

Senate Daily Reader

Monday, January 26, 2004

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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

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

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

400J0222

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 31** - 01/21/2004

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

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions that levy the fuel excise tax on
2 biodiesel, biodiesel blends, and ethyl alcohol.

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

4 Section 1. That § 10-47B-5 be amended to read as follows:

5 10-47B-5. A fuel excise tax is imposed on all motor fuel and special fuel that is removed
6 from a terminal in this state at the rack or used at the terminal. This tax is not imposed if the fuel
7 is withdrawn from a terminal for export by the consignee, if the consignee is specifically
8 licensed to export fuel from this state, into the state which is indicated as the destination state
9 on the bill of lading which was issued by the terminal operator for the fuel. This tax is not
10 imposed if the fuel removed is ethyl alcohol or biodiesel which has been removed by a licensed
11 blender or supplier, for resale over a terminal rack, is invoiced separately from gasoline, and is
12 not sold as an ethanol blend biodiesel blend. The tax imposed shall be at the rate indicated in
13 § 10-47B-4.

14 Section 2. That § 10-47B-6 be amended to read as follows:

15 10-47B-6. A fuel excise tax is imposed on all motor fuel or special fuel, except unblended



1 ethyl alcohol, or biodiesel imported into this state in the bulk cargo area of any motor vehicle,
2 vessel rail car, or trailer by any means other than through a terminal located in this state, upon
3 its entry into this state. The tax imposed shall be at the rate indicated in § 10-47B-4.

4 Section 3. That § 10-47B-9 be amended to read as follows:

5 10-47B-9. A fuel excise tax is imposed on unblended ethyl alcohol or biodiesel sold by an
6 ethanol producer, supplier, importer, or blender unless the sale is made to a licensed supplier
7 for resale, to a licensed blender, or to a licensed exporter for export to another state who is
8 specifically licensed to export to that state. The tax imposed shall be at the rate set for motor
9 fuel in § 10-47B-4.

10 Section 4. That § 10-47B-10 be amended to read as follows:

11 10-47B-10. A fuel excise tax is imposed on all motor fuel or special fuel which has been
12 removed from a terminal in this state at the rack by a licensed exporter for which the bill of
13 lading issued for the fuel by the terminal operator indicates a destination state other than South
14 Dakota, and the fuel is later diverted by the exporter to a destination within this state for
15 off-loading or is transferred or sold to another person within this state prior to off-loading in any
16 destination state. This tax is not imposed if the fuel is ethyl alcohol or biodiesel, the exporter
17 is also licensed as a blender or supplier, and the product is purchased and invoiced separately
18 from gasoline and not as an ethanol blend. The tax imposed shall be at the rate set for motor fuel
19 or special fuel in § 10-47B-4.

20 Section 5. That subdivisions (1B) and (39) of § 10-47B-3 be amended and that two NEW
21 SUBDIVISIONS be added to read as follows:

22 (1B) "~~Biodiesel blend,~~" a ~~blended special fuel containing a minimum of two percent by~~
23 ~~volume of biodiesel. Biodiesel means a renewable, biodegradable, mono alkyl ester~~
24 ~~combustible liquid fuel that is derived from agricultural plant oils or animal fats and~~

1 ~~that meets American Society For Testing and Materials Specification D 6751-02 for~~
2 ~~Biodiesel Fuel (B100) Blend Stock for Distillate Fuels as in effect on December 31,~~
3 ~~2002 fuel comprised of mono-alkyl esters of long chain fatty acids derived from~~
4 ~~vegetable oils or animal fats, designated B100, and meeting the requirements of the~~
5 ~~American Society of Testing and Materials D 6751 as of January 1, 2004;~~

6 (1C) "Biodiesel blend," a blended special fuel containing a minimum of two percent by
7 volume of biodiesel;

8 (12A) "Ethyl alcohol," a fuel that has been denatured as prescribed in § 10-47B-166. This
9 definition does not apply to § 10-47B-162 or 10-47B-166;

10 (39) "Special fuel," all combustible gases and liquids that are:

11 (a) Suitable for the generation of power in an internal combustion engine or
12 motor; or

13 (b) Used exclusively for heating, industrial, or farm purposes other than for the
14 operation of a motor vehicle.

15 The term includes diesel fuel, fuel oil, heating fuel, biodiesel, all special fuel blends,
16 and all kerosene products except K-1. The term does not include motor fuel, liquid
17 petroleum gas, compressed natural gas, natural gas which is not compressed natural
18 gas, compounds or blends of fuels which are prepared and used strictly as racing
19 fuels in motor vehicles operated solely off of public highways in organized racing
20 events. The term, special use fuel, is synonymous with the term, special fuel;

21

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

400J0403

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 57** - 01/20/2004

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



1 the person is not eligible for consideration for parole until serving the last of all such
2 consecutive sentences, unless the sentencing court specifically orders otherwise. ~~In such cases~~
3 ~~the~~ The parole date shall be established subject to the provisions of § 24-15A-32. This section
4 does not apply to a person who commits a felony while on parole as defined in § 24-15A-15.

5 Section 4. That § 22-18-27 be amended to read as follows:

6 22-18-27. A penitentiary sentence arising from a conviction pursuant to § 22-18-26 may not
7 commence until the expiration, with no allowance of good time, of the last sentence of
8 imprisonment, ~~pursuant to § 23A-27-36.~~

9 Section 5. That § 22-11A-9 be amended to read as follows:

10 22-11A-9. A penitentiary sentence arising from a conviction under § 22-11A-8 may not
11 commence until the expiration, with no allowance of good time, of the last sentence of
12 imprisonment, ~~pursuant to § 23A-27-36.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0381

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 62** - 01/21/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney
General

1 FOR AN ACT ENTITLED, An Act to provide a procedure for handling certain complaints
2 regarding open meeting requirements and to create an open meetings commission.

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

4 Section 1. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's
7 attorney shall take one of the following actions:

8 (1) Prosecute the case pursuant to Title 23A;

9 (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's
10 attorney shall send a copy of the complaint and any investigation file to the attorney
11 general. The attorney general shall use the information for statistical purposes and
12 may publish abstracts of such information, including the name of the government
13 body involved for purposes of public education; or

14 (3) Send the complaint and any investigation file to the South Dakota Open Meetings
15 Commission for further action.



1 Section 2. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Upon receiving a referral from a state's attorney, the South Dakota Open Meetings
4 Commission shall examine the complaint and investigatory file submitted by the state's attorney
5 and shall also consider signed written submissions by the persons or entities that are directly
6 involved. Based on the investigatory file submitted by the state's attorney and any written
7 responses, the commission shall issue a written determination on whether the conduct violates
8 this chapter, including a statement of the reasons therefor and findings of fact on each issue and
9 conclusions of law necessary for the proposed decision. The final decision shall be made by a
10 majority of the commission members, with each member's vote set forth in the written decision.
11 The final decision shall be filed with the attorney general and shall be provided to the public
12 entity and or public officer involved, the state's attorney, and any person that has made a written
13 request for such determinations. If the commission finds a violation of this chapter, the
14 commission shall issue a public reprimand to the offending official or governmental entity.
15 However, no violation found by the commission may be subsequently prosecuted by the state's
16 attorney or the attorney general. All findings and public censures of the commission shall be
17 public records pursuant to § 1-27-1. This Act is not subject to the provisions of chapter 1-26.

18 Section 3. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The South Dakota Open Meeting Commission shall be comprised of five state's attorneys
21 appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney
22 general. A chair of the commission shall be chosen annually from the membership of the
23 commission by a majority of its members.

24 Section 4. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 No member of the commission may participate as part of the commission or vote on any
3 action regarding a violation of this chapter if that member reported or was involved in the initial
4 investigation, is an attorney for anyone who reported or was involved in the initial investigation,
5 or represents or serves as a member of the governmental entity about whom the referral is made.
6 The provisions of this section do not preclude a commission member from otherwise serving
7 on the commission for other matters referred to the commission.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

667J0290

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 63** - 01/21/2004

Introduced by: Senators McCracken, Bogue, and Dennert and Representatives Hunhoff, Engels, and Smidt at the request of the Code Commission

1 FOR AN ACT ENTITLED, An Act to provide additional criteria to send a promulgated rule
2 back for further public hearing by the agency.

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

4 Section 1. That § 1-26-4.7 be amended to read as follows:

5 1-26-4.7. The Interim Rules Review Committee may require an agency to revert to any step
6 in the adoption procedure provided in § 1-26-4. The Interim Rules Review Committee may
7 require an agency to hold public hearings in addition to those provided for in § 1-26-4 if, in the
8 judgment of the committee:

9 (1) The substance of the proposed rule has been significantly rewritten from the
10 originally proposed rule which was not the result of testimony received from the
11 public hearing;

12 (2) The proposed rule needs to be significantly rewritten in order to accomplish the intent
13 of the agency; ~~or~~

14 (3) The proposed rule needs to be rewritten to address the recommendations or
15 objections of the Interim Rules Review Committee;



1 (4) The proposed rule is not a valid exercise of delegated legislative authority;

2 (5) The proposed rule is not in proper form;

3 (6) The notice given prior to the proposed rule's adoption was not sufficient to give
4 adequate notice to persons likely to be affected by the proposed rule;

5 (7) The proposed rule is not consistent with the expressed legislative intent pertaining
6 to the specific provision of law which the proposed rule implements; or

7 (9) The proposed rule is not a reasonable implementation of the law as it affects the
8 convenience of the general public or persons likely affected by the proposed rule.

9 If the committee requires an agency to revert to any step in the adoption procedure pursuant
10 to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

580J0408

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 66 - 01/21/2004

Introduced by: Senators Olson (Ed), Albers, Dempster, Earley, Ham-Burr, Reedy, and Sutton (Dan) and Representatives Olson (Mel), Adelstein, Hennies, Hunhoff, Sebert, Solum, and Thompson

1 FOR AN ACT ENTITLED, An Act to revise the definition of an abused or neglected child to
2 include exposure to the manufacturing of methamphetamines.

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

4 Section 1. That § 26-8A-2 be amended to read as follows:

5 26-8A-2. In this chapter and chapter 26-7A, the term, abused or neglected child, means a
6 child:

- 7 (1) Whose parent, guardian, or custodian; has abandoned the child or has subjected the
8 child to mistreatment or abuse;
- 9 (2) Who lacks proper parental care through the actions or omissions of the child's parent,
10 guardian, or custodian;
- 11 (3) Whose environment is injurious to the child's welfare;
- 12 (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary
13 subsistence, supervision, education, medical care, or any other care necessary for the
14 child's health, guidance, or well-being;



- 1 (5) Who is homeless, without proper care, or not domiciled with the child's parent,
2 guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- 3 (6) Who is threatened with substantial harm;
- 4 (7) Who has sustained emotional harm or mental injury as indicated by an injury to the
5 child's intellectual or psychological capacity evidenced by an observable and
6 substantial impairment in the child's ability to function within the child's normal
7 range of performance and behavior, with due regard to the child's culture;
- 8 (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the
9 child's parent, guardian, custodian, or any other person responsible for the child's
10 care; ~~or~~
- 11 (9) Who was subject to prenatal exposure to abusive use of alcohol or any controlled
12 drug or substance not lawfully prescribed by a practitioner as authorized by chapters
13 22-42 and 34-20B; or
- 14 (10) Whose parent, guardian, or custodian has knowingly exposed the child to an
15 environment used for the manufacturing of methamphetamines.