indicating whether all the conditions are satisfied or waived and whether the director intends the
3 institution of a proceeding under Section 306. The notice by the director does not preclude the
4 institution of such a proceeding.

5 Section 13. Section 304. (a) Registration permitted. A security may be registered by
6 qualification under this section.

7 (b) Required records. A registration statement under this section must contain the
8 information or records specified in Section 305, a consent to service of process complying with
9 Section 611, and, if required by rule adopted under this Act, the following information or
10 records:

11 (1) With respect to the issuer and any significant subsidiary, its name, address, and form
12 of organization; the state or foreign jurisdiction and date of its organization; the
13 general character and location of its business; a description of its physical properties
14 and equipment; and a statement of the general competitive conditions in the industry
15 or business in which it is or will be engaged;

16 (2) With respect to each director and officer of the issuer, and other person having a
17 similar status or performing similar functions, the person's name, address, and
18 principal occupation for the previous five years; the amount of securities of the issuer
19 held by the person as of the thirtieth day before the filing of the registration
20 statement; the amount of the securities covered by the registration statement to which
21 the person has indicated an intention to subscribe; and a description of any material
22 interest of the person in any material transaction with the issuer or a significant
23 subsidiary effected within the previous three years or proposed to be effected;

24 (3) With respect to persons covered by paragraph (2), the aggregate sum of the

- 1 remuneration paid to those persons during the previous twelve months and estimated
2 to be paid during the next twelve months, directly or indirectly, by the issuer, and all
3 predecessors, parents, subsidiaries, and affiliates of the issuer;
- 4 (4) With respect to a person owning of record or owning beneficially, if known, ten
5 percent or more of the outstanding shares of any class of equity security of the issuer,
6 the information specified in paragraph (2) other than the person's occupation;
- 7 (5) With respect to a promoter, if the issuer was organized within the previous three
8 years, the information or records specified in paragraph (2), any amount paid to the
9 promoter within that period or intended to be paid to the promoter, and the
10 consideration for the payment;
- 11 (6) With respect to a person on whose behalf any part of the offering is to be made in a
12 nonissuer distribution, the person's name and address; the amount of securities of the
13 issuer held by the person as of the date of the filing of the registration statement; a
14 description of any material interest of the person in any material transaction with the
15 issuer or any significant subsidiary effected within the previous three years or
16 proposed to be effected; and a statement of the reasons for making the offering;
- 17 (7) The capitalization and long term debt, on both a current and pro forma basis, of the
18 issuer and any significant subsidiary, including a description of each security
19 outstanding or being registered or otherwise offered, and a statement of the amount
20 and kind of consideration, whether in the form of cash, physical assets, services,
21 patents, goodwill, or anything else of value, for which the issuer or any subsidiary has
22 issued its securities within the previous two years or is obligated to issue its
23 securities;
- 24 (8) The kind and amount of securities to be offered; the proposed offering price or the

1 method by which it is to be computed; any variation at which a proportion of the
2 offering is to be made to a person or class of persons other than the underwriters,
3 with a specification of the person or class; the basis on which the offering is to be
4 made if otherwise than for cash; the estimated aggregate underwriting and selling
5 discounts or commissions and finders' fees, including separately cash, securities,
6 contracts, or anything else of value to accrue to the underwriters or finders in
7 connection with the offering or, if the selling discounts or commissions are variable,
8 the basis of determining them and their maximum and minimum amounts; the
9 estimated amounts of other selling expenses, including legal, engineering, and
10 accounting charges; the name and address of each underwriter and each recipient of
11 a finder's fee; a copy of any underwriting or selling group agreement under which the
12 distribution is to be made or the proposed form of any such agreement whose terms
13 have not yet been determined; and a description of the plan of distribution of any
14 securities that are to be offered otherwise than through an underwriter;

15 (9) The estimated monetary proceeds to be received by the issuer from the offering; the
16 purposes for which the proceeds are to be used by the issuer; the estimated amount
17 to be used for each purpose; the order or priority in which the proceeds will be used
18 for the purposes stated; the amounts of any funds to be raised from other sources to
19 achieve the purposes stated; the sources of the funds; and, if a part of the proceeds
20 is to be used to acquire property, including goodwill, otherwise than in the ordinary
21 course of business, the names and addresses of the vendors, the purchase price, the
22 names of any persons that have received commissions in connection with the
23 acquisition, and the amounts of the commissions and other expenses in connection
24 with the acquisition, including the cost of borrowing money to finance the

- 1 acquisition;
- 2 (10) A description of any stock options or other security options outstanding, or to be
3 created in connection with the offering, and the amount of those options held or to
4 be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and
5 by any person that holds or will hold ten percent or more in the aggregate of those
6 options;
- 7 (11) The dates of, parties to, and general effect concisely stated of each managerial or
8 other material contract made or to be made otherwise than in the ordinary course of
9 business to be performed in whole or in part at or after the filing of the registration
10 statement or that was made within the previous two years, and a copy of the contract;
- 11 (12) A description of any pending litigation, action, or proceeding to which the issuer is
12 a party and that materially affects its business or assets, and any litigation, action, or
13 proceeding known to be contemplated by governmental authorities;
- 14 (13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other
15 sales literature intended as of the effective date to be used in connection with the
16 offering and any solicitation of interest used in compliance with Section 202(17)(B);
- 17 (14) A specimen or copy of the security being registered, unless the security is
18 uncertificated; a copy of the issuer's articles of incorporation and bylaws or their
19 substantial equivalents, in effect; and a copy of any indenture or other instrument
20 covering the security to be registered;
- 21 (15) A signed or conformed copy of an opinion of counsel concerning the legality of the
22 security being registered, with an English translation if it is in a language other than
23 English, which states whether the security when sold will be validly issued, fully
24 paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

1 (16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or
2 other person whose profession gives authority for a statement made by the person,
3 if the person is named as having prepared or certified a report or valuation, other than
4 an official record, that is public, which is used in connection with the registration
5 statement;

6 (17) A balance sheet of the issuer as of a date within four months before the filing of the
7 registration statement; a statement of income and a statement of cash flows for each
8 of the three fiscal years preceding the date of the balance sheet and for any period
9 between the close of the immediately previous fiscal year and the date of the balance
10 sheet, or for the period of the issuer's and any predecessor's existence if less than
11 three years; and, if any part of the proceeds of the offering is to be applied to the
12 purchase of a business, the financial statements that would be required if that
13 business were the registrant; and

14 (18) Any additional information or records required by rule adopted or order issued under
15 this Act.

16 (c) Conditions for effectiveness of registration statement. A registration statement under this
17 section becomes effective thirty days, or any shorter period provided by rule adopted or order
18 issued under this Act, after the date the registration statement or the last amendment other than
19 a price amendment is filed, if:

- 20 (1) A stop order is not in effect and a proceeding is not pending under Section 306;
- 21 (2) The director has not issued an order under Section 306 delaying effectiveness; and
- 22 (3) The applicant or registrant has not requested that effectiveness be delayed.

23 (d) Delay of effectiveness of registration statement. The director may delay effectiveness
24 once for not more than ninety days if the director determines the registration statement is not

1 complete in all material respects and promptly notifies the applicant or registrant of that
2 determination. The director may also delay effectiveness for a further period of not more than
3 thirty days if the director determines that the delay is necessary or appropriate.

4 (e) Prospectus distribution may be required. A rule adopted or order issued under this Act
5 may require as a condition of registration under this section that a prospectus containing a
6 specified part of the information or record specified in subsection (b) be sent or given to each
7 person to which an offer is made, before or concurrently, with the earliest of:

8 (1) The first offer made in a record to the person otherwise than by means of a public
9 advertisement, by or for the account of the issuer or another person on whose behalf
10 the offering is being made or by an underwriter or broker-dealer that is offering part
11 of an unsold allotment or subscription taken by the person as a participant in the
12 distribution;

13 (2) The confirmation of a sale made by or for the account of the person;

14 (3) Payment pursuant to such a sale; or

15 (4) Delivery of the security pursuant to such a sale.

16 Section 14. Section 305. (a) Who may file. A registration statement may be filed by the
17 issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under
18 this Act.

19 (b) Filing fee. A person filing a registration statement shall pay a filing fee as follows: On
20 the first five hundred thousand dollars of the total proposed sale price of the securities covered
21 by such registration, the sum of one dollar per thousand dollars. All registrations over five
22 hundred thousand dollars, the sum of five hundred dollars, plus seventy-five cents per thousand
23 dollars of excess over five hundred thousand dollars. The minimum fee is one hundred dollars.
24 The maximum fee is two thousand dollars. If a registration statement is withdrawn before the

1 effective date or a pre-effective stop order is issued under Section 306, the director shall retain
2 the minimum fee of one hundred dollars.

3 (c) Status of offering. A registration statement filed under Section 303 or 304 must specify:

4 (1) The amount of securities to be offered in this state;

5 (2) The states in which a registration statement or similar record in connection with the
6 offering has been or is to be filed; and

7 (3) Any adverse order, judgment, or decree issued in connection with the offering by a
8 state securities regulator, the Securities and Exchange Commission, or a court.

9 (d) Incorporation by reference. A record filed under this Act or the predecessor act within
10 five years preceding the filing of a registration statement may be incorporated by reference in
11 the registration statement to the extent that the record is currently accurate.

12 (e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record
13 may not be required under subsection (h) or Section 304, unless it is known to the person filing
14 the registration statement or to the person on whose behalf the distribution is to be made or
15 unless it can be furnished by those persons without unreasonable effort or expense.

16 (f) Form of subscription. A rule adopted or order issued under this Act may require as a
17 condition of registration that a security registered under this Act be sold only on a specified form
18 of subscription or sale contract and that a signed or conformed copy of each contract be filed
19 under this Act or preserved for a period specified by the rule or order, which may not be longer
20 than five years.

21 (g) Effective period. Except while a stop order is in effect under Section 306, a registration
22 statement is effective for one year after its effective date, or for any longer period designated in
23 an order under this Act during which the security is being offered or distributed in a
24 nonexempted transaction by or for the account of the issuer or other person on whose behalf the

1 offering is being made or by an underwriter or broker-dealer that is still offering part of an
2 unsold allotment or subscription taken as a participant in the distribution. For the purposes of
3 a nonissuer transaction, all outstanding securities of the same class identified in the registration
4 statement as a security registered under this Act are considered to be registered while the
5 registration statement is effective. If any securities of the same class are outstanding, a
6 registration statement may not be withdrawn until one year after its effective date. A registration
7 statement may be withdrawn only with the approval of the director. A fee of one hundred dollars
8 is required for any extension of registration.

9 (h) Periodic reports. While a registration statement is effective, a rule adopted or order
10 issued under this Act may require the person that filed the registration statement to file reports,
11 not more often than quarterly, to keep the information or other record in the registration
12 statement reasonably current and to disclose the progress of the offering. The only fee required
13 for filing a report under this subsection (h) is for the annual report. The annual report fee is
14 twenty-five dollars.

15 (i) Post-effective amendments. A registration statement may be amended after its effective
16 date. The post-effective amendment becomes effective when the director so orders. If a post-
17 effective amendment is made to increase the number of securities specified to be offered or sold,
18 the person filing the amendment shall pay a late registration fee of twenty five dollars and a
19 filing fee, calculated in the manner specified in subsection (b). A post-effective amendment
20 relates back to the date of the offering of the additional securities being registered if, within one
21 year after the date of the sale, the amendment is filed and the additional registration fee is paid.

22 Section 15. Section 306. (a) Stop orders. The director may issue a stop order denying
23 effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the
24 director finds that the order is in the public interest and that:

- 1 (1) The registration statement as of its effective date or before the effective date in the
2 case of an order denying effectiveness, an amendment under Section 305(i) as of its
3 effective date, or a report under Section 305(h), is incomplete in a material respect
4 or contains a statement that, in the light of the circumstances under which it was
5 made, was false or misleading with respect to a material fact;

- 6 (2) This Act or a rule adopted or order issued under this Act or a condition imposed
7 under this Act has been willfully violated, in connection with the offering, by the
8 person filing the registration statement; by the issuer, a partner, officer, or director
9 of the issuer or a person having a similar status or performing a similar function; a
10 promoter of the issuer; or a person directly or indirectly controlling or controlled by
11 the issuer; but only if the person filing the registration statement is directly or
12 indirectly controlled by or acting for the issuer; or by an underwriter;

- 13 (3) The security registered or sought to be registered is the subject of a permanent or
14 temporary injunction of a court of competent jurisdiction or an administrative stop
15 order or similar order issued under any federal, foreign, or state law other than this
16 Act applicable to the offering, but the director may not institute a proceeding against
17 an effective registration statement under this paragraph more than one year after the
18 date of the order or injunction on which it is based, and the director may not issue an
19 order under this paragraph on the basis of an order or injunction issued under the
20 securities act of another state unless the order or injunction was based on conduct that
21 would constitute, as of the date of the order, a ground for a stop order under this
22 section;

- 23 (4) The issuer's enterprise or method of business includes or would include activities that
24 are unlawful where performed;

1 (5) With respect to a security sought to be registered under Section 303, there has been
2 a failure to comply with the undertaking required by Section 303(b)(4); or

3 (6) The applicant or registrant has not paid the filing fee, but the director shall void the
4 order if the deficiency is corrected.

5 (b) Institution of stop order. The director may not institute a stop order proceeding against
6 an effective registration statement on the basis of conduct or a transaction known to the director
7 when the registration statement became effective unless the proceeding is instituted within thirty
8 days after the registration statement became effective.

9 (c) Summary process. The director may summarily revoke, deny, postpone, or suspend the
10 effectiveness of a registration statement pending final determination of an administrative
11 proceeding. Upon the issuance of the order, the director shall promptly notify each person
12 specified in subsection (d) that the order has been issued, the reasons for the revocation, denial,
13 postponement, or suspension, and that within fifteen days after the receipt of a request in a
14 record from the person the matter will be scheduled for a hearing. If a hearing is not requested
15 and none is ordered by the director, within thirty days after the date of service of the order, the
16 order becomes final. If a hearing is requested or ordered, the director, after notice of and
17 opportunity for hearing for each person subject to the order, may modify or vacate the order or
18 extend the order until final determination.

19 (d) Procedural requirements for stop order. A stop order may not be issued under this section
20 without:

21 (1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose
22 behalf the securities are to be or have been offered;

23 (2) An opportunity for hearing; and

24 (3) Findings of fact and conclusions of law in a record in accordance with chapter 1-26.

1 (e) Modification or vacation of stop order. The director may modify or vacate a stop order
2 issued under this section if the director finds that the conditions that caused its issuance have
3 changed or that it is necessary or appropriate in the public interest or for the protection of
4 investors.

5 Section 16. Section 307. The director may waive or modify, in whole or in part, any or all
6 of the requirements of Sections 302, 303, and 304(b) or the requirement of any information or
7 record in a registration statement or in a periodic report filed pursuant to Section 305(h).

8 Section 17. Section 401. (a) Registration requirement. It is unlawful for a person to transact
9 business in this state as a broker-dealer unless the person is registered under this Act as a
10 broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

11 (b) Exemptions from registration. The following persons are exempt from the registration
12 requirement of subsection (a):

13 (1) A broker-dealer without a place of business in this state if its only transactions
14 effected in this state are with:

15 (A) The issuer of the securities involved in the transactions;

16 (B) A broker-dealer registered as a broker-dealer under this Act or not required to
17 be registered as a broker-dealer under this Act;

18 (C) An institutional investor;

19 (D) A nonaffiliated federal covered investment adviser with investments under
20 management in excess of one hundred million dollars acting for the account
21 of others pursuant to discretionary authority in a signed record;

22 (E) A bona fide preexisting customer whose principal place of residence is not in
23 this state and the person is registered as a broker-dealer under the Securities
24 Exchange Act of 1934 or not required to be registered under the Securities

1 Exchange Act of 1934 and is registered under the securities act of the state in
2 which the customer maintains a principal place of residence;

3 (F) A bona fide preexisting customer whose principal place of residence is in this
4 state but was not present in this state when the customer relationship was
5 established, if:

6 (i) The broker-dealer is registered under the Securities Exchange Act of
7 1934 or not required to be registered under the Securities Exchange Act
8 of 1934 and is registered under the securities laws of the state in which
9 the customer relationship was established and where the customer had
10 maintained a principal place of residence; and

11 (ii) Within forty-five days after the customer's first transaction in this state,
12 the person files an application for registration as a broker-dealer in this
13 state and a further transaction is not effected more than seventy-five
14 days after the date on which the application is filed, or, if earlier, the
15 date on which the director notifies the person that the director has
16 denied the application for registration or has stayed the pendency of the
17 application for good cause;

18 (G) Not more than three customers in this state during the previous twelve months,
19 in addition to those customers specified in subparagraphs (A) through (F) and
20 under subparagraph (H), if the broker-dealer is registered under the Securities
21 Exchange Act of 1934 or not required to be registered under the Securities
22 Exchange Act of 1934 and is registered under the securities act of the state in
23 which the broker-dealer has its principal place of business; and

24 (H) Any other person exempted by rule adopted or order issued under this Act; and

1 (2) A person that deals solely in United States government securities and is supervised
2 as a dealer in government securities by the Board of Governors of the Federal
3 Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance
4 Corporation, or the Office of Thrift Supervision.

5 (c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer
6 engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly
7 or indirectly, to employ or associate with an individual to engage in an activity related to
8 securities transactions in this state if the registration of the individual is suspended or revoked
9 or the individual is barred from employment or association with a broker-dealer, an issuer, an
10 investment adviser, or a federal covered investment adviser by an order of the director under this
11 Act, the Securities and Exchange Commission, or a self-regulatory organization. A broker-
12 dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and
13 in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.
14 Upon request from a broker-dealer or issuer and for good cause, an order under this Act may
15 modify or waive, in whole or in part, the application of the prohibitions of this subsection to the
16 broker-dealer.

17 (d) Foreign transactions. A rule adopted or order issued under this Act may permit:

18 (1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does
19 not have a place of business in this state to effect transactions in securities with or
20 for, or attempt to effect the purchase or sale of any securities by:

21 (A) An individual from Canada or other foreign jurisdiction who is temporarily
22 present in this state and with whom the broker-dealer had a bona fide customer
23 relationship before the individual entered the United States;

24 (B) An individual from Canada or other foreign jurisdiction who is present in this

1 state and whose transactions are in a self-directed tax advantaged retirement
2 plan of which the individual is the holder or contributor in that foreign
3 jurisdiction; or

4 (C) An individual who is present in this state, with whom the broker-dealer
5 customer relationship arose while the individual was temporarily or
6 permanently a resident in Canada or the other foreign jurisdiction; and

7 (2) An agent who represents a broker-dealer that is exempt under this subsection to effect
8 transactions in securities or attempt to effect the purchase or sale of securities in this
9 state as permitted for a broker-dealer described in paragraph (1).

10 Section 18. Section 402. (a) Registration requirement. It is unlawful for an individual to
11 transact business in this state as an agent unless the individual is registered under this Act as an
12 agent or is exempt from registration as an agent under subsection (b).

13 (b) Exemptions from registration. The following individuals are exempt from the
14 registration requirement of subsection (a):

15 (1) An individual who represents a broker-dealer in effecting transactions in this state
16 limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934
17 (15 U.S.C. Section 78(o)(2));

18 (2) An individual who represents a broker-dealer that is exempt under Section 401(b) or
19 (d);

20 (3) An individual who represents an issuer with respect to an offer or sale of the issuer's
21 own securities or those of the issuer's parent or any of the issuer's subsidiaries, and
22 who is not compensated in connection with the individual's participation by the
23 payment of commissions or other remuneration based, directly or indirectly, on
24 transactions in those securities;

- 1 (4) An individual who represents an issuer and who effects transactions in the issuer's
2 securities exempted by Section 202, other than Section 202(11) and (14);
- 3 (5) An individual who represents an issuer that effects transactions solely in federal
4 covered securities of the issuer, but an individual who effects transactions in a federal
5 covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933
6 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is
7 compensated in connection with the agent's participation by the payment of
8 commissions or other remuneration based, directly or indirectly, on transactions in
9 those securities;
- 10 (6) An individual who represents a broker-dealer registered in this state under Section
11 401(a) or exempt from registration under Section 401(b) in the offer and sale of
12 securities for an account of a nonaffiliated federal covered investment adviser with
13 investments under management in excess of one hundred million dollars acting for
14 the account of others pursuant to discretionary authority in a signed record;
- 15 (7) An individual who represents an issuer in connection with the purchase of the issuer's
16 own securities;
- 17 (8) An individual who represents an issuer and who restricts participation to performing
18 clerical or ministerial acts; or
- 19 (9) Any other individual exempted by rule adopted or order issued under this Act.
- 20 (c) Registration effective only while employed or associated. The registration of an agent
21 is effective only while the agent is employed by or associated with a broker-dealer registered
22 under this Act or an issuer that is offering, selling, or purchasing its securities in this state.
- 23 (d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer
24 engaged in offering, selling, or purchasing securities in this state, to employ or associate with

1 an agent who transacts business in this state on behalf of broker-dealers or issuers unless the
2 agent is registered under subsection (a) or exempt from registration under subsection (b).

3 (e) Limit on affiliations. An individual may not act as an agent for more than one broker-
4 dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are
5 affiliated by direct or indirect common control or are authorized by rule or order under this Act.

6 Section 19. Section 403. (a) Registration requirement. It is unlawful for a person to transact
7 business in this state as an investment adviser unless the person is registered under this Act as
8 an investment adviser or is exempt from registration as an investment adviser under subsection
9 (b).

10 (b) Exemptions from registration. The following persons are exempt from the registration
11 requirement of subsection (a):

12 (1) A person without a place of business in this state that is registered under the
13 securities act of the state in which the person has its principal place of business if its
14 only clients in this state are:

15 (A) Federal covered investment advisers, investment advisers registered under this
16 Act, or broker-dealers registered under this Act;

17 (B) Institutional investors;

18 (C) Bona fide preexisting clients whose principal places of residence are not in
19 this state if the investment adviser is registered under the securities act of the
20 state in which the clients maintain principal places of residence; or

21 (D) Any other client exempted by rule adopted or order issued under this Act;

22 (2) A person without a place of business in this state if the person has had, during the
23 preceding twelve months, not more than five clients that are resident in this state in
24 addition to those specified under paragraph (1); or

1 (3) Any other person exempted by rule adopted or order issued under this Act.

2 (c) Limits on employment or association. It is unlawful for an investment adviser, directly
3 or indirectly, to employ or associate with an individual to engage in an activity related to
4 investment advice in this state if the registration of the individual is suspended or revoked or
5 the individual is barred from employment or association with an investment adviser, federal
6 covered investment adviser, or broker-dealer by an order under this Act, the Securities and
7 Exchange Commission, or a self-regulatory organization, unless the investment adviser did not
8 know, and in the exercise of reasonable care could not have known, of the suspension,
9 revocation, or bar. Upon request from the investment adviser and for good cause, the director,
10 by order, may waive, in whole or in part, the application of the prohibitions of this subsection
11 to the investment adviser.

12 (d) Investment adviser representative registration required. It is unlawful for an investment
13 adviser to employ or associate with an individual required to be registered under this Act as an
14 investment adviser representative who transacts business in this state on behalf of the
15 investment adviser unless the individual is registered under Section 404(a) or is exempt from
16 registration under Section 404(b).

17 Section 20. Section 404. (a) Registration requirement. It is unlawful for an individual to
18 transact business in this state as an investment adviser representative unless the individual is
19 registered under this Act as an investment adviser representative or is exempt from registration
20 as an investment adviser representative under subsection (b).

21 (b) Exemptions from registration. The following individuals are exempt from the
22 registration requirement of subsection (a):

23 (1) An individual who is employed by or associated with an investment adviser that is
24 exempt from registration under Section 403(b) or a federal covered investment

1 adviser that is excluded from the notice filing requirements of Section 405; and

2 (2) Any other individual exempted by rule adopted or order issued under this Act.

3 (c) Registration effective only while employed or associated. The registration of an
4 investment adviser representative is not effective while the investment adviser representative
5 is not employed by or associated with an investment adviser registered under this Act or a
6 federal covered investment adviser that has made or is required to make a notice filing under
7 Section 405.

8 (d) Limit on affiliations. An individual may transact business as an investment adviser
9 representative for more than one investment adviser or federal covered investment adviser
10 unless a rule adopted or order issued under this Act prohibits or limits an individual from acting
11 as an investment adviser representative for more than one investment adviser or federal covered
12 investment adviser.

13 (e) Limits on employment or association. It is unlawful for an individual acting as an
14 investment adviser representative, directly or indirectly, to conduct business in this state on
15 behalf of an investment adviser or a federal covered investment adviser if the registration of the
16 individual as an investment adviser representative is suspended or revoked or the individual is
17 barred from employment or association with an investment adviser or a federal covered
18 investment adviser by an order under this Act, the Securities and Exchange Commission, or a
19 self-regulatory organization. Upon request from a federal covered investment adviser and for
20 good cause, the director, by order issued, may waive, in whole or in part, the application of the
21 requirements of this subsection to the federal covered investment adviser.

22 (f) Referral fees. An investment adviser registered under this Act, a federal covered
23 investment adviser that has filed a notice under Section 405, or a broker-dealer registered under
24 this Act is not required to employ or associate with an individual as an investment adviser

1 representative if the only compensation paid to the individual for a referral of investment
2 advisory clients is paid to an investment adviser registered under this Act, a federal covered
3 investment adviser who has filed a notice under Section 405, or a broker-dealer registered under
4 this Act with which the individual is employed or associated as an investment adviser
5 representative.

6 Section 21. Section 405. (a) Notice filing requirement. Except with respect to a federal
7 covered investment adviser described in subsection (b), it is unlawful for a federal covered
8 investment adviser to transact business in this state as a federal covered investment adviser
9 unless the federal covered investment adviser complies with subsection (c).

10 (b) Notice filing requirement not required. The following federal covered investment
11 advisers are not required to comply with subsection (c):

12 (1) A federal covered investment adviser without a place of business in this state if its
13 only clients in this state are:

14 (A) Federal covered investment advisers, investment advisers registered under this
15 Act, and broker-dealers registered under this Act;

16 (B) Institutional investors;

17 (C) Bona fide preexisting clients whose principal places of residence are not in
18 this state; or

19 (D) Other clients specified by rule adopted or order issued under this Act;

20 (2) A federal covered investment adviser without a place of business in this state if the
21 person has had, during the preceding twelve months, not more than five clients that
22 are resident in this state in addition to those specified under paragraph (1); and

23 (3) Any other person excluded by rule adopted or order issued under this Act.

24 (c) Notice filing procedure. A person acting as a federal covered investment adviser, not

1 excluded under subsection (b), shall file a notice, a consent to service of process complying with
2 Section 611, and such records as have been filed with the Securities and Exchange Commission
3 under the Investment Advisers Act of 1940 required by rule adopted or order issued under this
4 Act and pay the fees specified in Section 410(e).

5 (d) Effectiveness of filing. The notice under subsection (c) becomes effective upon its filing.

6 Section 22. Section 406. (a) Application for initial registration. A person shall register as a
7 broker-dealer, agent, investment adviser, or investment adviser representative by filing an
8 application and a consent to service of process complying with Section 611, and paying the fee
9 specified in Section 410 and any reasonable fees charged by the designee of the director for
10 processing the filing. The application must contain:

11 (1) The information or record required for the filing of a uniform application; and

12 (2) Upon request by the director, any other financial or other information or record that
13 the director determines is appropriate.

14 (b) Amendment. If the information or record contained in an application filed under
15 subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall
16 promptly file a correcting amendment.

17 (c) Effectiveness of registration. If an order is not in effect and a proceeding is not pending
18 under Section 412, registration becomes effective at noon on the forty-fifth day after a
19 completed application is filed, unless the registration is denied. A rule adopted or order issued
20 under this Act may set an earlier effective date or may defer the effective date until noon on the
21 forty-fifth day after the filing of any amendment completing the application.

22 (d) Registration renewal. A registration is effective until midnight on December thirty-first
23 of the year for which the application for registration is filed. Unless an order is in effect under
24 Section 412, a registration may be automatically renewed each year by filing such records as are

1 required by rule adopted or order issued under this Act, by paying the fee specified in Section
2 410, and by paying costs charged by the designee of the director for processing the filings.

3 (e) Additional conditions or waivers. A rule adopted or order issued under this Act may
4 impose such other conditions, not inconsistent with the National Securities Markets
5 Improvement Act of 1996. An order issued under this Act may waive, in whole or in part,
6 specific requirements in connection with registration as are in the public interest and for the
7 protection of investors.

8 Section 23. Section 407. (a) Succession. A broker-dealer or investment adviser may succeed
9 to the current registration of another broker-dealer or investment adviser or a notice filing of a
10 federal covered investment adviser, and a federal covered investment adviser may succeed to
11 the current registration of an investment adviser or notice filing of another federal covered
12 investment adviser, by filing as a successor an application for registration pursuant to Section
13 401 or 403 or a notice pursuant to Section 405 for the unexpired portion of the current
14 registration or notice filing.

15 (b) Organizational change. A broker-dealer or investment adviser that changes its form of
16 organization or state of incorporation or organization may continue its registration by filing an
17 amendment to its registration if the change does not involve a material change in its financial
18 condition or management. The amendment becomes effective when filed or on a date designated
19 by the registrant in its filing. The new organization is a successor to the original registrant for
20 the purposes of this Act. If there is a material change in financial condition or management, the
21 broker-dealer or investment adviser shall file a new application for registration. A predecessor
22 registered under this Act shall stop conducting its securities business other than winding down
23 transactions and shall file for withdrawal of broker-dealer or investment adviser registration
24 within forty-five days after filing its amendment to effect succession.

1 (c) Name change. A broker-dealer or investment adviser that changes its name may continue
2 its registration by filing an amendment to its registration. The amendment becomes effective
3 when filed or on a date designated by the registrant.

4 (d) Change of control. A change of control of a broker-dealer or investment adviser may be
5 made in accordance with a rule adopted or order issued under this Act.

6 Section 24. Section 408. (a) Notice of termination. If an agent registered under this Act
7 terminates employment by or association with a broker-dealer or issuer, or if an investment
8 adviser representative registered under this Act terminates employment by or association with
9 an investment adviser or federal covered investment adviser, or if either registrant terminates
10 activities that require registration as an agent or investment adviser representative, the broker-
11 dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a
12 notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser,
13 or federal covered investment adviser has not filed the notice, the registrant may do so.

14 (b) Transfer of employment or association. If an agent registered under this Act terminates
15 employment by or association with a broker-dealer registered under this Act and begins
16 employment by or association with another broker-dealer registered under this Act; or if an
17 investment adviser representative registered under this Act terminates employment by or
18 association with an investment adviser registered under this Act or a federal covered investment
19 adviser that has filed a notice under Section 405 and begins employment by or association with
20 another investment adviser registered under this Act or a federal covered investment adviser that
21 has filed a notice under Section 405; then upon the filing by or on behalf of the registrant, within
22 thirty days after the termination, of an application for registration that complies with the
23 requirement of Section 406(a) and payment of the filing fee required under Section 410, the
24 registration of the agent or investment adviser representative is:

1 (1) Immediately effective as of the date of the completed filing, if the agent's Central
2 Registration Depository record or successor record or the investment adviser
3 representative's Investment Adviser Registration Depository record or successor
4 record does not contain a new or amended disciplinary disclosure within the previous
5 twelve months; or

6 (2) Temporarily effective as of the date of the completed filing, if the agent's Central
7 Registration Depository record or successor record or the investment adviser
8 representative's Investment Adviser Registration Depository record or successor
9 record contains a new or amended disciplinary disclosure within the preceding twelve
10 months.

11 (c) Withdrawal of temporary registration. The director may withdraw a temporary
12 registration if there are or were grounds for discipline as specified in Section 412 and the
13 director does so within thirty days after the filing of the application. If the director does not
14 withdraw the temporary registration within the thirty-day period, registration becomes
15 automatically effective on the thirty-first day after filing.

16 (d) Power to prevent registration. The director may prevent the effectiveness of a transfer
17 of an agent or investment adviser representative under subsection (b)(1) or (2) based on the
18 public interest and the protection of investors.

19 (e) Termination of registration or application for registration. If the director determines that
20 a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-
21 dealer, agent, investment adviser, or investment adviser representative, or is the subject of an
22 adjudication of incapacity or is subject to the control of a committee, conservator, or guardian,
23 or cannot reasonably be located, a rule adopted or order issued under this Act may require the
24 registration be canceled or terminated or the application denied. The director may reinstate a

1 canceled or terminated registration, with or without hearing, and may make the registration
2 retroactive.

3 Section 25. Section 409. Withdrawal of registration by a broker-dealer, agent, investment
4 adviser, or investment adviser representative becomes effective sixty days after the filing of the
5 application to withdraw or within any shorter period as provided by rule adopted or order issued
6 under this Act unless a revocation or suspension proceeding is pending when the application is
7 filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions
8 as required by rule adopted or order issued under this Act. The director may institute a
9 revocation or suspension proceeding under Section 412 within one year after the withdrawal
10 became effective automatically and issue a revocation or suspension order as of the last date on
11 which registration was effective if a proceeding is not pending.

12 Section 26. Section 410. (a) Broker-dealers. A person shall pay a fee of one hundred fifty
13 dollars when initially filing an application for registration as a broker-dealer and a fee of one
14 hundred fifty dollars when filing a renewal of registration as a broker-dealer. If the filing results
15 in a denial or withdrawal, the director shall retain the fee.

16 (b) Agents. The fee for an individual is one hundred twenty five dollars when filing an
17 application for registration as an agent, a fee of one hundred twenty five dollars when filing a
18 renewal of registration as an agent, and a fee of one hundred twenty five dollars when filing for
19 a change of registration as an agent. If the filing results in a denial or withdrawal, the director
20 shall retain the fee.

21 (c) Investment advisers. A person shall pay a fee of one hundred dollars when filing an
22 application for registration as an investment adviser and a fee of one hundred dollars when filing
23 a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal,
24 the director shall retain the fee.

1 (d) Investment adviser representatives. The fee for an individual is fifty dollars when filing
2 an application for registration as an investment adviser representative, a fee of fifty dollars when
3 filing a renewal of registration as an investment adviser representative, and a fee of fifty dollars
4 when filing a change of registration as an investment adviser representative. If the filing results
5 in a denial or withdrawal, the director shall retain the fee.

6 (e) Federal covered investment advisers. A federal covered investment adviser required to
7 file a notice under Section 405 shall pay an initial fee of two hundred dollars and an annual
8 notice fee of two hundred dollars.

9 (f) Payment. A person required to pay a filing or notice fee under this section may transmit
10 the fee through or to a designee as a rule or order provides under this Act.

11 Section 27. Section 411. (a) Financial requirements. Subject to Section 15(h) of the
12 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
13 Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act
14 may establish minimum financial requirements for broker-dealers registered or required to be
15 registered under this Act and investment advisers registered or required to be registered under
16 this Act.

17 (b) Financial reports. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15
18 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C.
19 Section 80b-22), a broker-dealer registered or required to be registered under this Act and an
20 investment adviser registered or required to be registered under this Act shall file such financial
21 reports as are required by a rule adopted or order issued under this Act. If the information
22 contained in a record filed under this subsection is or becomes inaccurate or incomplete in a
23 material respect, the registrant shall promptly file a correcting amendment.

24 (c) Record keeping. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15

1 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C.
2 Section 80b-22):

3 (1) A broker-dealer registered or required to be registered under this Act and an
4 investment adviser registered or required to be registered under this Act shall make
5 and maintain the accounts, correspondence, memoranda, papers, books, and other
6 records required by rule adopted or order issued under this Act;

7 (2) Broker-dealer records required to be maintained under paragraph (1) may be
8 maintained in any form of data storage acceptable under Section 17(a) of the
9 Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily
10 accessible to the director; and

11 (3) Investment adviser records required to be maintained under paragraph (1) may be
12 maintained in any form of data storage required by rule adopted or order issued under
13 this Act.

14 (d) Audits or inspections. The records of a broker-dealer registered or required to be
15 registered under this Act and of an investment adviser registered or required to be registered
16 under this Act are subject to such reasonable periodic, special, or other audits or inspections by
17 a representative of the director, within or without this state, as the director considers necessary
18 or appropriate in the public interest and for the protection of investors. An audit or inspection
19 may be made at any time and without prior notice. The director may copy, and remove for audit
20 or inspection copies of, all records the director reasonably considers necessary or appropriate
21 to conduct the audit or inspection. The director may assess a reasonable charge for conducting
22 an audit or inspection under this subsection.

23 (e) Custody and discretionary authority bond or insurance. Subject to Section 15(h) of the
24 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment

1 Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act
2 may require a broker-dealer or investment adviser that has custody of or discretionary authority
3 over funds or securities of a customer or client to obtain insurance or post a bond or other
4 satisfactory form of security in an amount not to exceed fifty thousand dollars. The director may
5 determine the requirements of the insurance, bond, or other satisfactory form of security.
6 Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer
7 registered under this Act whose net capital exceeds, or of an investment adviser registered under
8 this Act whose minimum financial requirements exceed, the amounts required by rule or order
9 under this Act. The insurance, bond, or other satisfactory form of security must permit an action
10 by a person to enforce any liability on the insurance, bond, or other satisfactory form of security
11 if instituted within the time limitations in Section 509(j)(2).

12 (f) Requirements for custody. Subject to Section 15(h) of the Securities Exchange Act of
13 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15
14 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer
15 except under the supervision of a broker-dealer and an investment adviser representative may
16 not have custody of funds or securities of a client except under the supervision of an investment
17 adviser or a federal covered investment adviser. A rule adopted or order issued under this Act
18 may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or
19 securities of a customer and on an investment adviser regarding custody of securities or funds
20 of a client.

21 (g) Investment adviser brochure rule. With respect to an investment adviser registered or
22 required to be registered under this Act, a rule adopted or order issued under this Act may
23 require that information or other record be furnished or disseminated to clients or prospective
24 clients in this state as necessary or appropriate in the public interest and for the protection of

1 investors and advisory clients.

2 (h) Continuing education. A rule adopted or order issued under this Act may require an
3 individual registered under Section 402 or 404 to participate in a continuing education program
4 approved by the Securities and Exchange Commission and administered by a self-regulatory
5 organization or, in the absence of such a program, a rule adopted or order issued under this Act
6 may require continuing education for an individual registered under Section 404.

7 Section 28. Section 412. (a) Disciplinary conditions-applicants. If the director finds that the
8 order is in the public interest and subsection (d) authorizes the action, an order issued under this
9 Act may deny an application, or may condition or limit registration of an applicant to be a
10 broker-dealer, agent, investment adviser, or investment adviser representative, and, if the
11 applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person
12 having a similar status or performing similar functions, or a person directly or indirectly in
13 control, of the broker-dealer or investment adviser.

14 (b) Disciplinary conditions – registrants. If the director finds that the order is in the public
15 interest and subsection (d) authorizes the action, an order issued under this Act may revoke,
16 suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer
17 or investment adviser, of a partner, officer, director, or person having a similar status or
18 performing similar functions, or a person directly or indirectly in control, of the broker-dealer
19 or investment adviser. However, the director may not:

- 20 (1) Institute a revocation or suspension proceeding under this subsection based on an
21 order issued under a law of another state that is reported to the director or a designee
22 of the director more than one year after the date of the order on which it is based; or
23 (2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued
24 under the securities act of another state unless the other order was based on conduct

1 for which subsection (d) would authorize the action had the conduct occurred in this
2 state.

3 (c) Disciplinary penalties – registrants. If the director finds that the order is in the public
4 interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action,
5 an order under this Act may censure, impose a bar, or impose a civil penalty in an amount not
6 to exceed a maximum of ten thousand dollars per violation, on a registrant, and, if the registrant
7 is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar
8 status or performing similar functions, or a person directly or indirectly in control, of the broker-
9 dealer or investment adviser.

10 (d) Grounds for discipline. A person may be disciplined under subsections (a) through (c)
11 if the person:

12 (1) Has filed an application for registration in this state under this Act or the predecessor
13 act within the previous ten years, which, as of the effective date of registration or as
14 of any date after filing in the case of an order denying effectiveness, was incomplete
15 in any material respect or contained a statement that, in light of the circumstances
16 under which it was made, was false or misleading with respect to a material fact;

17 (2) Willfully violated or willfully failed to comply with this Act or the predecessor act
18 or a rule adopted or order issued under this Act or the predecessor act within the
19 previous ten years;

20 (3) Has been convicted of a felony or within the previous ten years has been convicted
21 of a misdemeanor involving a security, a commodity future or option contract, or an
22 aspect of a business involving securities, commodities, investments, franchises,
23 insurance, banking, or finance;

24 (4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted

1 by the director under this Act or the predecessor act, a state, the Securities and
2 Exchange Commission, or the United States from engaging in or continuing an act,
3 practice, or course of business involving an aspect of a business involving securities,
4 commodities, investments, franchises, insurance, banking, or finance;

5 (5) Is the subject of an order, issued after notice and opportunity for hearing by:

6 (A) The securities, depository institution, insurance, or other financial services
7 regulator of a state or by the Securities and Exchange Commission or other
8 federal agency denying, revoking, barring, or suspending registration as a
9 broker-dealer, agent, investment adviser, federal covered investment adviser,
10 or investment adviser representative;

11 (B) The securities regulator of a state or the Securities and Exchange Commission
12 against a broker-dealer, agent, investment adviser, investment adviser
13 representative, or federal covered investment adviser;

14 (C) The Securities and Exchange Commission or a self-regulatory organization
15 suspending or expelling the registrant from membership in the self-regulatory
16 organization;

17 (D) A court adjudicating a United States Postal Service fraud order;

18 (E) The insurance regulator of a state denying, suspending, or revoking
19 registration as an insurance agent; or

20 (F) A depository institution regulator suspending or barring the person from the
21 depository institution business;

22 (6) Is the subject of an adjudication or determination, after notice and opportunity for
23 hearing, by the Securities and Exchange Commission, the Commodity Futures
24 Trading Commission; the Federal Trade Commission; a federal depository institution

1 regulator, or a depository institution, insurance, or other financial services regulator
2 of a state that the person willfully violated the Securities Act of 1933, the Securities
3 Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment
4 Company Act of 1940, or the Commodity Exchange Act, the securities or
5 commodities law of a state, or a federal or state law under which a business involving
6 investments, franchises, insurance, banking, or finance is regulated;

7 (7) Is insolvent, either because the person's liabilities exceed the person's assets or
8 because the person cannot meet the person's obligations as they mature, but the
9 director may not enter an order against an applicant or registrant under this paragraph
10 without a finding of insolvency as to the applicant or registrant;

11 (8) Refuses to allow or otherwise impedes the director from conducting an audit or
12 inspection under Section 411(d) or refuses access to a registrant's office to conduct
13 an audit or inspection under Section 411(d);

14 (9) Has failed to reasonably supervise an agent, investment adviser representative, or
15 other individual, if the agent, investment adviser representative, or other individual
16 was subject to the person's supervision and committed a violation of this Act or the
17 predecessor act or a rule adopted or order issued under this Act or the predecessor act
18 within the previous ten years;

19 (10) Has not paid the proper filing fee within thirty days after having been notified by the
20 director of a deficiency, but the director shall vacate an order under this paragraph
21 when the deficiency is corrected;

22 (11) After notice and opportunity for a hearing, has been found within the previous ten
23 years:

24 (A) By a court of competent jurisdiction to have willfully violated the laws of a

- 1 foreign jurisdiction under which the business of securities, commodities,
2 investment, franchises, insurance, banking, or finance is regulated;
- 3 (B) To have been the subject of an order of a securities regulator of a foreign
4 jurisdiction denying, revoking, or suspending the right to engage in the
5 business of securities as a broker-dealer, agent, investment adviser, investment
6 adviser representative, or similar person; or
- 7 (C) To have been suspended or expelled from membership by or participation in
8 a securities exchange or securities association operating under the securities
9 laws of a foreign jurisdiction;
- 10 (12) Is the subject of a cease and desist order issued by the Securities and Exchange
11 Commission or issued under the securities, commodities, investment, franchise,
12 banking, finance, or insurance laws of a state;
- 13 (13) Has engaged in dishonest or unethical practices in the securities, commodities,
14 investment, franchise, banking, finance, or insurance business within the previous ten
15 years; or
- 16 (14) Is not qualified on the basis of factors such as training, experience, and knowledge
17 of the securities business. However, in the case of an application by an agent for a
18 broker-dealer that is a member of a self-regulatory organization or by an individual
19 for registration as an investment adviser representative, a denial order may not be
20 based on this paragraph if the individual has successfully completed all examinations
21 required by subsection (e). The director may require an applicant for registration
22 under Section 402 or 404 who has not been registered in a state within the two years
23 preceding the filing of an application in this state to successfully complete an
24 examination.

1 (e) Examinations. A rule adopted or order issued under this Act may require that an
2 examination, including an examination developed or approved by an organization of securities
3 regulators, be successfully completed by a class of individuals or all individuals. An order
4 issued under this Act may waive, in whole or in part, an examination as to an individual and a
5 rule adopted under this Act may waive, in whole or in part, an examination as to a class of
6 individuals if the director determines that the examination is not necessary or appropriate in the
7 public interest and for the protection of investors.

8 (f) Summary process. The director may suspend or deny an application summarily; restrict,
9 condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a
10 registrant before final determination of an administrative proceeding. Upon the issuance of an
11 order, the director shall promptly notify each person subject to the order that the order has been
12 issued, the reasons for the action, and that within fifteen days after the receipt of a request in a
13 record from the person the matter will be scheduled for a hearing. If a hearing is not requested
14 and none is ordered by the director within thirty days after the date of service of the order, the
15 order becomes final by operation of law. If a hearing is requested or ordered, the director, after
16 notice of and opportunity for hearing to each person subject to the order, may modify or vacate
17 the order or extend the order until final determination.

18 (g) Procedural requirements. An order issued may not be issued under this section, except
19 under subsection (f), without:

- 20 (1) Appropriate notice to the applicant or registrant;
- 21 (2) Opportunity for hearing; and
- 22 (3) Findings of fact and conclusions of law in a record in accordance with chapter 1-26.

23 (h) Control person liability. A person that controls, directly or indirectly, a person not in
24 compliance with this section may be disciplined by order of the director under subsections (a)

1 through (c) to the same extent as the noncomplying person, unless the controlling person did not
2 know, and in the exercise of reasonable care could not have known, of the existence of conduct
3 that is a ground for discipline under this section.

4 (i) Limit on investigation or proceeding. The director may not institute a proceeding under
5 subsection(a), (b), or (c) based solely on material facts actually known by the director unless an
6 investigation or the proceeding is instituted within one year after the director actually acquires
7 knowledge of the material facts.

8 Section 29. Section 501. It is unlawful for a person, in connection with the offer, sale, or
9 purchase of a security, directly or indirectly:

- 10 (1) To employ a device, scheme, or artifice to defraud;
- 11 (2) To make an untrue statement of a material fact or to omit to state a material fact
12 necessary in order to make the statements made, in light of the circumstances under
13 which they were made, not misleading; or
- 14 (3) To engage in an act, practice, or course of business that operates or would operate as
15 a fraud or deceit upon another person.

16 Section 30. Section 502. (a) Fraud in providing investment advice. It is unlawful for a person
17 that advises others for compensation, either directly or indirectly or through publications or
18 writings, as to the value of securities or the advisability of investing in, purchasing, or selling
19 securities or that, for compensation and as part of a regular business, issues or promulgates
20 analyses or reports relating to securities:

- 21 (1) To employ a device, scheme, or artifice to defraud another person; or
- 22 (2) To engage in an act, practice, or course of business that operates or would operate as
23 a fraud or deceit upon another person.

24 (b) Rules defining fraud. A rule adopted under this Act may define an act, practice, or course

1 of business of an investment adviser or an investment adviser representative, other than a
2 supervised person of a federal covered investment adviser, as fraudulent, deceptive, or
3 manipulative, and prescribe means reasonably designed to prevent investment advisers and
4 investment adviser representatives, other than supervised persons of a federal covered
5 investment adviser, from engaging in acts, practices, and courses of business defined as
6 fraudulent, deceptive, or manipulative.

7 (c) Rules specifying contents of advisory contract. A rule adopted under this Act may
8 specify the contents of an investment advisory contract entered into, extended, or renewed by
9 an investment adviser.

10 Section 31. Section 503. (a) Civil. In a civil action or administrative proceeding under this
11 Act, a person claiming an exemption, exception, preemption, or exclusion has the burden to
12 prove the applicability of the claim.

13 (b) Criminal. In a criminal proceeding under this Act, a person claiming an exemption,
14 exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

15 Section 32. Section 504. (a) Filing requirement. Except as otherwise provided in subsection
16 (b), a rule adopted or order issued under this Act may require the filing of a prospectus,
17 pamphlet, circular, form letter, advertisement, sales literature, or other advertising record
18 relating to a security or investment advice, addressed or intended for distribution to prospective
19 investors, including clients or prospective clients of a person registered or required to be
20 registered as an investment adviser under this Act.

21 (b) Excluded communications. This section does not apply to sales and advertising literature
22 specified in subsection (a) which relates to a federal covered security, a federal covered
23 investment adviser, or a security or transaction exempted by Section 201, 202, or 203 except as
24 required pursuant to Section 201(7).

1 Section 33. Section 505. It is unlawful for a person to make or cause to be made, in a record
2 that is used in an action or proceeding or filed under this Act, a statement that, at the time and
3 in the light of the circumstances under which it is made, is false or misleading in a material
4 respect, or, in connection with the statement, to omit to state a material fact necessary to make
5 the statement made, in the light of the circumstances under which it was made, not false or
6 misleading.

7 Section 34. Section 506. The filing of an application for registration, a registration
8 statement, a notice filing under this Act, the registration of a person, the notice filing by a
9 person, or the registration of a security under this Act does not constitute a finding by the
10 director that a record filed under this Act is true, complete, and not misleading. The filing or
11 registration or the availability of an exemption, exception, preemption, or exclusion for a
12 security or a transaction does not mean that the director has passed upon the merits or
13 qualifications of, or recommended or given approval to, a person, security, or transaction. It is
14 unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer
15 or client a representation inconsistent with this section.

16 Section 35. Section 507. A broker-dealer, agent, investment adviser, federal covered
17 investment adviser, or investment adviser representative is not liable to another broker-dealer,
18 agent, investment adviser, federal covered investment adviser, or investment adviser
19 representative for defamation relating to a statement that is contained in a record required by the
20 director, or designee of the director, the Securities and Exchange Commission, or a self-
21 regulatory organization, unless the person knew, or should have known at the time that the
22 statement was made, that it was false in a material respect or the person acted in reckless
23 disregard of the statement's truth or falsity.

24 Section 36. Section 508. (a) Criminal penalties. It is a class four felony for any person that

1 willfully violates this Act, or a rule adopted or order issued under this Act, except Section 504
2 or the notice filing requirements of Section 302 or 405, or that willfully violates Section 505
3 knowing the statement made to be false or misleading in a material respect, upon conviction,
4 shall be fined not more than ten thousand dollars per violation. An individual convicted of
5 violating a rule or order under this Act may be fined, but may not be imprisoned, if the
6 individual did not have knowledge of the rule or order. A subsequent violation is a Class 3
7 felony.

8 (b) Criminal reference not required. The Attorney General or the proper prosecuting attorney
9 with or without a reference from the director, may institute criminal proceedings under this Act.

10 (c) No limitation on other criminal enforcement. This Act does not limit the power of this
11 state to punish a person for conduct that constitutes a crime under other laws of this state.

12 Section 37. Section 509. (a) Securities Litigation Uniform Standards Act. Enforcement of
13 civil liability under this section is subject to the Securities Litigation Uniform Standards Act of
14 1998.

15 (b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a
16 security in violation of Section 301 or, by means of an untrue statement of a material fact or an
17 omission to state a material fact necessary in order to make the statement made, in light of the
18 circumstances under which it is made, not misleading, the purchaser not knowing the untruth
19 or omission and the seller not sustaining the burden of proof that the seller did not know and,
20 in the exercise of reasonable care, could not have known of the untruth or omission. An action
21 under this subsection is governed by the following:

22 (1) The purchaser may maintain an action to recover the consideration paid for the
23 security, less the amount of any income received on the security, and interest at
24 Category D, § 54-3-16 from the date of the purchase, costs, and reasonable attorneys'

1 fees determined by the court, upon the tender of the security, or for actual damages
2 as provided in paragraph (3).

3 (2) The tender referred to in paragraph (1) may be made any time before entry of
4 judgment. Tender requires only notice in a record of ownership of the security and
5 willingness to exchange the security for the amount specified. A purchaser that no
6 longer owns the security may recover actual damages as provided in paragraph (3).

7 (3) Actual damages in an action arising under this subsection are the amount that would
8 be recoverable upon a tender less the value of the security when the purchaser
9 disposed of it, and interest at Category D § 54-3-16 from the date of the purchase,
10 costs, and reasonable attorneys' fees determined by the court.

11 (c) Liability of purchaser to seller. A person is liable to the seller if the person buys a
12 security by means of an untrue statement of a material fact or omission to state a material fact
13 necessary in order to make the statement made, in light of the circumstances under which it is
14 made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not
15 sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable
16 care, could not have known of the untruth or omission. An action under this subsection is
17 governed by the following:

18 (1) The seller may maintain an action to recover the security, and any income received
19 on the security, costs, and reasonable attorneys' fees determined by the court, upon
20 the tender of the purchase price, or for actual damages as provided in paragraph (3).

21 (2) The tender referred to in paragraph (1) may be made any time before entry of
22 judgment. Tender requires only notice in a record of the present ability to pay the
23 amount tendered and willingness to take delivery of the security for the amount
24 specified. If the purchaser no longer owns the security, the seller may recover actual

1 damages as provided in paragraph (3).

2 (3) Actual damages in an action arising under this subsection are the difference between
3 the price at which the security was sold and the value the security would have had at
4 the time of the sale in the absence of the purchaser's conduct causing liability, and
5 interest at Category D § 54-3-16 from the date of the sale of the security, costs, and
6 reasonable attorneys' fees determined by the court.

7 (d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or
8 agent that sells or buys a security in violation of Section 401(a), 402(a), or 506 is liable to the
9 customer. The customer, if a purchaser, may maintain an action for recovery of actual damages
10 as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in
11 subsections (c)(1) through (3).

12 (e) Liability of unregistered investment adviser and investment adviser representative. A
13 person acting as an investment adviser or investment adviser representative that provides
14 investment advice for compensation in violation of Section 403(a), 404(a), or 506 is liable to
15 the client. The client may maintain an action to recover the consideration paid for the advice,
16 interest at Category D § 54-3-16 from the date of payment, costs, and reasonable attorneys' fees
17 determined by the court.

18 (f) Liability for investment advice. A person that receives directly or indirectly any
19 consideration for providing investment advice to another person and that employs a device,
20 scheme, or artifice to defraud the other person or engages in an act, practice, or course of
21 business that operates or would operate as a fraud or deceit on the other person, is liable to the
22 other person. An action under this subsection is governed by the following:

23 (1) The person defrauded may maintain an action to recover the consideration paid for
24 the advice and the amount of any actual damages caused by the fraudulent conduct,

1 interest at Category D § 54-3-16 from the date of the fraudulent conduct, costs, and
2 reasonable attorneys' fees determined by the court, less the amount of any income
3 received as a result of the fraudulent conduct.

4 (2) This subsection does not apply to a broker-dealer or its agents if the investment
5 advice provided is solely incidental to transacting business as a broker-dealer and no
6 special compensation is received for the investment advice.

7 (g) Joint and several liability. The following persons are liable jointly and severally with and
8 to the same extent as persons liable under subsections (b) through (f):

9 (1) A person that directly or indirectly controls a person liable under subsections (b)
10 through (f), unless the controlling person sustains the burden of proof that the person
11 did not know, and in the exercise of reasonable care could not have known, of the
12 existence of conduct by reason of which the liability is alleged to exist;

13 (2) An individual who is a managing partner, executive officer, or director of a person
14 liable under subsections (b) through (f), including an individual having a similar
15 status or performing similar functions, unless the individual sustains the burden of
16 proof that the individual did not know and, in the exercise of reasonable care could
17 not have known, of the existence of conduct by reason of which the liability is
18 alleged to exist;

19 (3) An individual who is an employee of or associated with a person liable under
20 subsections (b) through (f) and who materially aids the conduct giving rise to the
21 liability, unless the individual sustains the burden of proof that the individual did not
22 know and, in the exercise of reasonable care could not have known, of the existence
23 of conduct by reason of which the liability is alleged to exist; and

24 (4) A person that is a broker-dealer, agent, investment adviser, or investment adviser

1 representative that materially aids the conduct giving rise to the liability under
2 subsections (b) through (f), unless the person sustains the burden of proof that the
3 person did not know and, in the exercise of reasonable care could not have known,
4 of the existence of conduct by reason of which liability is alleged to exist.

5 (h) Right of contribution. A person liable under this section has a right of contribution as in
6 cases of contract against any other person liable under this section for the same conduct.

7 (i) Survival of cause of action. A cause of action under this section survives the death of an
8 individual who might have been a plaintiff or defendant.

9 (j) Statute of limitations. A person may not obtain relief:

10 (1) Under subsection (b) for violation of Section 301, or under subsection (d) or (e),
11 unless the action is instituted within one year after the violation occurred; or

12 (2) Under subsection (b), other than for violation of Section 301, or under subsection (c)
13 or (f), unless the action is instituted within the earlier of two years after discovery of
14 the facts constituting the violation or five years after the violation.

15 (k) No enforcement of violative contract. A person that has made, or has engaged in the
16 performance of, a contract in violation of this Act or a rule adopted or order issued under this
17 Act, or that has acquired a purported right under the contract with knowledge of conduct by
18 reason of which its making or performance was in violation of this Act, may not base an action
19 on the contract.

20 (l) No contractual waiver. A condition, stipulation, or provision binding a person purchasing
21 or selling a security or receiving investment advice to waive compliance with this Act or a rule
22 adopted or order issued under this Act is void.

23 (m) Survival of other rights or remedies. The rights and remedies provided by this Act are
24 in addition to any other rights or remedies that may exist, but this Act does not create a cause

1 of action not specified in this section or Section 411(e).

2 Section 38. Section 510. A purchaser, seller, or recipient of investment advice may not
3 maintain an action under Section 509 if:

4 (1) The purchaser, seller, or recipient of investment advice receives in a record, before
5 the action is instituted:

6 (A) An offer stating the respect in which liability under Section 509 may have
7 arisen and fairly advising the purchaser, seller, or recipient of investment
8 advice of that person's rights in connection with the offer, and any financial or
9 other information necessary to correct all material misrepresentations or
10 omissions in the information that was required by this Act to be furnished to
11 that person at the time of the purchase, sale, or investment advice;

12 (B) If the basis for relief under this section may have been a violation of Section
13 509(b), an offer to repurchase the security for cash, payable on delivery of the
14 security, equal to the consideration paid, and interest at Category D § 54-3-16
15 from the date of the purchase, less the amount of any income received on the
16 security, or, if the purchaser no longer owns the security, an offer to pay the
17 purchaser upon acceptance of the offer damages in an amount that would be
18 recoverable upon a tender, less the value of the security when the purchaser
19 disposed of it, and interest at Category D § 54-3-16 from the date of the
20 purchase in cash equal to the damages computed in the manner provided in
21 this subsection;

22 (C) If the basis for relief under this section may have been a violation of Section
23 509(c), an offer to tender the security, on payment by the seller of an amount
24 equal to the purchase price paid, less income received on the security by the

1 purchaser and interest at Category D § 54-3-16 from the date of the sale; or if
2 the purchaser no longer owns the security, an offer to pay the seller upon
3 acceptance of the offer, in cash, damages in the amount of the difference
4 between the price at which the security was purchased and the value the
5 security would have had at the time of the purchase in the absence of the
6 purchaser's conduct that may have caused liability and interest at Category D
7 § 54-3-16 from the date of the sale;

8 (D) If the basis for relief under this section may have been a violation of Section
9 509(d); and if the customer is a purchaser, an offer to pay as specified in
10 subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as
11 specified in subparagraph (C);

12 (E) If the basis for relief under this section may have been a violation of Section
13 509(e), an offer to reimburse in cash the consideration paid for the advice and
14 interest at Category D § 54-3-16 from the date of payment; or

15 (F) If the basis for relief under this section may have been a violation of Section
16 509(f), an offer to reimburse in cash the consideration paid for the advice, the
17 amount of any actual damages that may have been caused by the conduct, and
18 interest at Category D § 54-3-16 from the date of the violation causing the
19 loss;

20 (2) The offer under paragraph (1) states that it must be accepted by the purchaser, seller,
21 or recipient of investment advice within thirty days after the date of its receipt by the
22 purchaser, seller, or recipient of investment advice or any shorter period, of not less
23 than three days, that the director, by order, specifies;

24 (3) The offeror has the present ability to pay the amount offered or to tender the security

1 under paragraph (1);

2 (4) The offer under paragraph (1) is delivered to the purchaser, seller, or recipient of
3 investment advice, or sent in a manner that ensures receipt by the purchaser, seller,
4 or recipient of investment advice; and

5 (5) The purchaser, seller, or recipient of investment advice that accepts the offer under
6 paragraph (1) in a record within the period specified under paragraph (2) is paid in
7 accordance with the terms of the offer.

8 Section 39. Section 601. (a) Administration. This Act shall be administered by the director.

9 (b) The director shall designate one of his employees to administer the provisions of this Act
10 in the event of his absence or disability.

11 (c) This Act shall be administered under the direction and supervision of the Department of
12 Revenue and Regulation and the secretary thereof, but shall retain the quasi-judicial, quasi-
13 legislative, advisory, and other nonadministrative functions, as defined in § 1-32-1, otherwise
14 vested in it and shall exercise those functions independently of the secretary of the Department
15 of Revenue and Regulation.

16 (d) The director shall be appointed by the secretary of the Department of Revenue and
17 Regulation and may be removed at the pleasure of the secretary. The appointment and removal
18 of the director shall be subject to approval by the Governor.

19 (e) The director shall receive travel expenses, in accordance with the rules of the Board of
20 Finance, incurred in the discharge of official duties.

21 (f) The director shall employ, from time to time, such clerks and employees as are necessary
22 for the administration of this chapter, and they shall perform such duties as the director shall
23 assign.

24 (g) The director may be included in the state's employees' blanket bond pursuant to § 3-5-

1 5.1.

2 (h) The director shall use the seal with the words, Director of Securities, South Dakota, and
3 such designs as the director shall prescribe engraved thereon by which seal the director shall
4 authenticate his signature and proceedings.

5 (i) Unlawful use of records or information. It is unlawful for the director or an officer,
6 employee, or designee of the director to use for personal benefit or the benefit of others records
7 or other information obtained by or filed with the director that are not public under Section
8 607(b). This Act does not authorize the director or an officer, employee, or designee of the
9 director to disclose the record or information, except in accordance with Section 602, 607(c),
10 or 608.

11 (j) No privilege or exemption created or diminished. This Act does not create or diminish
12 a privilege or exemption that exists at common law, by statute or rule, or otherwise.

13 (k) Investor education. The director may develop and implement investor education
14 initiatives to inform the public about investing in securities, with particular emphasis on the
15 prevention and detection of securities fraud. In developing and implementing these initiatives,
16 the director may collaborate with public and nonprofit organizations with an interest in investor
17 education. The director may accept a grant or donation from a person that is not affiliated with
18 the securities industry or from a nonprofit organization, regardless of whether the organization
19 is affiliated with the securities industry, to develop and implement investor education initiatives.
20 This subsection does not authorize the director to require participation or monetary contributions
21 of a registrant in an investor education program.

22 Section 40. Section 602. (a) Authority to investigate. The director may:

23 (1) Conduct public or private investigations within or outside of this state which the
24 director considers necessary or appropriate to determine whether a person has

1 violated, is violating, or is about to violate this Act or a rule adopted or order issued
2 under this Act, or to aid in the enforcement of this Act or in the adoption of rules and
3 forms under this Act;

4 (2) Require or permit a person to testify, file a statement, or produce a record, under oath
5 or otherwise as the director determines, as to all the facts and circumstances
6 concerning a matter to be investigated or about which an action or proceeding is to
7 be instituted; and

8 (3) Publish a record concerning an action, proceeding, or an investigation under, or a
9 violation of, this Act or a rule adopted or order issued under this Act if the director
10 determines it is necessary or appropriate in the public interest and for the protection
11 of investors.

12 (b) Director powers to investigate. For the purpose of an investigation under this Act, the
13 director or its designated officer may administer oaths and affirmations, subpoena witnesses,
14 seek compulsion of attendance, take evidence, require the filing of statements, and require the
15 production of any records that the director considers relevant or material to the investigation.

16 (c) Procedure and remedies for noncompliance. If a person does not appear or refuses to
17 testify, file a statement, produce records, or otherwise does not obey a subpoena as required by
18 the director under this Act, the director, or any officer designated by him, may apply to the
19 circuit court to enforce compliance, or may refer the matter to the Attorney General or the
20 proper attorney, who may apply to the circuit court or a court of another state to enforce
21 compliance. The court may:

22 (1) Hold the person in contempt;

23 (2) Order the person to appear before the director;

24 (3) Order the person to testify about the matter under investigation or in question;

1 (4) Order the production of records;

2 (5) Grant injunctive relief, including restricting or prohibiting the offer or sale of
3 securities or the providing of investment advice;

4 (6) Impose a civil penalty of not more than ten thousand dollars per violation; and

5 (7) Grant any other necessary or appropriate relief.

6 (d) Application for relief. This section does not preclude a person from applying to the
7 circuit court or a court of another state for relief from a request to appear, testify, file a
8 statement, produce records, or obey a subpoena.

9 (e) Use immunity procedure. An individual is not excused from attending, testifying, filing
10 a statement, producing a record or other evidence, or obeying a subpoena of the director under
11 this Act or in an action or proceeding instituted by the director under this Act on the ground that
12 the required testimony, statement, record, or other evidence, directly or indirectly, may tend to
13 incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If
14 the individual refuses to testify, file a statement, or produce a record or other evidence on the
15 basis of the individual's privilege against self-incrimination, the director may apply to the circuit
16 court to compel the testimony, the filing of the statement, the production of the record, or the
17 giving of other evidence. The testimony, record, or other evidence compelled under such an
18 order may not be used, directly or indirectly, against the individual in a criminal case, except
19 in a prosecution for perjury or contempt or otherwise failing to comply with the order.

20 (f) Assistance to securities regulator of another jurisdiction. At the request of the securities
21 regulator of another state or a foreign jurisdiction, the director may provide assistance if the
22 requesting regulator states that it is conducting an investigation to determine whether a person
23 has violated, is violating, or is about to violate a law or rule of the other state or foreign
24 jurisdiction relating to securities matters that the requesting regulator administers or enforces.

1 The director may provide the assistance by using the authority to investigate and the powers
2 conferred by this section as the director determines is necessary or appropriate. The assistance
3 may be provided without regard to whether the conduct described in the request would also
4 constitute a violation of this Act or other law of this state if occurring in this state. In deciding
5 whether to provide the assistance, the director may consider whether the requesting regulator
6 is permitted and has agreed to provide assistance reciprocally within its state or foreign
7 jurisdiction to the director on securities matters when requested; whether compliance with the
8 request would violate or prejudice the public policy of this state; and the availability of
9 resources and employees of the director to carry out the request for assistance.

10 Section 41. Section 603. (a) Civil action instituted by director. If the director believes that
11 a person has engaged, is engaging, or is about to engage in an act, practice, or course of business
12 constituting a violation of this Act or a rule adopted or order issued under this Act or that a
13 person has, is, or is about to engage in an act, practice, or course of business that materially aids
14 a violation of this Act or a rule adopted or order issued under this Act, the director may maintain
15 an action in the circuit court to enjoin the act, practice, or course of business and to enforce
16 compliance with this Act or a rule adopted or order issued under this Act.

17 (b) Relief available. In an action under this section and on a proper showing, the court may:

18 (1) Issue a permanent or temporary injunction, restraining order, or declaratory
19 judgment;

20 (2) Order other appropriate or ancillary relief, which may include:

21 (A) An asset freeze, accounting, writ of attachment, writ of general or specific
22 execution, and appointment of a receiver or conservator, that may be the
23 director for the defendant or the defendant's assets;

24 (B) Ordering the director to take charge and control of a defendant's property,

1 including investment accounts and accounts in a depository institution, rents,
2 and profits; to collect debts; and to acquire and dispose of property;

3 (C) Imposing a civil penalty up to ten thousand dollars for each violation; an order
4 of rescission, restitution, or disgorgement directed to a person that has engaged
5 in an act, practice, or course of business constituting a violation of this Act or
6 the predecessor act or a rule adopted or order issued under this Act or the
7 predecessor act; and

8 (D) Ordering the payment of prejudgment and postjudgment interest; or

9 (3) Order such other relief as the court considers appropriate.

10 (c) No bond required. The director may not be required to post a bond in an action or
11 proceeding under this Act.

12 Section 42. Section 604. (a) Issuance of an order or notice. If the director determines that
13 a person has engaged, is engaging, or is about to engage in an act, practice, or course of business
14 constituting a violation of this Act or a rule adopted or order issued under this Act or that a
15 person has materially aided, is materially aiding, or is about to materially aid an act, practice,
16 or course of business constituting a violation of this Act or a rule adopted or order issued under
17 this Act, the director may:

18 (1) Issue an order directing the person to cease and desist from engaging in the act,
19 practice, or course of business or to take other action necessary or appropriate to
20 comply with this Act;

21 (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a
22 broker-dealer under Section 401(b)(1)(D) or (F) or an investment adviser under
23 Section 403(b)(1)(C); or

24 (3) Issue an order under Section 204.

1 (b) Summary process. An order under subsection (a) is effective on the date of issuance.
2 Upon issuance of the order, the director shall promptly serve each person subject to the order
3 with a copy of the order and a notice that the order has been entered. The order must include a
4 statement whether the director will seek a civil penalty or costs of the investigation, a statement
5 of the reasons for the order, and notice that, within fifteen days after receipt of a request in a
6 record from the person, the matter will be scheduled for a hearing. If a person subject to the
7 order does not request a hearing and none is ordered by the director within thirty days after the
8 date of service of the order, the order, which may include a civil penalty or costs of the
9 investigation if a civil penalty or costs were sought in the statement accompanying the order,
10 becomes final as to that person by operation of law. If a hearing is requested or ordered, the
11 director, after notice of and opportunity for hearing to each person subject to the order, may
12 modify or vacate the order or extend it until final determination.

13 (c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b),
14 a hearing must be held pursuant to chapter 1-26. A final order may not be issued unless the
15 director makes findings of fact and conclusions of law in a record pursuant to chapter 1-26. The
16 final order may make final, vacate, or modify the order issued under subsection (a).

17 (d) Civil penalty. In a final order under subsection (c), the director may impose a civil
18 penalty up to ten thousand dollars for each violation.

19 (e) Costs. In a final order, the director may charge the actual cost of an investigation or
20 proceeding for a violation of this Act or a rule adopted or order issued under this Act.

21 (f) Filing of certified final order with court; effect of filing. If a petition for judicial review
22 of a final order is not filed in accordance with Section 609, the director may file a certified copy
23 of the final order with the clerk of a court of competent jurisdiction. The order so filed has the
24 same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same

1 manner as a judgment of the court.

2 (g) Enforcement by court; further civil penalty. If a person does not comply with an order
3 under this section, the director may petition a court of competent jurisdiction to enforce the
4 order. The court may not require the director to post a bond in an action or proceeding under this
5 section. If the court finds, after service and opportunity for hearing, that the person was not in
6 compliance with the order, the court may adjudge the person in civil contempt of the order. The
7 court may impose a further civil penalty against the person for contempt in an amount not more
8 than ten thousand dollars, for each violation and may grant any other relief the court determines
9 is just and proper in the circumstances.

10 Section 43. Section 605. (a) Issuance and adoption of forms, orders, and rules. The director
11 may:

- 12 (1) Issue forms and orders and, after notice and comment, may adopt and amend rules
13 necessary or appropriate to carry out this Act and may repeal rules, including rules
14 and forms governing registration statements, applications, notice filings, reports, and
15 other records;
- 16 (2) By rule, define terms, whether or not used in this Act, but those definitions may not
17 be inconsistent with this Act; and
- 18 (3) By rule, classify securities, persons, and transactions and adopt different requirements
19 for different classes.

20 (b) Findings and cooperation. Under this Act, a rule or form may not be adopted or
21 amended, or an order issued or amended, unless the director finds that the rule, form, order, or
22 amendment is necessary or appropriate in the public interest or for the protection of investors
23 and is consistent with the purposes intended by this Act. In adopting, amending, and repealing
24 rules and forms, Section 608 applies in order to achieve uniformity among the states and

1 coordination with federal laws in the form and content of registration statements, applications,
2 reports, and other records, including the adoption of uniform rules, forms, and procedures.

3 (c) Financial statements. Subject to Section 15(h) of the Securities Exchange Act and
4 Section 222 of the Investment Advisers Act of 1940, the director may require that a financial
5 statement filed under this Act be prepared in accordance with generally accepted accounting
6 principles in the United States and comply with other requirements specified by rule adopted
7 or order issued under this Act. A rule adopted or order issued under this Act may establish:

8 (1) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the
9 Investment Advisers Act of 1940, the form and content of financial statements
10 required under this Act;

11 (2) Whether unconsolidated financial statements must be filed; and

12 (3) Whether required financial statements must be audited by an independent certified
13 public accountant.

14 (d) Interpretative opinions. The director may provide interpretative opinions or issue
15 determinations that the director will not institute a proceeding or an action under this Act against
16 a specified person for engaging in a specified act, practice, or course of business if the
17 determination is consistent with this Act. A fifty dollar fee is required for interpretative opinions
18 and no action letters.

19 (e) Effect of compliance. A penalty under this Act may not be imposed for, and liability does
20 not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule,
21 form, or order of the director under this Act.

22 (f) Presumption for public hearings. A hearing in an administrative proceeding under this Act
23 must be conducted in public unless the director for good cause consistent with this Act
24 determines that the hearing will not be so conducted.

1 Section 44. Section 606. (a) Public register of filings. The director shall maintain, or
2 designate a person to maintain, a register of applications for registration of securities;
3 registration statements; notice filings; applications for registration of broker-dealers, agents,
4 investment advisers, and investment adviser representatives; notice filings by federal covered
5 investment advisers that are or have been effective under this Act or the predecessor act; notices
6 of claims of exemption from registration or notice filing requirements contained in a record;
7 orders issued under this Act or the predecessor act; and interpretative opinions or no action
8 determinations issued under this Act.

9 (b) Public availability. The director shall make all rules, forms, interpretative opinions, and
10 orders available to the public.

11 (c) Copies of public records. The director shall furnish a copy of a record that is a public
12 record or a certification that the public record does not exist to a person that so requests. A rule
13 adopted under this Act may establish a reasonable charge for furnishing the record or
14 certification. A copy of the record certified or a certificate by the director of a record's
15 nonexistence is prima facie evidence of a record or its nonexistence.

16 Section 45. Section 607. (a) Presumption of public records. Except as otherwise provided
17 in subsection (b), records obtained by the director or filed under this Act, including a record
18 contained in or filed with a registration statement, application, notice filing, or report, are public
19 records and are available for public examination.

20 (b) Nonpublic records. The following records are not public records and are not available
21 for public examination under subsection (a):

22 (1) A record obtained by the director in connection with an audit or inspection under
23 Section 411(d) or an investigation under Section 602;

24 (2) A part of a record filed in connection with a registration statement under Sections

1 301 and 303 through 305 or a record under Section 411(d) that contains trade secrets
2 or confidential information if the person filing the registration statement or report has
3 asserted a claim of confidentiality or privilege that is authorized by law;

4 (3) A record that is not required to be provided to the director or filed under this Act and
5 is provided to the director only on the condition that the record will not be subject to
6 public examination or disclosure;

7 (4) A nonpublic record received from a person specified in Section 608(a); and

8 (5) Any social security number, residential address unless used as a business address, and
9 residential telephone number unless used as a business telephone number, contained
10 in a record that is filed; and

11 (6) A record obtained by the director through a designee of the director or that a rule or
12 order under this Act determines has been:

13 (A) Expunged from the director's records by the designee; or

14 (B) Determined to be nonpublic or nondisclosable by that designee if the director
15 finds the determination to be in the public interest and for the protection of
16 investors.

17 (c) Director discretion to disclose. If disclosure is for the purpose of a civil, administrative,
18 or criminal investigation, action, or proceeding or to a person specified in Section 608(a), the
19 director may disclose a record obtained in connection with an audit or inspection under Section
20 411(d) or a record obtained in connection with an investigation under Section 602.

21 Section 46. Section 608. (a) Objective of uniformity. The director shall, in its discretion,
22 cooperate, coordinate, consult, and, subject to Section 607, share records and information with
23 the securities regulator of another state, Canada, a Canadian province or territory, a foreign
24 jurisdiction, the Securities and Exchange Commission, the United States Department of Justice,

1 the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities
2 Investor Protection Corporation, a self-regulatory organization, a national or international
3 organization of securities regulators, a federal or state banking and insurance regulator, and a
4 governmental law enforcement agency to effectuate greater uniformity in securities matters
5 among the federal government, self-regulatory organizations, states, and foreign governments.

6 (b) Policies to consider. In cooperating, coordinating, consulting, and sharing records and
7 information under this section and in acting by rule, order, or waiver under this Act, the director
8 shall, in its discretion, take into consideration in carrying out the public interest the following
9 general policies:

- 10 (1) Maximizing effectiveness of regulation for the protection of investors;
- 11 (2) Maximizing uniformity in federal and state regulatory standards; and
- 12 (3) Minimizing burdens on the business of capital formation, without adversely affecting
13 essentials of investor protection.

14 (c) Subjects for cooperation. The cooperation, coordination, consultation, and sharing of
15 records and information authorized by this section includes:

- 16 (1) Establishing or employing one or more designees as a central depository for
17 registration and notice filings under this Act and for records required or allowed to
18 be maintained under this Act;
- 19 (2) Developing and maintaining uniform forms;
- 20 (3) Conducting a joint examination or investigation;
- 21 (4) Holding a joint administrative hearing;
- 22 (5) Instituting and prosecuting a joint civil or administrative proceeding;
- 23 (6) Sharing and exchanging personnel;
- 24 (7) Coordinating registrations under Sections 301 and 401 through 404 and exemptions

1 under Section 203;

2 (8) Sharing and exchanging records, subject to Section 607;

3 (9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions
4 and releases;

5 (10) Formulating common systems and procedures;

6 (11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;

7 (12) Attending conferences and other meetings among securities regulators, which may
8 include representatives of governmental and private sector organizations involved in
9 capital formation, deemed necessary or appropriate to promote or achieve uniformity;
10 and

11 (13) Developing and maintaining a uniform exemption from registration for small issuers,
12 and taking other steps to reduce the burden of raising investment capital by small
13 businesses.

14 Section 47. Section 609. (a) Judicial review of orders. A final order issued by the director
15 under this Act is subject to judicial review in accordance with chapter 1-26.

16 (b) Judicial review of rules. A rule adopted under this Act is subject to judicial review in
17 accordance with chapter 1-26.

18 Section 48. Section 610. (a) Sales and offers to sell. Sections 301, 302, 401(a), 402(a),
19 403(a), 404(a), 501, 506, 509, and 510 do not apply to a person that sells or offers to sell a
20 security unless the offer to sell or the sale is made in this state or the offer to purchase or the
21 purchase is made and accepted in this state.

22 (b) Purchases and offers to purchase. Sections 401(a), 402(a), 403(a), 404(a), 501, 506, 509,
23 and 510 do not apply to a person that purchases or offers to purchase a security unless the offer
24 to purchase or the purchase is made in this state or the offer to sell or the sale is made and

1 accepted in this state.

2 (c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a
3 security is made in this State, whether or not either party is then present in this state, if the offer:

4 (1) Originates from within this state; or

5 (2) Is directed by the offeror to a place in this state and received at the place to which it
6 is directed.

7 (d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell
8 is accepted in this state, whether or not either party is then present in this state, if the acceptance:

9 (1) Is communicated to the offeror in this state and the offeree reasonably believes the
10 offeror to be present in this state and the acceptance is received at the place in this
11 state to which it is directed; and

12 (2) Has not previously been communicated to the offeror, orally or in a record, outside
13 this state.

14 (e) Publications, radio, television, or electronic communications. An offer to sell or to
15 purchase is not made in this state when a publisher circulates or there is circulated on the
16 publisher's behalf in this state a bona fide newspaper or other publication of general, regular,
17 and paid circulation that is not published in this state, or that is published in this state but has
18 had more than two thirds of its circulation outside this state during the previous twelve months
19 or when a radio or television program or other electronic communication originating outside this
20 state is received in this state. A radio or television program, or other electronic communication
21 is considered as having originated in this state if either the broadcast studio or the originating
22 source of transmission is located in this state, unless:

23 (1) The program or communication is syndicated and distributed from outside this state
24 for redistribution to the general public in this state;

1 (2) The program or communication is supplied by a radio, television, or other electronic
2 network with the electronic signal originating from outside this state for
3 redistribution to the general public in this state;

4 (3) The program or communication is an electronic communication that originates
5 outside this state and is captured for redistribution to the general public in this state
6 by a community antenna or cable, radio, cable television, or other electronic system;
7 or

8 (4) The program or communication consists of an electronic communication that
9 originates in this state, but which is not intended for distribution to the general public
10 in this state.

11 (f) Investment advice and misrepresentations. Sections 403(a), 404(a), 405(a), 502, 505, and
12 506 apply to a person if the person engages in an act, practice, or course of business
13 instrumental in effecting prohibited or actionable conduct in this state, whether or not either
14 party is then present in this state.

15 Section 49. Section 611. (a) Signed consent to service of process. A consent to service of
16 process complying with Section 611 required by this Act must be signed and filed in the form
17 required by a rule or order under this Act. A consent appointing the director the person's agent
18 for service of process in a noncriminal action or proceeding against the person, or the person's
19 successor or personal representative under this Act or a rule adopted or order issued under this
20 Act after the consent is filed, has the same force and validity as if the service were made
21 personally on the person filing the consent. A person that has filed a consent complying with
22 this subsection in connection with a previous application for registration or notice filing need
23 not file an additional consent.

24 (b) Conduct constituting appointment of agent for service. If a person, including a

1 nonresident of this state, engages in an act, practice, or course of business prohibited or made
2 actionable by this Act or a rule adopted or order issued under this Act and the person has not
3 filed a consent to service of process under subsection (a), the act, practice, or course of business
4 constitutes the appointment of the director as the person's agent for service of process in a
5 noncriminal action or proceeding against the person or the person's successor or personal
6 representative.

7 (c) Procedure for service of process. Service under subsection (a) or (b) may be made by
8 providing a copy of the process to the office of the director, but it is not effective unless:

9 (1) The plaintiff, which may be the director, promptly sends notice of the service and a
10 copy of the process, return receipt requested, to the defendant or respondent at the
11 address set forth in the consent to service of process or, if a consent to service of
12 process has not been filed, at the last known address, or takes other reasonable steps
13 to give notice; and

14 (2) The plaintiff files an affidavit of compliance with this subsection in the action or
15 proceeding on or before the return day of the process, if any, or within the time that
16 the court, or the director in a proceeding before the director, allows.

17 (d) Service in administrative proceedings or civil actions by director. Service pursuant to
18 subsection (c) may be used in a proceeding before the director or by the director in a civil action
19 in which the director is the moving party.

20 (e) Opportunity to defend. If process is served under subsection (c), the court, or the director
21 in a proceeding before the director, shall order continuances as are necessary or appropriate to
22 afford the defendant or respondent reasonable opportunity to defend.

23 Section 50. Section 612. If any provision of this Act or its application to any person or
24 circumstances is held invalid, the invalidity does not affect other provisions or applications of

1 this Act that can be given effect without the invalid provision or application, and to this end the
2 provisions of this Act are severable.

3 Section 51. Section 701. This Act, takes effect on July 1, 2004.

4 Section 52. Section 702. That §§ 47-31A-101 to 47-31A-420, inclusive, be repealed.

5 Section 53. Section 703. (a) Applicability of predecessor act to pending proceedings and
6 existing rights. The predecessor act exclusively governs all actions or proceedings that are
7 pending on the effective date of this Act or may be instituted on the basis of conduct occurring
8 before the effective date of this Act, but a civil action may not be maintained to enforce any
9 liability under the predecessor act unless instituted within any period of limitation that applied
10 when the cause of action accrued or within five years after the effective date of this Act,
11 whichever is earlier.

12 (b) Continued effectiveness under predecessor act. All effective registrations under the
13 predecessor act, all administrative orders relating to the registrations, rules, statements of policy,
14 interpretative opinions, declaratory rulings, no action determinations, and conditions imposed
15 on the registrations under the predecessor act remain in effect while they would have remained
16 in effect if this Act had not been enacted. They are considered to have been filed, issued, or
17 imposed under this Act, but are exclusively governed by the predecessor act.

18 (c) Applicability of predecessor act to offers or sales. The predecessor act exclusively
19 applies to an offer or sale made within one year after the effective date of this Act pursuant to
20 an offering made in good faith before the effective date of this Act on the basis of an exemption
21 available under the predecessor act.

22 Section 54. That § 1-16A-59 be amended to read as follows:

23 1-16A-59. For purposes of chapter ~~47-31A and any amendment thereto and substitution~~
24 ~~therefor~~ 47-31B, bonds issued by the authority ~~shall be~~ are deemed to be securities issued by a

1 public instrumentality of the State of South Dakota.

2 Section 55. That § 4-4-4.3 be amended to read as follows:

3 4-4-4.3. There ~~shall be~~ is established within the state treasury the securities operating fund
4 and the insurance operating fund, into which shall be deposited all fees received by each
5 division. All moneys in the funds created by this section shall be budgeted and expended in
6 accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers
7 approved by the secretary of the Department of Revenue and Regulation. Expenditures from
8 these funds may be made only to pay the necessary expenses of purposes specified in chapters
9 37-5A, 37-25A, ~~47-31A~~ 47-31B, 47-33, and Title 58.

10 Section 56. That § 5-12-55 be amended to read as follows:

11 5-12-55. The corporation is hereby declared to be performing a public function on behalf
12 of the state and to be a public instrumentality of the state. The income of the authority and the
13 corporation, and all properties at any time owned by the authority and the corporation, are
14 exempt from all taxation in the State of South Dakota. In addition, the corporation is exempt
15 from all filing, reporting, and similar requirements otherwise applicable to nonprofit and other
16 corporations.

17 For purposes of chapter ~~47-31A and any amendment thereto and substitution therefor~~ 47-
18 31B, bonds, notes, certificates, or other obligations issued, incurred or created by the
19 corporation under §§ 5-12-48 to 5-12-60, inclusive, ~~shall be~~ are deemed to be securities issued
20 by a public instrumentality of the State of South Dakota.

21 Section 57. That § 6-8B-69 be amended to read as follows:

22 6-8B-69. Any credit enhancement obligation, any agreement or other arrangement related
23 thereto, and any anticipation note authorized hereunder shall be exempt from registration under
24 chapter ~~47-31A~~ 47-31B.

1 Section 58. That subdivision (4) of § 10-43-1 be amended to read as follows:

2 (4) "Financial institution," any banking institution or savings and loan association
3 organized under the laws of the United States and located or doing business in this
4 state; any bank, savings and loan association, mutual saving bank, or trust company,
5 organized under the laws of this state or of any other state, district, territory, or
6 country, doing business within this state; any person licensed in this state pursuant
7 to chapter 54-4, the installment repayment small loan and consumer finance law; and
8 any person in the business of buying loans, notes, or other evidences of debt except
9 those persons registered as broker-dealers pursuant to chapter ~~47-31A~~ 47-31B; and
10 persons in the business of making installment repayment and open-end loans which
11 may be unsecured or secured by real or personal property, which loans are in an
12 aggregate amount exceeding five hundred dollars, which are repaid in two or more
13 installment payments or one lump sum payment extending over a time exceeding
14 thirty days from the day the loan was made except where the loan is made by the
15 person selling the property, incidental to the sale of the property and where the seller
16 is primarily in the business of selling such real or personal property or except where
17 the loan is made to a related corporation and the primary business of these related
18 corporations is the production and sale of tangible personal property or where the
19 loan is made in the form of an advance to secure the production of equipment to be
20 obtained by the lender or to finance a joint venture between the lender and others
21 which has been formed to produce and sell tangible personal property;

22 Section 59. That § 11-11-96 be amended to read as follows:

23 11-11-96. For the purposes of chapter ~~47-31A and any amendments thereto and substitution~~
24 ~~therefor~~ 47-31B, bonds issued by the authority ~~shall be~~ are deemed to be securities issued by a

1 public instrumentality of the State of South Dakota.

2 Section 60. That § 25-7A-56 be amended to read as follows:

3 25-7A-56. A state agency or board may not issue or renew the professional, sporting, or
4 recreational license, registration, certification, or permit of any applicant after receiving notice
5 from the Department of Social Services that the applicant has support arrearages in the sum of
6 one thousand dollars or more, unless the applicant first makes satisfactory arrangements with
7 the Department of Social Services for payment of any accumulated arrearages. An applicant
8 who disputes a determination by the Department of Social Services that the applicant has
9 support arrearages of one thousand dollars or more shall, upon request, be given a due process
10 hearing by the department. Upon recommendation by the department, the licensing agency or
11 board may issue a temporary license, registration, certification, or permit to the applicant
12 pending final resolution of the due process hearing. The department may promulgate rules
13 pursuant to chapter 1-26 to implement the provisions of this section.

14 The term professional license, registration, certification, or permit as specified by this
15 section includes appraisers as specified in chapter 36-21B; abstractors as specified in chapter
16 36-13; accountants as specified in chapter 36-20A; barbers as specified in chapter 36-14;
17 chiropractors as specified in chapter 36-5; cosmetologists as specified in chapter 36-15;
18 counselors as specified in chapter 36-32; dentists and dental hygienists as specified in chapter
19 36-6A; electricians as specified in chapter 36-16; engineers, architects, and surveyors as
20 specified in chapter 36-18; embalmers and funeral directors as specified in chapter 36-19; nurses
21 as specified in chapter 36-9; nurse practitioners and nurse mid-wives as specified in chapter
22 36-9A; physical therapists as specified in chapter 36-10; medical assistants as specified in
23 chapter 36-9B; hearing aid dispensers as specified in chapter 36-24; physicians and surgeons
24 as specified in chapter 36-4; physician's assistants as specified in chapter 36-4A; advanced life

1 support personnel as specified in chapter 36-4B; nursing facility administrators as specified in
2 chapter 36-28; optometrists as specified in chapter 36-7; pharmacists as specified in chapter
3 36-11; plumbers as specified in chapter 36-25; podiatrists as specified in chapter 36-8;
4 psychologists as specified in chapter 36-27A; real estate brokers and salesmen as specified in
5 chapter 36-21A; social workers as specified in chapter 36-26; veterinarians as specified in
6 chapter 36-12; insurance brokers, agents, and solicitors as specified in chapter 58-30; teachers
7 and administrators as specified in chapters 13-42 and 13-43; attorneys as specified in chapter
8 16-16; securities agents, securities brokers, investment advisers, or investment adviser
9 representatives as specified in chapter ~~47-31A~~ 47-31B; pilots as specified in chapter 50-11; day
10 care providers as specified in chapter 26-6; gaming employees as specified in chapter 42-7B;
11 and law enforcement officers as specified in chapter 23-3. The state agencies or boards which
12 govern the professions, recreational licenses, and occupations listed in this paragraph may adopt
13 rules pursuant to chapter 1-26 to implement the provisions of this section for their particular
14 profession or occupation.

15 Section 61. That § 25-7A-56.9 be amended to read as follows:

16 25-7A-56.9. The department shall enter into agreements with any financial institution
17 conducting business within the state whereby the financial institution shall, on a quarterly basis,
18 provide to the department the name, record address, social security number, or other taxpayer
19 identification number, and other identifying information requested by the department for each
20 obligor who owes past-due child support, and who maintains an account at the financial
21 institution. Every financial institution shall also comply with any lien, levy, or order for
22 withholding of income issued by the department against any account.

23 A financial institution is not liable to any person or entity for release or disclosure of any
24 information required herein, and is not liable for encumbering or surrendering to the department

1 any assets held by the financial institution and owned by the obligor. A financial institution is
2 not liable to any person or entity for any other action taken in good faith by the institution to
3 comply with the requirements of this section. Any information obtained by any Title IV-D
4 agency pursuant to this section is confidential in nature and may be disclosed only for the
5 purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support
6 obligation.

7 As used in this section, financial institution includes any financial institution as defined in
8 subdivision 10-43-1(4), any institution regulated by chapter ~~47-31A~~ 47-31B, and any other
9 depository institution, credit union, benefit association, insurance company, safe deposit
10 company, bond fund, money market mutual fund, and any mutual fund of any kind or character.
11 The term, account, as used in this section includes any demand deposit account, checking
12 account, negotiable withdrawal order account, savings account, time deposit account, money
13 market or any type of mutual fund account, and intangible property as defined in subdivision
14 43-41B-1(10).

15 Section 62. That § 37-5A-14 be amended to read as follows:

16 37-5A-14. The registration requirement imposed by § 37-5A-6 ~~shall~~ do not apply to the
17 following:

- 18 (1) Any transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy,
19 guardian or conservator;
- 20 (2) Any offer or sale to a banking organization, financial organization or life insurance
21 corporation within the meanings given these terms by chapters 51A-1, 52-1, and
22 58-1; or
- 23 (3) Securities currently registered in this state pursuant to chapter ~~47-31A~~ 47-31B.

24 Section 63. That subdivision (4) of § 37-25A-2 be amended to read as follows:

1 (4) Any offer or sale of a business opportunity registered pursuant to chapter ~~47-31A~~ 47-
2 31B;

3 Section 64. That subdivision (4) of § 37-25A-3 be amended to read as follows:

4 (4) Any offer or sale of a business opportunity if the purchaser is a bank, savings and
5 loan association, trust company, insurance company, credit union, or investment
6 company as defined by the Investment Company Act of 1940, pension or profit
7 sharing trust, or other financial institution or institutional buyer or a dealer registered
8 pursuant to chapter ~~47-31A~~ 47-31B, if the purchaser is acting for itself or in a
9 fiduciary capacity;

10 Section 65. That § 47-21-77 be amended to read as follows:

11 ~~47-21-77. The provisions of the Uniform Securities Act, chapter 47-31A, shall~~ chapter 47-
12 31B do not apply to any note, bond or other evidence of indebtedness issued by any cooperative
13 pursuant to this chapter to the United States of America or any agency or other instrumentality
14 thereof, to any member of such cooperative, or to any mortgage, deed of trust, or other
15 instrument executed to secure the same. ~~The Uniform Securities Act Chapter 47-31B~~ does not
16 apply to the issuance of membership certificates or any other evidence of member interest by
17 any cooperative or any such foreign corporation.

18 Section 66. That § 58-28-31 be amended to read as follows:

19 58-28-31. The director ~~shall have~~ has sole authority to regulate the issuance and sale of
20 variable contracts and promulgate rules to carry out the purposes and provisions of this chapter.
21 The Division of Securities may, upon request by the director, review the underlying investments
22 in securities of variable contracts. The Division of Securities may require filing a disclosure
23 document with the division of securities pursuant to chapter ~~47-31A~~ 47-31B.

24 Section 67. That § 58-33-90 be amended to read as follows:

1 58-33-90. No insurance producer may offer or sell any security in this state unless the
2 insurance producer is properly registered or exempt from registration pursuant to chapter
3 ~~47-31A~~ 47-31B.

4 Section 68. That § 58-33-91 be amended to read as follows:

5 58-33-91. No insurance producer may offer or sell any security in this state unless the
6 security is registered or exempt from registration pursuant to chapter ~~47-31A~~ 47-31B.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0443

SENATE ENGROSSED NO. **SB 40** - 01/22/2004

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

1 FOR AN ACT ENTITLED, An Act to prohibit certain snowmobiles from being operated on a
2 state snowmobile trail or area.

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

4 Section 1. That chapter 32-20A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 No person may operate a snowmobile on a state snowmobile trail or area established
7 pursuant to the provisions of chapter 41-19 unless the snowmobile has a curb weight of less than
8 fourteen hundred pounds, is driven by track contact with the snow, and is steered by ski contact
9 with the snow. A violation of this section is a Class 2 misdemeanor.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0444

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 42** - 01/27/2004

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding railroad tax credits
2 and to provide a process for administrating the tax credits.

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

4 Section 1. That § 10-28-21.2 be amended to read as follows:

5 10-28-21.2. Any publicly operated railroad or railway corporation operating over rail lines
6 owned by the publicly operated railroad or railway corporation located within this state may
7 claim a credit against the tax levied on such rail lines for amounts that the railroad or railway
8 corporation has certified as having been expended in the replacement, improvement, and repair
9 of such rail lines. Only those expenses of a capital nature may be certified as an expense eligible
10 for a credit pursuant to this section. The certification required by this section shall be on forms
11 provided by the Department of Revenue and Regulation. The labor and material expenses
12 certified pursuant to this section shall be itemized separately by rail line and mile post locations.
13 The credit provided in this section shall be applied proportionally across the railroad's entire
14 mainline within this state. The credit shall be applied to tax liability over a three-year period in
15 an amount equal to thirty-three and one-third percent the first year following certification;



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

9 Section 2. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Expenses of a capital nature contained in § 10-28-21.2 are as defined in CFR 49 Parts 1200
12 through 1219 Subpart A Uniform Systems of Accounts for Railroad Companies, as amended
13 through January 1, 2004, for Class 1 railroads or as defined in accordance with generally
14 accepted accounting principles for regulated industries for Class 2 and Class 3 railroads.

15 Section 3. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Each year the railroad or railroad corporation requesting tax credits shall prepare a capital
18 improvement plan detailing the proposed mainline and secondary line capital improvement
19 projects including the project scope, estimated value, approximate scheduling of the projects,
20 and the current category of the line on the railroad's system diagram map as provided in 49 CFR
21 § 1152.10 as of January 1, 2004. The plan shall be presented to the Department of
22 Transportation by March first of each year for any capital improvement project for which a tax
23 credit will be requested.

24 Section 4. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The railroad shall annually notify the Department of Transportation of completion of any
3 capital project. However, if the cost of the capital project exceeds three hundred thousand
4 dollars, the railroad shall notify the department immediately upon completion. The department
5 may conduct a verification inspection of capital improvement project completion and may audit
6 the capital improvement project according to South Dakota Department of Transportation Audit
7 guidelines and the Federal-Aid Policy Guide 23 CFR Chapter 1, Subchapter B, Part 140,
8 Subpart 1, as amended through January 1, 2004, to determine project value. The department
9 shall report its findings to each county where the railroad has requested a tax credit. Only those
10 capital expenses that have been claimed on the railroad's certification and verified by the
11 department are eligible for a credit pursuant to § 10-28-21.2. Any railroad aggrieved by the
12 decision of the department concerning the eligibility of a claimed capital expenditure for the tax
13 credit authorized by § 10-28-21.2 is entitled to an administrative hearing conducted in
14 accordance with the provisions of chapter 1-26.

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

17 The State Railroad Board shall, in accordance with chapter 1-26, promulgate rules
18 establishing the form upon which a railroad shall submit verification information for capital
19 expenses being claimed as tax credits authorized by § 10-28-21.2, when the information is to
20 be submitted, and the manner in which the certification is submitted.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0328

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 43** - 02/07/2004

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to authorize acquisition of utility corridors and to authorize
2 the use of such property to be regulated by administrative rule.

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

4 Section 1. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Department of Transportation may acquire by gift, devise, purchase, or condemnation,
7 an easement or fee interest in real estate, other than a right-of-way, for the purpose of providing
8 a suitable location for the relocation of utility lines and facilities displaced as a result of a
9 highway construction project. After all displaced utility lines and facilities have been
10 appropriately relocated, the department may allow the use of such property by additional utilities
11 under the terms and conditions established by the department. The South Dakota Transportation
12 Commission may provide, by rules promulgated pursuant to chapter 1-26, for the terms and
13 conditions for use of such property by utilities.

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



1 No owner or operator of utility lines or facilities displaced as a result of a highway
2 construction project may be compelled to relocate those utility lines or facilities to either an
3 easement or a fee interest acquired pursuant to section 1 of this Act.

4 Section 3. That § 31-19-2 be amended to read as follows:

5 31-19-2. Before acquiring land or material ~~for rights-of-way and borrow pit, either by~~
6 ~~purchase or~~ by condemnation, the Department of Transportation shall, by resolution, declare the
7 necessity for acquiring the land or material and file a copy of the resolution with the office of
8 right-of-way in the department of Transportation.

9 Section 4. That § 31-19-3 be amended to read as follows:

10 31-19-3. If land or material ~~for right-of-way and borrow pit~~ is to be acquired by
11 condemnation, the Department of Transportation, on behalf of the state and in its name, shall
12 file a petition in the circuit court for the county in which the property to be taken or damaged
13 is situated, praying that the just compensation be made and such property be ascertained by a
14 jury and shall name the Department of Transportation as the department of the state government
15 desiring to take or damage ~~said~~ the property on behalf of the state as plaintiff. All persons
16 having an interest in or a lien upon the property affected by the proceedings shall be named as
17 defendants so far as they ~~shall~~ may be known at the time of the filing of ~~same~~ the petition. It
18 shall contain a description of the property to be taken or damaged and shall contain a copy of
19 the related resolution of necessity; that was passed by the Transportation Commission ~~in relation~~
20 ~~thereto~~. The purpose for which the property is to be taken or damaged shall be clearly set forth
21 in the petition. It ~~shall~~ is not ~~be~~ necessary to specify the interest or claim of the several
22 defendants in the land or property affected by the proceedings. ~~Said~~ The petition shall be signed
23 and verified in the manner and as provided by § 15-6-11 relating to the signing of pleadings in
24 the circuit courts.

1 Section 5. That § 31-19-19 be amended to read as follows:

2 31-19-19. Whenever any land ~~or lands~~, easement in ~~same~~ land or material is necessary for
3 right-of-way in order to make a safe or proper grade, for the relocating of utility facilities, or for
4 widening, changing, relocating, constructing, reconstructing, maintaining, or repairing any
5 portion of the state trunk highway, or ~~whenever~~ if it is necessary for providing cut slopes,
6 borrow pits, channel changes, or to afford unobstructed vision on ~~said~~ any state trunk ~~highways~~
7 highway and at any point of danger to public travel, for right-of-way and borrow pit, the State
8 of South Dakota, through and by its Department of Transportation, or ~~counties which have been~~
9 any county authorized by agreement to acquire on behalf of the state ~~of South Dakota by~~
10 ~~agreement~~, shall acquire and pay for the same out of state highway funds unless it is otherwise
11 agreed. The cost of ~~said~~ the land or material and expense of purchase or condemnation shall be
12 paid as part of the cost of the state trunk highway unless otherwise agreed.

13 Section 6. That § 31-19-20 be amended to read as follows:

14 31-19-20. Whenever any land or material, dirt, sand, or gravel is required for the
15 construction, reconstruction, maintaining, or repairing of any portion of the state trunk highway,
16 ~~which~~ or for the relocating of utility facilities, and if the land or material, dirt, sand, or gravel
17 lies outside the right-of-way of ~~said~~ the highway or adjacent borrow pits, ~~it shall be the duty of~~
18 the state ~~to~~ shall purchase or condemn ~~said~~ the land or material, dirt, sand, or gravel and pay for
19 the same out of the state highway fund. ~~Said~~ The land or material, dirt, sand, or gravel may be
20 acquired either by purchase or condemnation and any cost or expense of purchase or
21 condemnation shall be paid for in the same manner as material, dirt, sand, or gravel or land is
22 paid for. In case of condemnation, the proceedings provided for condemnation ~~of right-of-way~~
23 ~~and borrow pit~~ in §§ 31-19-1 to 31-19-19, inclusive, or the provisions of chapter 21-35 ~~shall be~~
24 are applicable and either proceeding may be used.

1 Section 7. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The acquiring of an easement or fee interest pursuant to section 1 of this Act may not be
4 admitted as evidence in any action under chapter 21-35 brought by any owner or operator of
5 utility lines or facilities displaced as a result of a highway construction project. Any easement
6 or fee interest acquired pursuant to section 1 of this Act may not serve as a basis for a finding
7 of fraud, bad faith, or abuse of discretion under § 21-35-10.1.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0331

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 51** - 01/21/2004

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Certification Board for Alcohol
2 and Drug Professionals and to provide for its powers and duties.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the South Dakota Certification Board for Alcohol and Drug Professionals;
6 and

7 (2) "Practitioner," a person certified under this Act in the practice of chemical
8 dependency counseling or prevention services who holds himself or herself out to the
9 public by any title or description of services which uses the words certified chemical
10 dependency counselor or certified prevention specialist or derivatives thereof.

11 Section 2. That § 36-32-11 be amended to read as follows:

12 36-32-11. No person may represent himself or herself as a licensed or certified chemical
13 dependency counselor (CCDC) or certified prevention specialist unless he the person is certified
14 by the South Dakota ~~Chemical Dependency Counselor~~ Certification Board for Alcohol and Drug
15 Professionals.



1 Section 3. There is hereby created the South Dakota Certification Board for Alcohol and
2 Drug Professionals that consists of nine members. One member shall be a lay member and
3 resident of the state; one member shall be an educator from an addiction studies postsecondary
4 education program; four members shall be certified chemical dependency counselors in active
5 practice within the state and broadly representing a cross section of the profession of chemical
6 dependency counseling; one member shall be a certified prevention specialist; one member shall
7 be an attorney licensed to practice law in the State of South Dakota; and one member shall be
8 a certified practitioner who is an enrolled member of a tribe. This board replaces the functions
9 previously performed by the South Dakota Chemical Dependency Counselor Certification
10 Board, a private nonprofit entity doing business as the Certification Board for Alcohol and Drug
11 Professionals.

12 Section 4. The Governor shall appoint the members to the board. Initial appointments to the
13 board shall be staggered for terms of one, two, and three years, with three members appointed
14 for one year, three members appointed for two years, and three members appointed for three
15 years. Thereafter, appointments shall be for terms of three years beginning on the first day of
16 July.

17 Section 5. The Governor may remove any member of the board for cause. If there is a
18 vacancy on the board caused by the death, resignation, removal from the state of any member,
19 or for any other reason, the Governor shall appoint a new member to serve the unexpired term.
20 No member of the board may serve for more than two successive full terms.

21 Section 6. The initial meeting of the board shall occur at Pierre, South Dakota, within one
22 month after the appointment of the ninth member. The board shall elect a chair, vice-chair, and
23 a secretary-treasurer from its members. Thereafter the board shall elect officers annually. The
24 board shall meet at least once a year at a place and time determined by the chair. However, a

1 majority of the board may call a meeting without the assent of the chair.

2 Section 7. The secretary of the board shall provide for taking and keeping the minutes of all
3 board meetings.

4 Section 8. A majority of board members constitutes a quorum. A majority vote of those
5 present constitutes a decision of the entire board.

6 Section 9. The board is within the Department of Human Services. The department shall
7 provide all administrative functions other than those of the board member serving as secretary.
8 The expenses of the department shall be paid from the account established in section 10 of this
9 Act, on vouchers approved by the secretary of human services. The board shall submit an annual
10 report and such records, information, and reports in the form and at such times as required by
11 the secretary of human services.

12 Section 10. The board may accept any funds which may be made available to it from any
13 source. All funds received by the board shall be paid to the state treasurer on or before the tenth
14 day of the next month. The state treasurer shall keep the money in a separate account for the
15 board. The money in that account is continuously appropriated to the board for administering
16 and enforcing this Act. The board may expend funds for administrative, consultant, secretarial,
17 clerical, and stenographic services for the board. No expense may be incurred by the board
18 exceeding the total money collected by the board under the provisions of this Act. The board
19 shall transfer preexisting funds of the South Dakota Chemical Dependency Counselor
20 Certification Board the entity doing business as the Certification Board for Alcohol and Drug
21 Professionals into the account established in this Act.

22 Section 11. The board members shall be paid pursuant to § 3-9-2.

23 Section 12. No member of the board is civilly liable for any act taken while acting within
24 the scope of the member's official duties as a board member.

1 Section 13. The board shall:

- 2 (1) Through its policies and activities, and by rules promulgated pursuant to chapter 1-
3 26, establish standards for, and promote, the qualified practice of chemical
4 dependency prevention and counseling services;
- 5 (2) Be responsible for all disciplinary proceedings under this Act;
- 6 (3) Establish, by rules promulgated pursuant to chapter 1-26, educational, training and
7 competency, and ethical standards governing the examination and practice of
8 practitioners under this Act;
- 9 (4) Examine, or cause to be examined, for competency, eligible applicants, for
10 certification to practice chemical dependency prevention and counseling services;
- 11 (5) Issue certificates to those applicants who successfully complete the certification
12 requirements and renew the certifications of those practitioners who continue to meet
13 the certification standards of this Act;
- 14 (6) Register, pursuant to rules promulgated pursuant to chapter 1-26, those applicants
15 who successfully complete the certification requirements; and
- 16 (7) Establish and collect, pursuant to rules promulgated pursuant to chapter 1-26, fees
17 for certification, registration, examination, continuing education, certificate renewal,
18 and reinstatement.

19 Section 14. The board may promulgate rules, pursuant to chapter 1-26, to provide fees for
20 all examinations, certifications, recognitions, renewals, services, and charges authorized by this
21 Act. The fees may not exceed the following maximums:

- 22 (1) Application materials or portfolio reviews, twenty-five dollars;
- 23 (2) Chemical dependency counselor certification application and examination fee, two
24 hundred fifty dollars;

- 1 (3) Chemical dependency counselor certification retest fee, two hundred dollars;
- 2 (4) Chemical dependency counselor certification renewal fee, one hundred fifty dollars;
- 3 (5) Chemical dependency counselor certification level upgrade, one hundred fifty
- 4 dollars;
- 5 (6) Chemical dependency counselor replacement or duplicate certificate, fifteen dollars;
- 6 (7) Chemical dependency counselor certification replacement card, five dollars;
- 7 (8) Chemical dependency counselor trainee recognition fee, one hundred fifty dollars;
- 8 (9) Chemical dependency counselor trainee renewal fee, one hundred dollars;
- 9 (10) Chemical dependency counselor trainee replacement or duplicate certificate fee,
- 10 fifteen dollars;
- 11 (11) Prevention specialist certification application and examination fee, two hundred fifty
- 12 dollars;
- 13 (12) Prevention specialist certification retest fee, two hundred dollars;
- 14 (13) Prevention specialist certification renewal fee, one hundred fifty dollars;
- 15 (14) Prevention specialist replacement or duplicate certificate, fifteen dollars;
- 16 (15) Prevention specialist certification replacement card, five dollars;
- 17 (16) Prevention specialist trainee recognition fee, one hundred fifty dollars;
- 18 (17) Prevention specialist trainee renewal fee, one hundred dollars;
- 19 (18) Prevention specialist trainee replacement or duplicate certificate fee, fifteen dollars;
- 20 (19) Trainee intern replacement certificate, fifteen dollars;
- 21 (20) Trainee intern replacement certificate, fifteen dollars;
- 22 (21) Registration as a continuing education provider, twenty-five dollars; and
- 23 (22) Mailing labels charge, one hundred dollars.

24 Section 15. A chemical dependency counselor trainee may perform chemical dependency

1 counseling services so long as the trainee is working under the supervision of a certified
2 chemical dependency counselor.

3 Section 16. A prevention specialist trainee may perform prevention services so long as the
4 trainee is working under the supervision of a certified prevention specialist or certified chemical
5 dependency counselor, level II or III.

6 Section 17. The board may use its own staff or employ certified chemical dependency
7 counselors, certified prevention specialists, agents, or investigators to assist in the enforcement
8 of this Act or any rule promulgated by the board. Any person violating the provisions of this Act
9 may be enjoined from further violations by an action brought by the state's attorney of the
10 county where the violations occurred or by an action brought by any citizen in the state. The
11 attorney general, the board, or the state's attorney may apply to the circuit court for the county
12 in which a violation of this Act is alleged to have occurred for an order enjoining or restraining
13 the commission or continuance of the acts. The board may authorize a hearing examiner to
14 conduct the hearing required to determine a violation of this Act.

15 Section 18. The board may, if it deems best for the enforcement of this Act or in the conduct
16 of its duties, employ an attorney designated by the attorney general and subject to the
17 supervision, control, and direction of the attorney general. The board shall fix and determine the
18 compensation and period of service of the attorney who shall be paid out of the funds of the
19 board.

20 Section 19. The board shall receive complaints from its members, consumers, third party
21 carriers providing financial reimbursement for chemical dependency prevention or counseling
22 services, or the public concerning a practitioner's professional practices. Each complaint
23 received shall be logged by the secretary-treasurer recording the practitioner's name, name of
24 the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate

1 disposition. The board shall investigate each alleged violation of this Act. All disciplinary
2 proceedings held under the authority of this Act shall be conducted in accordance with chapter
3 1-26.

4 Section 20. The decision of the board to suspend or revoke a certification requires a majority
5 vote of all the board members.

6 Section 21. If the board determines that any complaint is frivolous or clearly unfounded in
7 fact, the board may dismiss the complaint and, by a separate and unanimous vote of the board,
8 may expunge the complaint from the record of the certified practitioner.

9 Section 22. Any practitioner subject to this Act shall practice in accordance with the
10 standards established by the board and is subject to the exercise of the disciplinary sanctions
11 enumerated in section 24 of this Act if, after a hearing in the manner provided in chapter 1-26,
12 the board finds that:

- 13 (1) A practitioner has employed or knowingly cooperated in fraud or material deception
14 in order to obtain a certification to practice the profession, or has engaged in fraud
15 or material deception in the course of professional services or activities;
- 16 (2) A practitioner has been convicted in any court of a felony;
- 17 (3) A practitioner has engaged in or permitted the performance of unacceptable patient
18 care by the practitioner or by auxiliaries working under the practitioner's supervision
19 due to any deliberate or negligent act or failure to act;
- 20 (4) A practitioner has knowingly violated any provision of this Act or board rules;
- 21 (5) A practitioner has continued to practice although the practitioner has become unfit
22 to practice due to professional incompetence, failure to keep abreast of current
23 professional theory or practice, physical or mental disability, or addiction or severe
24 dependency upon or use of alcohol or other drugs which endanger the public by

1 impairing a practitioner's ability to practice safely;

2 (6) A practitioner has engaged in lewd or immoral conduct in connection with the
3 delivery of chemical dependency or prevention services to consumers;

4 (7) A practitioner has or is employing or assisting an uncertified person to hold himself
5 or herself out as a certified chemical dependency counselor or certified prevention
6 specialist; or

7 (8) A practitioner has engaged in false or misleading advertising.

8 No suspension or revocation may be based on a judgment as to therapeutic value of any
9 individual treatment rendered, but only upon a repeated pattern or trend of treatment resulting
10 in unacceptable results.

11 Section 23. The board may, in a disciplinary proceeding, order a practitioner to submit to
12 a reasonable physical or mental examination if the practitioner's physical or mental capacity to
13 practice safely is at issue. Failure to comply with a board order to submit to a physical or mental
14 examination renders a practitioner liable to the summary revocation procedures described in
15 section 25 of this Act.

16 Section 24. The board may impose any of the following sanctions, singly or in combination,
17 if the board finds that a practitioner has violated any part of section 22 of this Act:

18 (1) Revoke a practitioner's certification to practice for an indefinite length of time;

19 (2) Suspend a practitioner's certification for a specific or indefinite length of time;

20 (3) Censure a practitioner;

21 (4) Issue a letter of reprimand;

22 (5) Place a practitioner on probationary status and require the practitioner to report
23 regularly to the board on the matters which are the basis for probation;

24 (6) Limit the practitioner's practice to areas prescribed by the board and continue to

1 renew professional education until a satisfactory degree of skill has been attained in
2 those areas which are the basis of the probation;

3 (7) Require the practitioner to reimburse the board in an amount equal to the costs
4 incurred for the investigation and disciplinary hearing.

5 The board may withdraw the probation if the board finds the deficiencies that resulted in
6 disciplinary action have been remedied.

7 Certification shall remain in effect during the pendency of an appeal unless suspended under
8 section 25 of this Act.

9 Section 25. The board may summarily suspend a practitioner's certification in advance of
10 a final adjudication or during the appeals process if the board finds that a practitioner would
11 represent a clear and immediate danger to the public health and safety if the practitioner were
12 allowed to continue to practice. A practitioner whose certification is suspended under this
13 section is entitled to a hearing before the board within twenty days after the effective date of the
14 suspension. The practitioner may subsequently appeal the suspension to circuit court in
15 accordance with chapter 1-26.

16 Section 26. Any practitioner whose certification or registration to practice has been
17 suspended or revoked may be reinstated or a new certification or registration may be issued, as
18 the case may be, if in the discretion of the board, such action is warranted. The board may
19 require the applicant to pay all costs of the proceedings resulting in the applicant's suspension
20 or revocation of certification or registration and reinstatement or new certification or
21 registration. In addition, the board may, by rule promulgated pursuant to chapter 1-26, require
22 a fee for reinstatement, not to exceed one hundred fifty dollars.

23 Section 27. In the prosecution of any person for violation of this Act, it is not necessary to
24 allege or prove lack of valid certification. Proof of certification or registration is a matter of

1 defense to be established by the defendant.

2 Section 28. Nothing in this Act may be construed to limit the ongoing certification of any
3 person at the level of certification and for the time period established under the former South
4 Dakota Chemical Dependency Counselor Certification Board doing business as the Certification
5 Board for Alcohol and Drug Professionals

6 Section 29. That subdivision (4) of § 34-20A-2 be amended to read as follows:

7 (4) "Chemical dependency counselor," a level II or III counselor certified by the South
8 Dakota ~~Chemical Dependency Counselor Certification Board, Incorporated for~~
9 Alcohol and Drug Professionals;

10

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0399

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 56** - 01/26/2004

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

1 FOR AN ACT ENTITLED, An Act to provide that certain minors who have been adjudicated
2 for driving under the influence be defined as children in need of supervision.

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

4 Section 1. That § 32-23-21 be amended to read as follows:

5 32-23-21. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
6 drive, operate, or be in actual physical control of any motor vehicle:

7 (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the
8 person's blood as shown by chemical analysis of the person's breath, blood, or other
9 bodily substance; or

10 (2) After having consumed marijuana or any controlled drug or substance for as long as
11 physical evidence of the consumption remains present in the person's body.

12 If a person is found guilty of or adjudicated for a violation of this section, the Unified
13 Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication,
14 the court shall suspend that person's driver's license or operating privilege for a period of six
15 months for a first offense or one year for any second or subsequent offense. However, the court



1 may, in its discretion, issue an order permitting the person to operate a motor vehicle during the
2 hours and days of the week set forth in the order for purposes of the person's employment,
3 attendance at school, or attendance at court-ordered counseling programs.

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

5 26-8B-2. In this chapter and chapter 26-7A, the term, child in need of supervision, means:

- 6 (1) Any child of compulsory school age who is habitually absent from school without
7 legal excuse;
- 8 (2) Any child who has run away from home or is otherwise beyond the control of the
9 child's parent, guardian, or custodian;
- 10 (3) Any child whose behavior or condition endangers the child's own welfare or the
11 welfare of others;
- 12 (4) Any child who has violated any federal, state, or local law or regulation for which
13 there is not a penalty of a criminal nature for an adult, except violations of
14 subdivision 34-46-2(2), or petty offenses; or
- 15 (5) Any child who has violated § 35-9-2 or 32-23-21.

16 Section 3. That § 26-8C-2 be amended to read as follows:

17 26-8C-2. In this chapter and chapter 26-7A, the term, delinquent child, means any child ten
18 years of age or older who, regardless of where the violation occurred, has violated any federal,
19 state, or local law or regulation for which there is a penalty of a criminal nature for an adult,
20 except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as
21 misdemeanors, or petty offenses or any violation of § 35-9-2 or 32-23-21.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0403

SENATE ENGROSSED NO. **SB 57** - 01/26/2004

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

1 FOR AN ACT ENTITLED, An Act to repeal and revise certain provisions relating to mandatory
2 consecutive sentences.

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

4 Section 1. That § 23A-27-36 be repealed.

5 ~~—23A-27-36. If any prisoner commits a crime, upon conviction, the sentence of the prisoner~~
6 ~~shall not commence to run until the expiration of the last sentence of his imprisonment. The~~
7 ~~term "prisoner" as used in this section includes every person in custody, under arrest, or under~~
8 ~~process of law issued from a court of competent jurisdiction.~~

9 Section 2. That § 22-11A-2 be amended to read as follows:

10 22-11A-2. Any prisoner who escapes is guilty of a Class 4 felony. ~~If such prisoner is under~~
11 ~~sentence of imprisonment, his sentence on conviction for an escape shall commence following~~
12 ~~the expiration of the term of the last sentence of his imprisonment.~~

13 Section 3. That § 24-15A-20 be amended to read as follows:

14 24-15A-20. ~~Any~~ If a person is convicted of a felony while an inmate under the custody of
15 the warden of the penitentiary ~~and for which,~~ the sentence ~~is made to~~ shall run consecutively and
16 the person is not eligible for consideration for parole until serving the last of all such



1 consecutive sentences, unless the sentencing court specifically orders otherwise. In such cases
2 ~~the~~ The parole date shall be established subject to the provisions of § 24-15A-32. This section
3 does not apply to a person who commits a felony while on parole as defined in § 24-15A-15.

4 Section 4. That § 22-18-27 be amended to read as follows:

5 22-18-27. A penitentiary sentence arising from a conviction pursuant to § 22-18-26 may not
6 commence until the expiration, with no allowance of good time, of the last sentence of
7 imprisonment, ~~pursuant to § 23A-27-36.~~

8 Section 5. That § 22-11A-9 be amended to read as follows:

9 22-11A-9. A penitentiary sentence arising from a conviction under § 22-11A-8 may not
10 commence until the expiration, with no allowance of good time, of the last sentence of
11 imprisonment, ~~pursuant to § 23A-27-36.~~

12 Section 6. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 If a person is convicted of a crime committed while confined in a county or municipal jail,
15 upon conviction, the sentence does not commence to run until the expiration of the last sentence
16 of imprisonment, unless the sentencing court specifically orders otherwise.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

767J0465

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 67** - 01/27/2004

Introduced by: Senators Olson (Ed), Ham-Burr, Knudson, and Symens and Representative
Heineman

1 FOR AN ACT ENTITLED, An Act to require school districts to offer kindergarten and to
2 require content standards for kindergarten.

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

4 Section 1. That § 13-26-2 be amended to read as follows:

5 13-26-2. The school board or governing body shall operate ~~grades one~~ kindergarten through
6 grade twelve in its schools ~~for at least a nine-month regular term in any one school year.~~ The
7 school board shall operate grades one through twelve for at least a nine-month regular term in
8 any one school year, and the number of hours in a school term for kindergarten shall be set
9 pursuant to § 13-26-1. The regular school term may be conducted on a year-round basis and
10 shall begin on a date established by the school board. The Board of Education shall promulgate
11 rules pursuant to chapter 1-26 governing the operation and scheduling of year-round schools.
12 Any school board or governing body may release graduating high school seniors from school
13 before the end of the regular term if the release is for no more than three school days. Make up
14 time for school closing because of weather, disease, or emergency need not exceed ten school
15 days. Graduating seniors are excused from make up time if the make up time occurs after the



1 students have graduated or after graduation exercises have been held. If classes have been
2 convened and then are dismissed, or if classes convene at a time later in the day than normal,
3 because of inclement weather, that day constitutes a school day in session equal to the number
4 of hours planned for that day as established in the local school district calendar for the year.

5 School boards are encouraged to provide time within the regular school term for curriculum
6 and staff development which shall be in addition to the time required in this section. Each
7 school board shall determine the appropriate amount of time for this activity and how best to
8 use the time based on local needs for program development, increased parent participation,
9 student contact, teachers' preparation, or other needs of the schools in the district. School shall
10 be in session only when classes are held and as provided in §§ 13-26-4 and 13-26-4.1. A school
11 board may operate a special term during the summer months.

12 Section 2. That § 13-15-14 be amended to read as follows:

13 13-15-14. School districts entering into contractual agreements specified in § 13-15-11 or
14 13-15-1.3 are considered to be operating a school whether or not the school is located within
15 the boundary of the district. In any event, each school district, except those which have entered
16 into an approved contract under the provisions of § 13-15-11, shall operate at least an
17 instructional program for ~~grades one~~ kindergarten through grade six within the boundaries of
18 the district.

19 Section 3. That § 13-3-48 be amended to read as follows:

20 13-3-48. The secretary of the Department of Education shall prepare and submit for approval
21 of the South Dakota Board of Education academic content standards in language arts,
22 mathematics, social studies, and science for ~~grades one~~ kindergarten through grade twelve. Each
23 school district shall adopt and implement clearly defined and measurable course guidelines so
24 as to meet the state academic content standards. ~~Course guidelines for language arts and~~

- 1 ~~mathematics shall be adopted and implemented by July 1, 1999, and those for social studies and~~
- 2 ~~science shall be adopted by July 1, 2000.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

834J0244

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 72** - 02/10/2004

Introduced by: Senators Kelly, Kooistra, and Reedy and Representatives Kraus, Kroger, and Rave

1 FOR AN ACT ENTITLED, An Act to revise the provisions relating to certain municipal
2 ordinance adoption and to declare an emergency.

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

4 Section 1. That § 22-24-25.1 be amended to read as follows:

5 22-24-25.1. A county or municipality may provide, by ordinance, for a contemporary
6 community standards test to regulate the sale, distribution, and use of obscene material and to
7 regulate obscene live conduct in any commercial establishment or public place within its
8 jurisdiction. ~~The ordinance shall be referred to the electorate at the next regular municipal or~~
9 ~~general election, and upon approval of a majority of those voting in the election, become law.~~

10 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
11 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
12 effect from and after its passage and approval.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

463J0533

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 77** - 02/09/2004

Introduced by: Senators Schoenbeck, Abdallah, Albers, Dempster, and McCracken and
Representatives LaRue, Craddock, Cutler, Gillespie, Hennies, Kraus, and
Madsen

1 FOR AN ACT ENTITLED, An Act to provide that certain third and subsequent violations of
2 stalking protection orders are felony offenses.

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

4 Section 1. That § 22-19A-16 be amended to read as follows:

5 22-19A-16. If a temporary protection order or a protection order is granted pursuant to
6 §§ 22-19A-8 to 22-19A-16, inclusive, and the respondent or person to be restrained knows of
7 the order, violation of the order is a Class 1 misdemeanor. If any violation of this section
8 constitutes an assault pursuant to § 22-18-1.1, the violation is a Class 6 felony. If a respondent
9 or person to be restrained has been convicted of, or entered a plea of guilty to, two or more
10 violations of this section, the factual basis for which occurred after the date of the second
11 conviction, and occurred within five years of committing the current offense, the respondent or
12 person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any
13 proceeding under §§ 22-19A-8 to 22-19A-16, inclusive, is in addition to other civil or criminal
14 remedies.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

716J0454

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 78 - 01/27/2004

Introduced by: Senators Kelly, de Hueck, Knudson, and Schoenbeck and Representatives Solum, Konold, LaRue, Peterson (Jim), and Weems

1 FOR AN ACT ENTITLED, An Act to increase the bond requirements for certain vehicle
2 dealers.

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

4 Section 1. That § 32-6B-7 be amended to read as follows:

5 32-6B-7. Before any license is issued, the applicant shall deliver to the department a good
6 and sufficient surety bond, executed by the applicant as principal and by a surety company
7 qualified to do business in the state as surety. The bond shall be for an amount based upon the
8 type of license applied for, as follows:

- 9 (1) Vehicle dealer's license -- ~~\$10,000~~ \$25,000;
- 10 (2) Used vehicle dealer's license -- ~~\$10,000~~ \$25,000;
- 11 (3) Motorcycle dealer's license -- ~~\$2,000~~ \$5,000;
- 12 (4) Trailer dealer's license -- \$10,000 for trailers weighing 2,000 pounds or more; or
- 13 (5) Emergency vehicle dealer's license -- \$10,000.

14 The bond shall be to the department and in favor of any customer who suffers any loss that
15 may be occasioned by reason of the failure of title or by reason of any fraudulent



1 misrepresentation or breaches of warranty as to freedom from liens. The bond shall be for the
2 license period, and a new bond or a proper continuation certificate shall be delivered to the
3 department at the beginning of each license period. Any surety company ~~which~~ that pays a claim
4 against the bond of a licensee shall notify the department, in writing, that it has paid such a
5 claim. Any surety company ~~which~~ that cancels the bond of a licensee shall notify the
6 department, in writing, of ~~such~~ the cancellation, giving the reason for that cancellation. If a
7 claim is made to the department against the bond, which claim is based upon a final judgment
8 of a court of record of this state, the dealer shall execute an additional bond for the amount
9 necessary to maintain ~~such~~ the security at the original level.

10 Section 2. That § 32-6C-4 be amended to read as follows:

11 32-6C-4. Before any license may be issued, the applicant shall deliver to the department, a
12 surety bond in the amount of ~~two~~ five thousand dollars, executed by the applicant as principal
13 and by a surety company qualified to do business in the state as surety. The bond shall be to the
14 department and in favor of any customer who suffers any loss that may be occasioned by reason
15 of the failure of title or by reason of any fraudulent misrepresentation or breach of warranty as
16 to freedom from liens. The bond shall be for the license period, and a new bond or a proper
17 continuation certificate shall be delivered to the department at the beginning of each license
18 period. Any surety company ~~which~~ that pays a claim against the bond of a licensee shall notify
19 the department, in writing, that it has paid such a claim and shall state the reason and the amount
20 of the claim. Any surety company ~~which~~ that cancels the bond of a licensee shall notify the
21 department, in writing, of ~~such~~ the cancellation, giving the reason for that cancellation. If a
22 claim is made to the department against the bond, which claim is based upon a final judgment
23 of a court record of this state, the dealer shall execute an additional bond for the amount
24 necessary to maintain such security at the original level.

1 Section 3. That § 32-7B-6 be amended to read as follows:

2 32-7B-6. Before any license may be issued, the applicant shall deliver to the department, a
3 surety bond in the amount of ~~ten~~ twenty thousand dollars, executed by the applicant as principal
4 and by a surety company qualified to do business in the state as surety. If the applicant has
5 multiple dealer licenses, one bond ~~will~~ may cover all dealer licenses. The bond shall be of the
6 amount to cover bonding requirements under each license. The bond shall be to the department
7 and in favor of any customer who suffers any loss that may be occasioned by reason of the
8 failure of title or by reason of any fraudulent misrepresentation or breach of warranty as to
9 freedom from liens. The bond shall be for the license period, and a new bond or a proper
10 continuation certificate shall be delivered to the department prior to the bond's expiration. Any
11 surety company that pays a claim against the bond of a licensee shall notify the department, in
12 writing, that it has paid such a claim and shall state the reason and the amount of the claim. Any
13 surety company that cancels the bond of a licensee shall notify the department, in writing, of
14 ~~such~~ the cancellation, giving the reason for that cancellation. If a claim is made to the
15 department against the bond, which claim is based upon a final judgment of a court of record
16 of this state, the dealer shall execute an additional bond for the amount necessary to maintain
17 such security at the original level.

18 Section 4. That § 32-7A-5 be amended to read as follows:

19 32-7A-5. No license as provided in § 32-7A-3 may be issued to anyone, until the applicant
20 executes a bond issued by a company licensed to do business in this state, as surety in the
21 amount of ~~ten~~ twenty-five thousand dollars. The bond shall be payable to the Department of
22 Revenue and Regulation for the use and benefit of any purchaser or holder of lien to pay any
23 loss, damages, and expenses resulting from the failure of any title for any fraudulent
24 misrepresentation or breach of warranty as to freedom from a lien. If any claim is made to the

1 department against such bond ~~and the claim is based upon a final judgment of a court of record~~
2 ~~of this state, the dealer shall execute an additional bond for the amount not to exceed thirty~~
3 ~~thousand dollars, which claim is based upon a final judgment of a court of record of this state,~~
4 the dealer shall execute an additional bond for the amount necessary to maintain the security at
5 the original level.

6 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
7 follows:

8 To implement any increase in the amount of a dealer bond, a dealer, upon renewal of a bond
9 or upon annual renewal of a dealer license, whichever comes first, shall deliver to the
10 department an original bond or a bond rider that is issued by the surety company showing the
11 new bond amount.

12 Section 6. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
13 follows:

14 To implement any increase in the amount of a dealer bond, a dealer, upon renewal of a bond
15 or upon annual renewal of a dealer license, whichever comes first, shall deliver to the
16 department an original bond or a bond rider that is issued by the surety company showing the
17 new bond amount.

18 Section 7. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as
19 follows:

20 To implement any increase in the amount of a dealer bond, a dealer, upon renewal of a bond
21 or upon annual renewal of a dealer license, whichever comes first, shall deliver to the
22 department an original bond or a bond rider that is issued by the surety company showing the
23 new bond amount.

24 Section 8. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as

1 follows:

2 To implement any increase in the amount of a dealer bond, a dealer, upon renewal of a bond
3 or upon annual renewal of a dealer license, whichever comes first, shall deliver to the
4 department an original bond or a bond rider that is issued by the surety company showing the
5 new bond amount.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

619J0575

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 80** - 01/26/2004

Introduced by: Senators Knudson and de Hueck and Representatives Murschel, Cutler,
Deadrick (Thomas), and Williamson

1 FOR AN ACT ENTITLED, An Act to establish a time limit for the filing of a civil action in lieu
2 of a hearing in certain human rights complaints and to permit the disclosure of confidential
3 investigatory materials after a determination in a discrimination proceeding.

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

5 Section 1. That § 20-13-32.2 be amended to read as follows:

6 20-13-32.2. Prior to the issuance of a ~~probable cause~~ determination under § ~~20-13-32~~ § 20-
7 13-1.1, 20-13-28.1, or 20-13-32, information and materials regarding a charge of discrimination
8 obtained by an investigating official are confidential. Notwithstanding §§ 1-27-29 to 1-27-32,
9 inclusive, after the issuance of a ~~probable cause~~ determination and upon receipt of a written
10 request and payment of costs for copying, all investigatory materials may be disclosed to the
11 parties or their counsel of record.

12 Section 2. That § 20-13-35.1 be amended to read as follows:

13 20-13-35.1. No later than twenty days after the issuance of notice requiring the respondent
14 to answer the charge, the charging party or the respondent may elect to have the claims asserted
15 in the charge decided in a civil action, in lieu of a hearing, under the provisions of this section.



1 Any civil action shall be filed within one year of such election. Upon receipt of notice of
2 election, the Division of Human Rights or the Commission of Human Rights has no further
3 jurisdiction over the parties concerning the charge filed. The Division of Human Rights or the
4 Commission of Human Rights shall notify the parties in writing of the election and of the one
5 year limitation period in which to file a civil action. The limitation period in which to file a civil
6 action begins on the date of the notice of election. In a civil action, if the court or jury finds that
7 an unfair or discriminatory practice has occurred, it may award the charging party compensatory
8 damages. The court may grant as relief any injunctive order, including affirmative action, to
9 effectuate the purpose of this chapter. Punitive damages may be awarded under § 21-3-2 for a
10 violation of §§ 20-13-20 to 20-13-21.2, inclusive, 20-13-23.4, 20-13-23.7, or 20-13-26.
11 Attorneys' fees and costs may be awarded to the prevailing party for housing matters.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

347J0605

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 82** - 01/28/2004

Introduced by: Senators Knudson, Abdallah, de Hueck, and Moore and Representatives
Cutler, Engels, Kraus, and Williamson

1 FOR AN ACT ENTITLED, An Act to require prior notice of automatic renewal dates in certain
2 telecommunications contracts.

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

4 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any telecommunications company having a contract with a subscriber for any retail
7 telecommunications service that has a term of one year or more and that contains a provision
8 requiring the subscriber to take any action to avoid automatic renewal of the contract for a
9 renewal term greater than sixty days, shall give prior written notice to the subscriber of the
10 action that the subscriber must take to avoid automatic renewal. The telecommunications
11 company shall give notice to the subscriber not less than thirty and not more than sixty days
12 before the date of the required action. The notice shall inform the subscriber in clear, plain and
13 conspicuous language what action the subscriber must take to avoid renewal and the date by
14 which the subscriber must take such action. If the company fails to give the notice required by
15 this section, the automatic renewal provision may not be enforced against the subscriber, and



1 the subscriber may terminate the contract at will following expiration of the original term
2 without incurring any liability or penalty for early termination. The commission may promulgate
3 rules pursuant to chapter 1-26 concerning the form, content, and means of delivery of the notice
4 required by this section.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

445J0407

SENATE ENGROSSED NO. **SB 84** - 02/02/2004

Introduced by: Senators Olson (Ed), Abdallah, Albers, Brown, de Hueck, Koetzle, and Sutton (Dan) and Representatives Hackl, Garnos, Schafer, Sebert, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to require certain sellers and lessors of residential property
2 to disclose any knowledge of the existence of prior manufacturing of methamphetamines
3 and to provide for development of a disclosure form.

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

5 Section 1. That chapter 43-32 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 In any hiring of a residential premises, any lessor who has actual knowledge of the existence
8 of any prior manufacturing of methamphetamines on the premises shall disclose that
9 information to any lessee or any person who may become a lessee. If the residential premises
10 consists of two or more housing units, the disclosure requirements provided by this section only
11 apply to the unit where there is knowledge of the existence of any prior manufacturing of
12 methamphetamines.

13 Section 2. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 In any selling of a residential premises, any seller who has actual knowledge of the existence



1 of any prior manufacturing of methamphetamines on the premises shall disclose that
2 information to any purchaser or any person who may become a purchaser.

3 Section 3. That chapter 36-21A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The commission shall develop a disclosure form, to be filled out by the seller, regarding a
6 purchaser's knowledge of the existence of any prior manufacturing of methamphetamines.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

394J0546

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 93** - 02/09/2004

Introduced by: Senators Albers, Dempster, Duniphan, Koetzle, Moore, Olson (Ed), Schoenbeck, and Sutton (Dan) and Representatives Gillespie, Buckingham, Christensen, Cutler, Dykstra, Hennies, Kraus, LaRue, Murschel, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide that certain third and subsequent violations of
2 protection orders are felony offenses.

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

4 Section 1. That § 25-10-13 be amended to read as follows:

5 25-10-13. If a temporary protection order or a protection order is granted pursuant to this
6 chapter, and the respondent or person to be restrained knows of the order, violation of the order
7 is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to
8 § 22-18-1.1, the violation is a Class 6 felony. If a respondent or person to be restrained has been
9 convicted of, or entered a plea of guilty to, two or more violations of this section, the factual
10 basis for which occurred after the date of the second conviction, and occurred within five years
11 of committing the current offense, the respondent or person to be restrained is guilty of a Class
12 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition
13 to other civil or criminal remedies.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

636J0616

SENATE ENGROSSED NO. **SB 104** - 02/05/2004

Introduced by: Senators Knudson, Earley, Kelly, McCracken, Schoenbeck, and Sutton (Dan)
and Representatives Madsen, Christensen, Glenski, Heineman, Hunhoff,
McLaughlin, Nesselhuf, Schafer, and Weems

1 FOR AN ACT ENTITLED, An Act to provide certain economic development incentives in
2 specified areas.

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

4 Section 1. That § 13-13-10.2 be amended to read as follows:

5 13-13-10.2. The assessed value as determined in § 13-13-10.1 of any property in a tax
6 incremental district formed on or before December 31, 1994, and created pursuant to chapter
7 11-9 is the tax incremental base, as defined in § 11-9-19 until the tax incremental district ceases
8 to exist as provided in § 11-9-46. The assessed values, as determined in § 13-13-10.1 of any
9 property in a tax incremental district formed after December 31, 1994, and created pursuant to
10 chapter 11-9, is the total assessed value of the property determined by the Department of
11 Revenue and Regulation pursuant to § 11-9-24, until the tax incremental district ceases to exist
12 as provided in § 11-9-46. The provisions of this chapter do not apply to any tax incremental
13 district created after December 31, 1994, for industrial purposes. For the purposes of this
14 chapter, industrial includes only those activities generally recognized as industrial by zoning
15 authorities within the state, including any factory or any business engaged primarily in the



1 manufacturing or assembly of goods, the processing of raw materials, and the wholesale
2 distribution of products for resale. The provisions of this chapter do not apply to any tax
3 incremental district created after December 31, 2003, for economic development purposes. For
4 the purposes of this chapter, economic development includes any area where there is or will be
5 one or more businesses engaged in any activity defined as commercial or industrial by the
6 governing body that has zoning authority over the land contained within the tax incremental
7 district.

8 Section 2. That § 11-9-8 be amended to read as follows:

9 11-9-8. ~~In order to~~ To implement the provisions of this chapter, the resolution required by
10 § 11-9-5 shall contain findings that:

11 (1) Not less than twenty-five percent, by area, of the real property within the district is
12 a blighted area; and

13 (2) The improvement of the area is likely to enhance significantly the value of
14 substantially all of the other real property in the district;

15 ~~(3) If the municipality is a county, there are, or there is a reasonable likelihood that there~~
16 ~~will be, one or more businesses engaged in manufacturing or in the transportation,~~
17 ~~storage, processing, or sale of agricultural products, located within the district.~~

18 It is not necessary to identify the specific parcels meeting the criteria. No county may create
19 a tax incremental district located, in whole or in part, within a municipality, unless the
20 governing body of such municipality has consented thereto by resolution.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

565J0622

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 115 - 01/26/2004

Introduced by: Senators Kelly, Abdallah, Earley, Ham-Burr, Kooistra, and Olson (Ed) and
Representatives Williamson, Cutler, Glenski, Hennies, McCaulley, Murschel,
and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to prohibit the disruption of or interference with traffic
2 signal preemption systems and to provide a penalty therefor.

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

4 Section 1. No person may disrupt or interfere with the traffic signal preemption system
5 installed by any municipality, county, or other unit of local government for use by emergency
6 vehicles to improve traffic movement by temporarily controlling signalized intersections.

7 Any violation of this section is a Class 2 misdemeanor.

8 Section 2. The provisions of section 1 of this Act do not apply to any authorized emergency
9 response employee who is using the system pursuant to such employment at a time when an
10 emergency exists and there is a threat of immediate danger to life or property that reasonably
11 requires the use of the system in order to protect the public peace or safety. Moreover, the
12 provisions of section 1 of this Act do not apply to any person who is performing any authorized
13 inspection, maintenance, or repair work on the system.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

922J0570

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 117** - 02/11/2004

Introduced by: Senators Olson (Ed), Brown, Dempster, Ham-Burr, Moore, and Sutton (Dan)
and Representatives Van Etten, Garnos, Gillespie, Haverly, Hennies, Kraus,
McCoy, and Murschel

1 FOR AN ACT ENTITLED, An Act to establish a task force to improve the quality and
2 availability of child care and early learning opportunities.

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

4 Section 1. There is hereby established a task force to improve the quality and availability
5 of child care and early learning opportunities. The task force shall examine the current child care
6 and early learning system for children in South Dakota and provide recommendations for
7 improvement in a report to the Eightieth Session of the Legislative Assembly. The evaluation
8 by the task force shall include the following areas within the child care and early learning
9 system:

- 10 (1) Review the current provision of services, pending initiatives, ongoing planning
11 activities, and funding sources available;
- 12 (2) Review national best practices and incentives to improve quality with an emphasis
13 on service delivery in rural states;
- 14 (3) Identify possible gaps in the continuum of services and seek solutions building upon



1 or enhancing current systems to prevent duplication of services; and
2 (4) Identify barriers to quality child care and availability, such as caregiver turnover,
3 caregiver pay and benefits, professional development opportunities, consumer
4 awareness of quality care and learning, funding adequacy, and service access in rural
5 areas.

6 Section 2. The task force to improve child care and early learning opportunities may not
7 exceed twenty members. The Executive Board of the Legislative Research Council shall appoint
8 one senator and one representative to the task force. The secretary of social services shall
9 appoint no more than eighteen members to the task force. The secretary's appointments shall
10 include parents of children in paid child care; provider representatives from registered and
11 unregistered family day care homes, group family day care homes, and day care centers;
12 professionals in early childhood education; representatives of advocacy organizations; family
13 members with, or representatives of, a child with special health care needs who requires day
14 care; representatives of business and economic development; and representatives of the
15 Department of Education, the Department of Social Services, the Department of Health, and the
16 Department of Human Services.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

545J0694

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 160** - 01/29/2004

Introduced by: Senator Albers and Representative Dykstra

1 FOR AN ACT ENTITLED, An Act to authorize a municipality to enter into leases for
2 communications towers on water towers located on park land and for related ground
3 facilities.

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

5 Section 1. That § 9-38-35 be amended to read as follows:

6 9-38-35. Neither the governing body nor the board may permit any person to build or
7 maintain any structure within any park or parkway under the control of the board. No structure
8 may be erected or maintained within any park or parkway except such structures or buildings
9 as may be erected by the board for park purposes, and such statues, monuments, works of art,
10 or structures intended for ornamentation only as may be erected by authority of the board.
11 However, the governing body or the board may authorize the building and operation of tourism,
12 science, or information centers within any park or parkway. ~~Such~~ The centers may include the
13 administrative offices of any nonprofit association or corporation responsible for the operation
14 of the center. If a water tower is located within a park or on park land, the governing body or
15 the board may authorize the installation of communications equipment, including personal



1 wireless service equipment, on the tower or on the ground and may authorize the installation of
2 equipment to run wires or cables underground across the park land in order to connect the
3 installation with facilities located outside the park land. The governing body or board shall
4 establish the terms and conditions for any such installation in a lease or license agreement.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

570J0498

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 166** - 01/30/2004

Introduced by: Senator Greenfield

1 FOR AN ACT ENTITLED, An Act to revise certain licensing requirements for nonresident
2 dove hunters.

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

4 Section 1. That § 41-6-17 be amended to read as follows:

5 41-6-17. It is a Class 2 misdemeanor for a nonresident to hunt, take, or kill small game,
6 other than migratory waterfowl, without a nonresident small game license or in violation of the
7 conditions of the license or the rules of the Game, Fish and Parks Commission. ~~It~~ However, a
8 person who possesses a valid early fall Canada goose temporary nonresident waterfowl license
9 established by the Game, Fish and Parks Commission may hunt, take, or kill mourning dove
10 without a nonresident small game license during the applicable early fall Canada goose hunting
11 season and only in the unit permitted for the taking of the Canada geese. Except as otherwise
12 provided in this section, it is a Class 2 misdemeanor for a nonresident to hunt, take, or kill
13 mourning dove and snipe without a nonresident small game license and a migratory bird
14 certification permit, or in violation of the rules of the Game, Fish and Parks Commission. It is
15 a Class 2 misdemeanor for a nonresident to hunt, take, or kill sandhill crane without a



1 nonresident small game license or nonresident waterfowl license and a migratory bird
2 certification permit, or in violation of the rules of the Game, Fish and Parks Commission.

3 A nonresident small game license, except as otherwise provided in this title and except for
4 the taking of migratory waterfowl, entitles the licensee to all of the privileges of a resident small
5 game hunting license for two periods of five consecutive days.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

753J0751

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 170 - 01/28/2004

Introduced by: Senators Bogue, Moore, and Sutton (Duane) and Representatives Gillespie, Bartling, Deadrick (Thomas), and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise the period of time when certain penalties apply
2 for failing to file or pay certain taxes due.

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

4 Section 1. That § 10-45-48.1 be amended to read as follows:

5 10-45-48.1. Any person who:

- 6 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
7 by this chapter is guilty of a Class 6 felony;
- 8 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
9 becomes due is guilty of a Class 1 misdemeanor;
- 10 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
11 records to the secretary of revenue and regulation or his agents for the purpose of
12 examination is guilty of a Class 1 misdemeanor;
- 13 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
14 return is due is guilty of a Class 1 misdemeanor;
- 15 (5) Engages in business as a retailer under this chapter without obtaining a sales tax



1 license is guilty of a Class 1 misdemeanor;

2 (6) Engages in business as a retailer under this chapter after his sales tax license has been
3 revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

4 (7) Willfully violates any rule of the secretary of revenue and regulation for the
5 administration and enforcement of the provisions of this chapter is guilty of a Class
6 1 misdemeanor;

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

9 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
10 license after having been notified in writing by the secretary of revenue and
11 regulation that the person is a retailer subject to the provisions of the sales and use
12 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
13 person engaging in business as a retailer files an application for a sales tax license
14 and meets all lawful prerequisites for obtaining such license within three days from
15 receipt of written notice from the secretary.

16 For purposes of this section, the term, "person", includes corporate officers having control,
17 supervision of or charged with the responsibility for making tax returns or payments pursuant
18 to § 10-45-55.

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

20 10-45D-14. Any person who:

21 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
22 by §§ 10-45D-1 to 10-45D-2, inclusive, is guilty of a Class 6 felony;

23 (2) Fails to pay tax due under §§ 10-45D-1 to 10-45D-14, inclusive, within ~~thirty~~ sixty
24 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

- 1 (3) Fails to keep the records and books required by § 10-45D-13 or refuses to exhibit
2 these records to the secretary of revenue and regulation or the secretary's agents for
3 the purpose of examination is guilty of a Class 1 misdemeanor;
- 4 (4) Fails to file a return required by §§ 10-45D-1 to 10-45D-14, inclusive, within ~~thirty~~
5 sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- 6 (5) Willfully violates any rule of the secretary of revenue and regulation for the
7 administration and enforcement of the provisions of §§ 10-45D-1 to 10-45D-14,
8 inclusive, is guilty of a Class 1 misdemeanor; or
- 9 (6) Violates either subdivision (2) or subdivision (4) of this section two or more times
10 in any twelve-month period is guilty of a Class 6 felony.

11 Section 3. That § 10-46A-13.1 be amended to read as follows:

12 10-46A-13.1. Any person who:

- 13 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
14 by this chapter is guilty of a Class 6 felony;
- 15 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
16 becomes due is guilty of a Class 1 misdemeanor;
- 17 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
18 records to the secretary of revenue and regulation or his agents for the purpose of
19 examination is guilty of a Class 1 misdemeanor;
- 20 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
21 return is due is guilty of a Class 1 misdemeanor;
- 22 (5) Engages in business under this chapter without obtaining a contractor's excise tax
23 license is guilty of a Class 1 misdemeanor;
- 24 (6) Engages in business under this chapter after his contractor's excise tax license has

- 1 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 2 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times
- 3 in any twelve-month period is guilty of a Class 6 felony;
- 4 (8) Engages in business under this chapter without obtaining a contractor's excise tax
- 5 license after having been notified in writing by the secretary of revenue and
- 6 regulation that the person is a contractor subject to the provisions of the contractors'
- 7 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
- 8 if the person engaging in business files an application for a contractor's excise tax
- 9 license and meets all lawful prerequisites for obtaining such license within three days
- 10 from receipt of written notice from the secretary.

11 For purposes of this section, the term, "person", includes corporate officers having control,

12 supervision of or charged with the responsibility for making tax returns or payments pursuant

13 to § 10-46A-13.

14 Section 4. That § 10-46B-11.1 be amended to read as follows:

15 10-46B-11.1. Any person who:

- 16 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
- 17 by this chapter is guilty of a Class 6 felony;
- 18 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
- 19 becomes due is guilty of a Class 1 misdemeanor;
- 20 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
- 21 records to the secretary of revenue and regulation or his agents for the purpose of
- 22 examination is guilty of a Class 1 misdemeanor;
- 23 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
- 24 return is due is guilty of a Class 1 misdemeanor;

- 1 (5) Engages in business under this chapter without obtaining a contractor's excise tax
2 license is guilty of a Class 1 misdemeanor;
- 3 (6) Engages in business under this chapter after his contractor's excise tax license has
4 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 5 (7) Violates either subdivision (2) or subdivision (4) two or more times in any
6 twelve-month period is guilty of a Class 6 felony;
- 7 (8) Engages in business under this chapter without obtaining a contractor's excise tax
8 license after having been notified in writing by the secretary of revenue and
9 regulation that the person is a contractor subject to the provisions of the contractors'
10 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
11 if the person engaging in business files an application for a contractor's excise tax
12 license and meets all lawful prerequisites for obtaining such license within three days
13 from receipt of written notice from the secretary.

14 For purposes of this section, the term, "person", includes corporate officers having control,
15 supervision of or charged with the responsibility for making tax returns or payments pursuant
16 to § 10-46B-11.

17 Section 5. That § 10-52A-8 be amended to read as follows:

18 10-52A-8. Any person who:

- 19 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
20 by this chapter is guilty of a Class 6 felony;
- 21 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
22 becomes due is guilty of a Class 1 misdemeanor;
- 23 (3) Fails to keep the records and books required by § 10-52A-9 or refuses to exhibit these
24 records to the secretary of revenue or the secretary's agents for the purpose of

1 examination is guilty of a Class 1 misdemeanor;

2 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
3 return is due is guilty of a Class 1 misdemeanor;

4 (5) Willfully violates any rule of the secretary of revenue and regulation for the
5 administration and enforcement of the provisions of this chapter is guilty of a Class
6 1 misdemeanor; or

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

9 Section 6. That § 10-33A-17 be amended to read as follows:

10 10-33A-17. Any person who:

11 (1) Makes any false or fraudulent return in attempting to defeat or evade the
12 telecommunications gross receipts tax is guilty of a Class 6 felony;

13 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within
14 ~~thirty~~ sixty days from the date the tax becomes due is guilty of a Class 1
15 misdemeanor;

16 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
17 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;

18 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
19 return is due is guilty of a Class 1 misdemeanor;

20 (5) Engages in business as a telecommunications company under this chapter without
21 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
22 misdemeanor;

23 (6) Engages in business as a telecommunications company under this chapter after the
24 company's telecommunications gross receipts tax license has been revoked or

1 canceled by the secretary is guilty of a Class 6 felony;

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

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

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

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

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

636J0726

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 171** - 02/02/2004

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

Introduced by: Senator Olson (Ed) and Representatives Sebert, Olson (Mel), and Sigdestad

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the organization of
2 civil townships.

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

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

6 Any township may be reestablished pursuant to this Act if such township contains at least
7 five resident voters. For the purposes of this Act, the term, reestablishment, means organizing
8 a township that has been dissolved.

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

11 Any township may be reestablished subject to approval by the voters in any unorganized
12 congressional township as provided in this Act, if:

- 13 (1) The board of county commissioners proposes that the township be reestablished; or
14 (2) Fifteen percent of the registered voters residing in the affected township petition the
15 board of county commissioners proposing that the township be reestablished.



1 Section 3. That chapter 8-1 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 If one of the conditions of section 2 of this Act is met, the board of county commissioners
4 shall hold a public hearing to consider the proposed reestablishment. The hearing may be
5 conducted in conjunction with a regularly scheduled meeting of the board. At least twenty days
6 before the hearing, the board shall publish notice of the hearing in the official newspapers of the
7 county.

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

10 Following the hearing required in section 3 of this Act, the proposed reestablishment shall
11 be decided by the voters of the affected civil townships on the date set for the township election
12 by the board of county commissioners. Any registered voter residing in the affected portion of
13 an unorganized congressional township shall be afforded the opportunity to vote. If a majority
14 of the votes cast in the township are in favor of the proposed reestablishment, the proposal shall
15 be implemented as provided in this chapter.