



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

455J0378

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 60** - 01/28/2004

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 make certain information kept by a law enforcement  
2 agency concerning calls for service available to the public.

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

4 Section 1. That § 23-5-10 be amended to read as follows:

5 23-5-10. Terms used in §§ 23-5-10 to 23-5-13, inclusive, mean:

- 6 (1) "Confidential criminal justice information," criminal identification information  
7 compiled pursuant to chapter 23-5, criminal intelligence information, criminal  
8 investigative information, criminal statistics information made confidential pursuant  
9 to § 23-6-14, and criminal justice information otherwise made confidential by law;
- 10 (2) "Criminal history information," arrest information, conviction information,  
11 disposition information and correction information compiled by the attorney general  
12 pursuant to chapter 23-5, commonly referred to as a "rap sheet";
- 13 (3) "Criminal intelligence information," information associated with an identifiable  
14 individual, group, organization, or event compiled by a law enforcement agency: in  
15 the course of conducting an investigation into a criminal conspiracy, projecting a



1 potential criminal operation, or producing an estimate of future criminal activities;  
2 or in relation to the reliability of information derived from reports of informants or  
3 investigators or from any type of surveillance;

4 (4) "Criminal investigative information," information associated with an individual,  
5 group, organization, or event compiled by a law enforcement agency in the course of  
6 conducting an investigation of a crime or crimes. This includes information about a  
7 crime or crimes derived from reports of officers, deputies, agents, informants, or  
8 investigators or from any type of surveillance;

9 (5) "Call for service," an event occurring in or near the jurisdiction of a law enforcement  
10 agency that requires law enforcement response, evaluation, action, or documentation.

11 Section 2. That § 23-5-11 be amended to read as follows:

12 23-5-11. ~~Section~~ The provisions of § 1-27-1 does do not apply to confidential criminal  
13 justice information. Information about calls for service revealing the date, time, and general  
14 location and general subject matter of the call is not confidential criminal justice information  
15 and may be released to the public, at the discretion of the executive of the law enforcement  
16 agency involved, unless the information contains intelligence or identity information that would  
17 jeopardize an ongoing investigation. The provisions of this section do not supersede more  
18 specific provisions regarding public access or confidentiality elsewhere in state or federal law.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

892J0274

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 68** - 01/28/2004

Introduced by: Senators Schoenbeck and de Hueck and Representatives Madsen and Engels

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the receipt of notice  
2 of an appeal in an administrative appeal.

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

4 Section 1. That § 1-26-31 be amended to read as follows:

5 1-26-31. An appeal shall be taken by serving a copy of a notice of appeal upon the adverse  
6 party, upon the agency, and upon the hearing examiner, if any, who rendered the decision, and  
7 by filing the original with proof of such service in the office of the clerk of courts of the county  
8 in which the venue of the appeal is set, within thirty days after the agency served notice of the  
9 final decision or, if a rehearing is authorized by law and is requested, within thirty days after  
10 notice has been served of the decision thereon. Failure to serve notice of the appeal upon the  
11 hearing examiner does not constitute a jurisdictional bar to the appeal.



# 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

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

646J0671

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 99** - 01/28/2004

Introduced by: Senator Knudson and Representative McCaulley

1 FOR AN ACT ENTITLED, An Act to revise certain statutes governing trusts.

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

3 Section 1. That chapter 59-7 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 All acts done by an agent pursuant to a durable power of attorney have the same effect and  
6 inure to the benefit of and bind the principal and the principal's successors in interest as if done  
7 by the principal. Unless the instrument states a time of termination, the authority of the agent  
8 is exercisable notwithstanding the lapse of time since the execution of the instrument.

9 Section 2. That chapter 59-6 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A durable power of attorney that purports to be signed by the principal named in the durable  
12 power of attorney is presumed valid. Another person may rely on the presumption of validity  
13 unless the person has actual knowledge that the power was not validly executed or that the  
14 power was revoked.

15 Except as provided in this section, any person who refuses to accept the authority of the



1 agent to exercise a power granted under the durable power of attorney is liable to the principal  
2 and to the principal's heirs, assigns, and the personal representative or successor in interest of  
3 the principal's estate in the same manner as the person would be liable had the person refused  
4 to accept the authority of the principal to act on the principal's own behalf. The person found  
5 liable for refusing to accept the authority of an agent is liable for damages and costs, including  
6 reasonable attorney's fees.

7 A person who refuses to accept the authority of an agent to exercise a power granted under  
8 a durable power of attorney is not liable pursuant to this section if:

- 9 (1) The person has actual knowledge of the revocation of the durable power of attorney  
10 before the exercise of the power;
- 11 (2) The duration of the durable power of attorney specified in the durable power of  
12 attorney has expired;
- 13 (3) The person has actual knowledge of the death of the principal;
- 14 (4) The person reasonably believes that the durable power of attorney is not valid under  
15 the law of this state;
- 16 (5) The person reasonably believes that the durable power of attorney does not grant the  
17 agent authority to perform the transaction requested; or
- 18 (6) The person reasonably believes that a course of conduct or refusal to act as proposed  
19 by the agent is contrary to the wishes of the principal as expressed to the person.

20 This section does not negate the liability that a person would have to the principal or the  
21 agent under another form of power of attorney, under the common law, or otherwise.

22 Section 3. That chapter 59-3 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 An agent may request, receive, and review any information regarding the principal's physical

1 or mental health, including legal, medical, and hospital records, execute any release or other  
2 documents that may be required in order to obtain such information, and disclose such  
3 information to such persons, organizations, firms, or corporations as the agent shall deem  
4 appropriate.

5 Section 4. That chapter 51A-6A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 In addition to the powers granted to the director and the commission in §§ 51A-6A-35 to  
8 51A-6A-46, inclusive, the powers granted to the director and commission pursuant to §§ 51A-  
9 15-11 to 51A-15-44, inclusive, and 51A-2-25 to 51A-2-27, inclusive, may be utilized by the  
10 director and the commission with regard to trust companies. The powers granted by §§ 51A-15-  
11 11 to 51A-15-44, inclusive, and 51A-2-25 to 51A-2-27, inclusive, may be used by the director  
12 and the commission in connection with a trust company as a supplement to or as an independent  
13 alternative to the powers granted in §§ 51A-6A-35 to 51A-6A-46, inclusive.

14 Section 5. That chapter 51A-6A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 The provisions of §§ 51A-6A-2 and 51A-6A-39 do not apply to the disclosure of  
17 information by the director or the commission in connection with the institution and prosecution  
18 of an action against a trust company under §§ 51A-15-11 to 51A-15-44, inclusive, or 51A-2-25  
19 to 51A-2-27, inclusive, or 51A-6A-35 to 51A-6A-46, inclusive. Disclosure of confidential  
20 information may be made only to formal governmental regulatory bodies which have a need for  
21 the confidential information.

22 Section 6. That § 55-3-39 be amended to read as follows:

23 55-3-39. A general law or a state jurisdiction provision stating that the laws of this state  
24 govern is valid, effective, and conclusive for the trust if all of the following are true:

- 1       (1)   Some or all of the trust assets are deposited in this state or physical evidence of such  
2           assets is held in this state and the trust is being administered by a qualified person;  
3           in this subdivision, deposited in this state, includes being held in a checking account,  
4           time deposit, certificate of deposit, brokerage account, trust company fiduciary  
5           account, or other similar account or deposit that is located in this state including  
6           South Dakota investments;
- 7       (2)   A trustee is a qualified person who is designated as a trustee under the governing  
8           instrument, a successor trusteeship, or designated by a court having jurisdiction over  
9           the trust; and
- 10      (3)   The administration, for example, physically maintaining trust records in this state and  
11           preparing or arranging for the preparation of, on an exclusive basis or a nonexclusive  
12           basis, an income tax return that must be filed by the trust, occurs wholly or partly in  
13           this state.

14       The State of South Dakota and its courts have jurisdiction over a trust created in a foreign  
15       jurisdiction if the administration of the trust meets the three requirements set forth in this  
16       section.

17       Nothing in this section may be construed to be the exclusive means of providing a valid  
18       effective and conclusive state jurisdiction provision.

19       Section 7. That § 55-15-6 be amended to read as follows:

20       55-15-6. The unitrust amount shall be determined as follows:

- 21      (1)   For the first three accounting periods of the trust, the unitrust amount for a current  
22           valuation year of the trust shall be three percent, or such higher percentage specified  
23           by the terms of the governing instrument or by the election of the trustee, the  
24           disinterested person, or the court, of the net fair market value of the assets held in the

- 1 trust on the first business day of the current valuation year;
- 2 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a  
3 current valuation year of the trust shall be three percent, or such higher percentage  
4 specified by the terms of the governing instrument or by the election of the trustee,  
5 the disinterested person, or the court, of the average of the net fair market value of  
6 the assets held in the trust on the first business day of the current valuation year and  
7 the net fair market value of the assets held in the trust on the first business day of  
8 each prior valuation year, as defined in subdivision 55-15-1(10);
- 9 (3) The percentage that may be elected in determining the unitrust amount shall be a  
10 reasonable current return from the trust, taking into account the intentions of the  
11 trustor of the trust as expressed in the governing instrument, the needs of the  
12 beneficiaries, general economic conditions, projected current earnings and  
13 appreciation for the trust, and projected inflation and its impact on the trust.  
14 However, if such percentage is three percent or greater, or if no percentage is  
15 specified, then that percentage shall be three percent;
- 16 (4) The unitrust amount for the current valuation year shall be proportionately reduced  
17 for any distributions, in whole or in part, other than distributions of the unitrust  
18 amount, and for any payments of expenses, including debts, disbursements and taxes,  
19 from the trust within a current valuation year that the trustee determines to be  
20 material and substantial, and shall be proportionately increased for the receipt, other  
21 than a receipt that represents a return on investment, of any additional property into  
22 the trust within a current valuation year;
- 23 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount  
24 on a daily basis;

1 (6) If the net fair market value of an asset held in the trust has been incorrectly  
2 determined either in a current valuation year or in a prior valuation year, the unitrust  
3 amount shall be increased in the case of an undervaluation, or be decreased in the  
4 case of an overvaluation, by an amount equal to the difference between the unitrust  
5 amount determined based on the correct valuation of the asset and the unitrust  
6 amount originally determined;

7 (7) In determining the net fair market value of the assets held in trust, the determination  
8 may not include the value of any residential property or any tangible personal  
9 property that, as of the first business day of the current valuation year, one or more  
10 income beneficiaries of the trust have or had the right to occupy, or have or had the  
11 right to possess or control, other than in a capacity as trustee, and instead the right of  
12 occupancy or the right of possession or control shall be deemed to be the unitrust  
13 amount with respect to the residential property or the tangible personal property; or  
14 any asset specifically given to a beneficiary under the terms of the trust and the return  
15 on investment on that asset, which return on investment shall be distributed to the  
16 beneficiary.

17 Section 8. That § 55-3-35 be amended to read as follows:

18 55-3-35. If a party to the proceeding has the same interest as a person under disability, it is  
19 not necessary to serve the person under a disability. If there is no party to the proceeding who  
20 has the same interest as a person under disability, notice shall be served on that person's  
21 conservator, if a conservator has been appointed. If the person under disability is a minor and  
22 no conservator has been appointed, notice shall be served on a guardian of the minor if one has  
23 been appointed, or if no guardian has been appointed, then on the natural parents, or if there are  
24 no natural parents alive, then upon the adoptive parent or parents of the minor. If there are no

1 adoptive parents of a minor, then notice shall be served upon any person responsible for or who  
2 has assumed responsibility for the minor's care or custody. If the person under a disability is an  
3 adult and no conservator has been appointed, notice shall be served on an agent under a durable  
4 power of attorney, a guardian of the adult person, a trustee responsible for the management of  
5 all or a portion of the adult person's estate, or any person responsible for or who has assumed  
6 responsibility for the adult person's care or custody.

7 Section 9. That § 55-3-24 be amended to read as follows:

8 55-3-24. An irrevocable trust may be modified or terminated upon the consent of all of the  
9 beneficiaries if continuance of the trust on its existing terms is not necessary to carry out a  
10 material purpose. Whether or not continuance of the trust on its existing terms is necessary to  
11 carry out a material purpose, an irrevocable trust may be modified or terminated upon the  
12 consent of the trustor and all of the beneficiaries. Upon termination of a trust under this section,  
13 the trustee shall distribute the trust property in accordance with the trustor's probable intention  
14 or in any other manner as agreed by all the beneficiaries. The trustor's powers with respect to  
15 termination or modification may be exercised by an agent under a power of attorney only to the  
16 extent the power of attorney expressly so authorizes. A conservator may exercise the trustor's  
17 powers under this section only if approved by the court supervising the conservatorship. If the  
18 consent of a person under disability is required, such consent may be given by any person upon  
19 whom notice may be served pursuant to § 55-3-35.

20 Section 10. That § 21-22-9 be amended to read as follows:

21 21-22-9. Any trustee or beneficiary of any other trust may, if the trustee is a resident of this  
22 state or if any of the trust estate has its situs in this state, at any time petition the circuit court,  
23 the county where such petition is to be filed to be determined the same as in the case of a court  
24 trust, to exercise supervision. Upon such petition being filed the court must fix a time and place

1 for hearing thereon, notice to be given as provided by this chapter and upon such hearing shall  
2 enter an order assuming supervision unless good cause to the contrary is shown. Thereupon the  
3 trustee shall within thirty days, file the information required pursuant to § 21-22-3 by a trustee  
4 under a court trust, and at all times thereafter the court shall have the same powers as over a  
5 court trust. If the petition for court supervision includes the information required pursuant to  
6 § 21-22-3, the trustee or beneficiary may in the same petition request court action as to any  
7 matter relevant to the administration of the trust, including the termination of court supervision.  
8 Upon the hearing on the petition, the court shall enter an order assuming supervision unless  
9 good cause to the contrary is shown and further shall make such order or give such directions  
10 to the trustee as the court shall determine.

11 Section 11. That § 55-3-29 be amended to read as follows:

12 55-3-29. Without approval of court and except as otherwise provided by the terms of the  
13 trust, a trustee may combine two or more trusts into a single trust or divide a trust into two or  
14 more separate trusts, if the combination or division does not impair the rights of any of the  
15 beneficiaries or substantially affect the accomplishment of the trust purposes. On petition by a  
16 trustee or beneficiary, the court may affirm or prevent a proposed combination or division; and,  
17 if the terms of the trust instruments creating the trusts are inconsistent, the court shall resolve  
18 such inconsistencies in its order by establishing the terms of the trust that will survive the  
19 combination or division.

20 Section 12. That § 55-3-27 be amended to read as follows:

21 55-3-27. Except as otherwise provided by the terms of the trust, if the value of the trust  
22 property of a noncharitable trust is less than ~~thirty~~ fifty thousand dollars, the trustee may  
23 terminate the trust. On petition by a trustee or beneficiary, the court may modify or terminate  
24 a noncharitable trust or appoint a new trustee if it determines that the value of the trust property

1 is insufficient to justify the cost of administration involved. Upon termination of a trust under  
2 this section, the trustee shall distribute the trust property in accordance with the trustor's  
3 probable intention. The existence of spendthrift or similar protective provisions in a trust does  
4 not make this section inapplicable. The court, when considering the termination of a trust  
5 containing spendthrift or similar protective provisions, shall consider the feasibility of  
6 appointing a new trustee to continue the trust.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

493J0632

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 147** - 01/28/2004

Introduced by: Senators Moore and Olson (Ed) and Representatives Michels and Hunhoff

1 FOR AN ACT ENTITLED, An Act to establish a fund for rehabilitation services for persons  
2 with spinal cord or traumatic brain injuries and the research of spinal cord and traumatic  
3 brain injuries and to create an advisory council for the disbursement of the fund.

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

5 Section 1. There is established in the state treasury the spinal cord and traumatic brain injury  
6 fund. Any liquidated costs collected pursuant to section 2 of this Act and any federal grants,  
7 private donations, and other moneys designated for the spinal cord and traumatic brain injury  
8 fund shall be deposited in the fund. The moneys in the fund shall be appropriated by the  
9 Legislature to the Department of Human Services for the purpose of funding rehabilitation  
10 services for persons with spinal cord or traumatic brain injuries and funding research projects  
11 that promote the advancement of knowledge in the area of spinal cord and traumatic brain  
12 injury. Notwithstanding § 4-8-21, any unexpended or unobligated moneys may not revert to the  
13 fund from which appropriated.

14 Section 2. Any person convicted of any violation of § 32-23-1 shall, in addition to any other  
15 penalty, assessment, or fine provided by law, pay a liquidated cost in the amount of twenty-five



1 dollars, which shall be deposited in the spinal cord and traumatic brain injury fund.

2 Section 3. There is created an advisory council on spinal cord and traumatic brain injury.

3 The advisory council shall be composed of nine members, two of which shall be persons who

4 have a spinal cord injury and one who has had a traumatic brain injury. The balance of the

5 advisory council shall consist of physicians and other allied health professionals who have

6 expertise in the area of spinal cord and traumatic brain injuries. The secretary of the Department

7 of Human Services shall appoint the members. Terms on the advisory council shall be four

8 years, with no member serving more than two terms. Any member unwilling or unable to fulfill

9 a term shall be succeeded by a member chosen by the secretary to fulfill that term. If the

10 unexpired balance of the replaced member's term is less than eighteen months, the succeeding

11 member may be reappointed by the secretary twice. The advisory council shall provide advice

12 and expertise to the department regarding the disbursement of the funds in the spinal cord and

13 traumatic brain injury fund.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

490J0471

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 154 - 01/28/2004**

Introduced by: Senators Knudson and de Hueck and Representatives Madsen, Cutler,  
Deadrick (Thomas), and Engels

1 FOR AN ACT ENTITLED, An Act to revise certain filing fees collected by the secretary of  
2 state.

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

4 Section 1. That § 47-34-54 be amended to read as follows:

5 47-34-54. The secretary of state shall charge and collect for:

6 (1) Filing the original articles of organization and issuing certificates of organization, in  
7 the case of a domestic limited liability company or filing, registering, and issuing a  
8 certificate of authority in the case of a foreign liability company; ~~if the total agreed~~  
9 ~~contributions of the limited liability company are;~~ a filing fee of two hundred fifty  
10 dollars;

11	<del>—————</del> \$25,000 or less	\$ 100
12	<del>—————</del> Over \$25,000 and not exceeding 100,000	—125
13	<del>—————</del> Over \$100,000 and not exceeding 500,000	—200
14	<del>—————</del> Over \$500,000 and not exceeding 1,000,000	—300
15	<del>—————</del> Over \$1,000,000 and not exceeding 1,500,000	—400



1	<del>Over \$1,500,000 and not exceeding 2,000,000</del>	<del>—500</del>
2	<del>Over \$2,000,000 and not exceeding 2,500,000</del>	<del>—600</del>
3	<del>Over \$2,500,000 and not exceeding 3,000,000</del>	<del>—700</del>
4	<del>Over \$3,000,000 and not exceeding 3,500,000</del>	<del>—800</del>
5	<del>Over \$3,500,000 and not exceeding 4,000,000</del>	<del>—900</del>
6	<del>Over \$4,000,000 and not exceeding 4,500,000</del>	<del>1,000</del>
7	<del>Over \$4,500,000 and not exceeding 5,000,000</del>	<del>1,100</del>
8	<del>For each additional \$500,000, \$250 in addition to \$1,100.</del>	

9           (2) For amending the articles of organization in the case of a domestic limited liability  
10           company or amending the registration in the case of a foreign limited liability  
11           company, a filing fee of ~~fifty dollars; together with the appropriate fee set out in~~  
12           ~~subdivision (1) of this section if the amendment is to increase the amount of capital~~  
13           one hundred seventy-five dollars;

14           (3) For filing articles of dissolution, issuing a certificate of dissolution, and canceling the  
15           certificate of organization, ten dollars;

16           (4) For filing a statement of change of address of registered office or change of registered  
17           agent, or both, ten dollars;

18           (5) For filing articles of merger or consolidation, fifty dollars;

19           (6) An annual tax of fifty dollars, due and payable January second of each year. This tax  
20           is delinquent if not paid by February first and a penalty of fifty dollars shall also be  
21           assessed.

22           Section 2. That § 47-34A-212 be amended to read as follows:

23           47-34A-212. The secretary of state shall charge and collect for:

24           (a) Filing the first annual report ~~if the total agreed contribution of the limited liability~~  
25           ~~company are~~, a filing fee of two hundred fifty dollars;

1	<del>—————</del> \$25,000 or less	\$ 100
2	<del>—————</del> Over \$25,000 and not exceeding 100,000	—125
3	<del>—————</del> Over \$100,000 and not exceeding 500,000	—200
4	<del>—————</del> Over \$500,000 and not exceeding 1,000,000	—300
5	<del>—————</del> Over \$1,000,000 and not exceeding 1,500,000	—400
6	<del>—————</del> Over \$1,500,000 and not exceeding 2,000,000	—500
7	<del>—————</del> Over \$2,000,000 and not exceeding 2,500,000	—600
8	<del>—————</del> Over \$2,500,000 and not exceeding 3,000,000	—700
9	<del>—————</del> Over \$3,000,000 and not exceeding 3,500,000	—800
10	<del>—————</del> Over \$3,500,000 and not exceeding 4,000,000	—900
11	<del>—————</del> Over \$4,000,000 and not exceeding 4,500,000	1,000
12	<del>—————</del> Over \$4,500,000 and not exceeding 5,000,000	1,100
13	<del>—————</del> For each additional \$500,000, \$250 in addition to \$1,100.	

14 ~~—————~~ The maximum amount charged under this subsection together with any subsequent  
15 payments under subsection (b) may not exceed sixteen thousand dollars. The filing  
16 fee required pursuant to this subsection is not applicable if the limited liability  
17 company has previously paid the fee required pursuant to subdivision 47-34-54(1).

18 (b) Filing any subsequent annual report that reflects additional contribution in excess of  
19 those stated in the last prior report, any additional fee necessary to make the  
20 cumulative fee match the cumulative agreed contributions as provided in subsection  
21 (a); above the agreed contributions as set forth in the last previous annual report  
22 consistent with subsection (a).

23 (c) A reporting fee of fifty dollars, due and payable with the filing of all annual report,  
24 after the first annual report required in § 47-34A-211(c).

25 Section 3. That § 47-34A-1206 be amended to read as follows:

26 47-34A-1206. The secretary of state may charge the following fees:

- 1 (a) For amending or restating the articles of organization in the case of a domestic  
2 limited liability company or amending the registration in the case of a foreign limited  
3 liability company, a filing fee of ~~fifty~~ one hundred seventy-five dollars;
- 4 (b) For filing articles of termination, ten dollars;
- 5 (c) For filing articles of merger, fifty dollars;
- 6 (d) For filing a statement of dissociation, ten dollars;
- 7 (e) For filing an application to reserve a name, twenty dollars;
- 8 (f) For issuing a certificate of existence, fifteen dollars;
- 9 (g) For filing an application for registration of name, one dollar for each month, or  
10 fraction thereof, between the date of filing such application and December thirty-first  
11 of the calendar year in which such application is filed;
- 12 (h) For filing an annual renewal of registration, a limited liability company which has in  
13 effect a registration of its name, may renew such registration from year to year by  
14 annually filing an application for renewal setting forth the facts required to be set  
15 forth in an original application for registration and a certificate of good standing as  
16 required for the original registration and by paying a fee of ten dollars. A renewal  
17 application may be filed between the first day of October and the thirty-first day of  
18 December in each year; and shall extend the registration for the following year;
- 19 (i) For acting as agent for service of process the secretary of state shall charge and  
20 collect at the time of such service twenty-five dollars which may be recoverable as  
21 taxable costs by the party to the suit or action causing the service to be made if the  
22 party prevails in the suit or action.

23 Each limited liability company, domestic or foreign, that fails or refused to file its annual  
24 report for any year within the time prescribed is subject to a penalty of fifty dollars to be

1 assessed by the secretary of state.

2 Section 4. That § 47-9-7 be amended to read as follows:

3 47-9-7. The secretary of state shall charge and collect for:

4 (1) Filing articles of incorporation and issuing a certificate of incorporation or filing an  
5 application of a foreign corporation for a certificate of authority to transact business  
6 in this state and issuing the certificate, two hundred fifty dollars;

7	<del>Authorized capital stock of \$25,000 or less</del>	<del>\$ 100</del>
8	<del>Over \$25,000 and not exceeding 100,000</del>	<del>125</del>
9	<del>Over \$100,000 and not exceeding 500,000</del>	<del>200</del>
10	<del>Over \$500,000 and not exceeding 1,000,000</del>	<del>300</del>
11	<del>Over \$1,000,000 and not exceeding 1,500,000</del>	<del>400</del>
12	<del>Over \$1,500,000 and not exceeding 2,000,000</del>	<del>500</del>
13	<del>Over \$2,000,000 and not exceeding 2,500,000</del>	<del>600</del>
14	<del>Over \$2,500,000 and not exceeding 3,000,000</del>	<del>700</del>
15	<del>Over \$3,000,000 and not exceeding 3,500,000</del>	<del>800</del>
16	<del>Over \$3,500,000 and not exceeding 4,000,000</del>	<del>900</del>
17	<del>Over \$4,000,000 and not exceeding 4,500,000</del>	<del>1,000</del>
18	<del>Over \$4,500,000 and not exceeding 5,000,000</del>	<del>1,100</del>
19	<del>For each additional \$500,000, \$250 in addition to \$1,100.</del>	

20 ~~For purposes only of computing fees under this section, the dollar value of each~~  
21 ~~authorized share having a par value shall be equal to par value and the value of each~~  
22 ~~authorized share having no par value shall be equal to one hundred dollars per share.~~  
23 ~~The maximum amount charged under this subdivision may not exceed sixteen~~  
24 ~~thousand dollars;~~

25 (2) Filing articles of amendment and issuing a certificate of amendment, fifty one  
26 hundred seventy-five dollars;

- 1 (3) Filing restated articles of incorporation, ~~fifty~~ one hundred seventy-five dollars;
- 2 (4) Filing articles of merger or consolidation and issuing a certificate of merger or  
3 consolidation, fifty dollars;
- 4 (5) Filing an application to reserve a corporate name, twenty dollars;
- 5 (6) Filing a notice of transfer of a reserved corporate name, ten dollars;
- 6 (7) Filing a statement of change of address of registered office or change of registered  
7 agent, or both, ten dollars;
- 8 (8) Filing a statement of the establishment of a series of shares, fifty dollars;
- 9 (9) Filing a statement of cancellation of shares, fifty dollars;
- 10 (10) Filing a statement of reduction of stated capital, fifty dollars;
- 11 (11) Filing a statement of revocation of voluntary dissolution proceedings, ten dollars;
- 12 (12) Filing articles of dissolution, ten dollars;
- 13 (13) Filing an application of a foreign corporation for an amended certificate of authority  
14 to transact business in this state and issuing an amended certificate of authority, ~~fifty~~  
15 one hundred seventy-five dollars;
- 16 (14) Filing a copy of an amendment to the articles of incorporation of a foreign  
17 corporation holding a certificate of authority to transact business in this state, ~~fifty~~  
18 one hundred seventy-five dollars;
- 19 (15) Filing a copy of articles of merger of a foreign corporation holding a certificate of  
20 authority to transact business in this state, fifty dollars;
- 21 (16) Filing an application for withdrawal of a foreign corporation and issuing a certificate  
22 of withdrawal, ten dollars;
- 23 (17) Filing any other statement or report except an annual report, of a domestic or foreign  
24 corporation, ten dollars;

- 1       (18) Filing by a domestic corporation of articles of amendment, restated articles of  
2       incorporation, or articles of merger or consolidation in which the surviving  
3       corporation is a domestic corporation, which provides authority to increase the  
4       number of authorized shares of such corporation, in addition to the other fees  
5       imposed by this section, an additional fee shall be charged as shall make, together  
6       with the fee paid at the time of the incorporation, a total sum equal to the fee which  
7       would be required under this section in case the corporation had been incorporated  
8       for such total increased capitalization;
- 9       (19) Filing by a foreign corporation of articles of amendment or articles of merger when  
10      the surviving or new corporation is a foreign corporation, which articles provide  
11      authority to increase the number of authorized shares of such foreign corporation, in  
12      addition to the other fees imposed by this section, an additional fee shall be charged  
13      as shall make, together with the fee paid at the time of authorization based on the fee  
14      schedule in subdivision (1) of this section, a total sum equal to the fee which would  
15      be required under this section in the case the corporation had been authorized for  
16      such total increased capitalization;
- 17      (20) All articles of amendment or articles of merger if the surviving or new corporation  
18      is a foreign corporation shall be filed with the secretary of state within thirty days  
19      after they have been filed with the secretary of state or other proper officer of the  
20      state wherein the corporation is organized. In case of failure to so file within the time  
21      specified in this subdivision, the corporation shall pay to the secretary of state on the  
22      filing of such articles of amendment or articles of merger a penalty of twenty-five  
23      dollars;
- 24      (21) Filing an annual report of a domestic or foreign corporation, thirty dollars;

- 1       (22) Each corporation, domestic or foreign, that fails or refuses to file its annual report for
- 2             any year within the time prescribed by this chapter is subject to a penalty of fifty
- 3             dollars to be assessed by the secretary of state;
- 4       (23) Issuing a certificate of existence, fifteen dollars;
- 5       (24) Filing articles of correction, twenty dollars.

# 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

273J0668

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 177** - 01/28/2004

Introduced by: Senators Reedy, Brown, Moore, and Vitter and Representatives Kroger, Hunhoff, Michels, Nesselhuf, and Schafer

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to contacts between  
2 members of the governing body and municipal employees in municipalities using the city  
3 manager form of government.

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

5 Section 1. That § 9-10-16 be amended to read as follows:

6 9-10-16. ~~Except for the purpose of inquiry the governing body and its members shall deal~~  
7 ~~with the administrative service solely through the manager, and~~ The governing body may by  
8 ordinance set forth the conditions and situations in which the governing body and its members  
9 may establish verbal or written contact with the administrative service, which may include  
10 contact for purposes of inquiry or discussion of official business of the municipality and other  
11 contacts not related to the official business of the municipality. However, it is a Class 2  
12 misdemeanor for any member of the governing body to give orders to any subordinate of the  
13 manager. Upon conviction of a violation of this section, the court in which such conviction is  
14 had may, in its discretion, enter an order removing the member of the governing body so  
15 convicted from his office.

