



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0324

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1022** -

01/27/2004

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 regarding the American Dairy  
2 Association and the state dairy check-off program.

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

4 Section 1. That chapter 40-31 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The secretary of agriculture may enter agreements to fund or conduct dairy promotion efforts  
7 in cooperation with regional and national dairy promotion programs, on behalf of the American  
8 Dairy Association of South Dakota.

9 Section 2. That § 40-31-2 be amended to read as follows:

10 40-31-2. There is hereby created an American Dairy Association of South Dakota. This  
11 association shall be composed of three dairy producers and two dairy processors who are  
12 residents of this state; ~~provided that no individual engaged in the production or distribution of~~  
13 ~~butter substitutes shall be eligible to serve on this commission;~~ with the secretary of agriculture  
14 or ~~his~~ the secretary's representative ~~and,~~ the head of the dairy ~~Husbandry~~ department of the



1 South Dakota State University, and the state executive member of the American Dairy  
2 Association acting as ~~ex-officio~~ nonvoting members.

3 Section 3. That § 40-31-3 be amended to read as follows:

4 40-31-3. The Governor shall appoint the producer members of the American Dairy  
5 Association ~~shall be appointed by the Governor~~ from among a list of nominees supplied by the  
6 ~~South Dakota Federation of Dairy Farmers, said list to be at least twice the number of~~  
7 ~~appointments to be made~~ any statewide nonprofit dairy organization incorporated under state  
8 law, for a period of three years, beginning on July first with one producer member to be  
9 appointed each year as the terms of previous appointees ~~shall expire~~ expire. The list of nominees  
10 shall comprise at least twice the number of appointments to be made.

11 Section 4. That § 40-31-9 be amended to read as follows:

12 40-31-9. There is hereby levied an assessment of ~~not less than .5 of one percent and not~~  
13 ~~more than two percent of the gross value of~~ ten cents per hundred weight on all milk and cream  
14 produced in the ~~State of South Dakota, which rate shall be established and set on or before July~~  
15 ~~first of each calendar year by the American Dairy Association, provided, however, that~~ state.  
16 However, the provisions of this section ~~shall do~~ do not apply to milk and cream produced outside  
17 of the ~~State of South Dakota~~ state or to milk and cream consumed upon the farm where  
18 produced. ~~Any change in the assessment rate can only be made in increments of not to exceed~~  
19 ~~.25 of one percent per annum.~~

20 Section 5. That § 40-31-12 be amended to read as follows:

21 40-31-12. All dealers and producers charged under this chapter with the obligation of  
22 collecting and remitting the assessment imposed by this chapter shall keep a complete and  
23 accurate record of all milk and cream subject to assessments by this chapter which may be  
24 handled. ~~Such~~ The record shall be in such form and contain such information and be reported

1 to the South Dakota Department of Agriculture at such times as the American Dairy Association  
2 may prescribe, ~~and~~. The record shall be preserved by the person charged with ~~their making~~  
3 keeping the record for a period of two years ~~and shall be~~. The record is subject to inspection by  
4 the South Dakota Department of Agriculture, ~~or its authorized agents or employees.~~

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0388

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1059** -

01/22/2004

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Game, Fish and Parks

1 FOR AN ACT ENTITLED, An Act to permit certain persons to discharge pyrotechnics on land  
2 owned or leased by the Department of Game, Fish and Parks.

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

4 Section 1. That § 34-37-11 be amended to read as follows:

5 34-37-11. No person may sell or cause to be sold, discharge or cause to be discharged, any  
6 pyrotechnics of any description whatever within the exterior boundaries of the Black Hills  
7 Forest Fire Protection District, national forest, national park, state forest, or any land owned or  
8 leased by the Department of Game, Fish and Parks. However, the ~~secretary of the~~ Department  
9 of Game, Fish and Parks may, by written authorization, permit the discharge of pyrotechnics,  
10 pyrotechnic displays, sales, or exhibits on land owned or leased by the department unless  
11 otherwise prohibited by statute. Any violation of this section which occurs on any land owned  
12 or leased by the Department of Game, Fish and Parks is a Class 2 misdemeanor. Any ~~other~~  
13 subsequent violation of this ~~chapter~~ section is a Class 1 misdemeanor.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

616J0483

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 112** - 02/04/2004

Introduced by: Senators Bogue, Dennert, McCracken, and Sutton (Dan) and Representatives Peterson (Bill), Bartling, Nesselhuf, Olson (Mel), and Rhoden

1 FOR AN ACT ENTITLED, An Act to require state agencies promulgating rules pursuant to the  
2 Administrative Procedures Act to provide an impact statement on small business.

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

4 Section 1. That § 1-26-1 be amended by adding thereto a NEW SUBDIVISION to read as  
5 follows:

6 "Small business," a business entity that employs twenty-five or fewer full-time employees.

7 Section 2. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 An agency shall, when submitting any proposed rule, include an impact statement on small  
10 business. The impact statement shall include the following:

11 (1) A narrative explanation in plain, easy-to-read language of the effect of the rule on  
12 small business, the basis for its enactments, and why the rule is needed;

13 (2) An identification and estimate of the number of small businesses subject to the  
14 proposed rule;

15 (3) The projected reporting and recordkeeping required for compliance with the proposed



1 rule, including the types of professional skills necessary for preparation of the report  
2 or record;

3 (4) A statement of the probable effect on impacted small business; and

4 (5) A description of any less intrusive or less costly alternative methods of achieving the  
5 purpose of the proposed rule.

6 Section 3. That § 1-26-4 be amended to read as follows:

7 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,  
8 or repeal of any rule, except an emergency rule:

9 (1) An agency shall serve a copy of a proposed rule and any publication described in  
10 § 1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional  
11 officer of the department to which it is attached;

12 (2) Fifteen days after the service required by subdivision (1) or upon receiving the  
13 written approval of that officer to proceed, whichever comes first, and twenty days  
14 before the hearing, the agency shall serve the director with a copy of the proposed  
15 rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note  
16 described in § 1-26-4.2, a copy of the impact statement on small business described  
17 in section 2 of this Act, and a copy of the notice of hearing required by § 1-26-4.1.

18 Any publication described in § 1-26-6.6 shall be returned to the agency upon  
19 completion of the director's review and retained by the agency. Also, twenty days  
20 before the hearing, the agency shall serve the Bureau of Finance and Management  
21 with a copy of the proposed rules, a copy of the fiscal note described in § 1-26-4.2,  
22 a copy of the impact statement on small business described in section 2 of this Act,  
23 and a copy of the notice of hearing required by § 1-26-4.1;

24 (3) The agency shall publish the notice of hearing in the manner prescribed by

- 1           § 1-26-4.1, at least twenty days before the hearing;
- 2       (4)   The agency shall afford all interested persons reasonable opportunity to submit data,  
3           opinions, or arguments, either orally or in writing, or both, at a hearing held for that  
4           purpose. The hearing may be continued from time to time until its business has been  
5           completed. The agency shall keep minutes of the hearing. A majority of the members  
6           of any board or commission authorized to pass rules must be present during the  
7           course of the hearing required by this subdivision;
- 8       (5)   For a period of ten days after the hearing, the agency shall accept written comments  
9           regarding the proposed rule, unless the entity promulgating the rule is a part-time  
10          citizen board, commission, committee, task force, or other multiperson decision  
11          maker, in which case the record of written comments shall be closed at the  
12          conclusion of the public hearing. However, the hearing may be specifically continued  
13          for the purpose of taking additional comments;
- 14       (6)   After the written comment period, the agency shall fully consider all written and oral  
15          submissions regarding the proposed rule. A proposed rule may be modified or  
16          amended at this time to include or exclude matters which were described in the notice  
17          of hearing;
- 18       (7)   After reviewing the proposed rule, the director shall advise the agency of any  
19          recommended corrections to the proposed rule;
- 20       (8)   If the agency does not concur with any recommendation of the director, the agency  
21          shall appeal the recommended correction to the Interim Rules Review Committee for  
22          appropriate action; and
- 23       (9)   The agency shall, at least five days prior to the time set for the agency to appear  
24          before the committee to present the rules, serve the minutes of the hearing, a

1 complete record of written comments, and a corrected copy of the rules on the  
2 members of the Interim Rules Review Committee.

3 The time periods specified in this section may be extended by the agency. The requirement  
4 to serve the committee in subdivision (9) may be waived by the committee chair if the agency  
5 presents sufficient reasons to the committee chair that the agency is unable to comply with the  
6 time limit. The waiver may not be granted solely for the convenience of the agency.

7 Section 4. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Any agency promulgating a rule may exempt small businesses from any of the requirements  
10 of the proposed rule, if the agency determines there is a rational basis for the exemption.

11 Section 5. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The provisions of section 2 of this Act do not apply to the Game, Fish and Parks  
14 Commission.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

391J0386

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 131** - 02/04/2004

Introduced by: Senators Duenwald and Ham-Burr and Representatives Miles, Bradford, Glenski, Hennies, Klaudt, Michels, and Van Norman

1 FOR AN ACT ENTITLED, An Act to revise the hours of supervision required for certification  
2 as a licensed professional counselor - mental health.

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

4 Section 1. That § 36-32-42 be amended to read as follows:

5 36-32-42. The board shall certify an applicant as a LPC-MH if the applicant fulfills the  
6 following requirements:

7 (1) Obtains licensure under this chapter as a licensed professional counselor;

8 (2) Completes a master's, specialist, or doctoral degree with an emphasis in mental health  
9 counseling from a counseling program approved by the Council for Accreditation of  
10 Counseling and Related Educational Programs as listed in the Directory of  
11 Accredited Programs, July 1991, or an equivalent program as demonstrated by  
12 studies in the following areas:

13 (a) The general principles and practices of etiology, diagnosis, treatment, and  
14 prevention of mental and emotional disorders and dysfunctional behavior, and  
15 the general principles and practices for the promotion of optimal mental



1 health;

2 (b) The specific models and methods for assessing mental status and the  
3 identification of mental illness or abnormal, deviant, or psychopathologic  
4 behavior by obtaining appropriate behavioral data using a variety of  
5 techniques, including nonprojective personality assessments and achievement,  
6 aptitude, and intelligence testing, and translating findings into the Diagnostic  
7 and Statistical Manual categories, as adopted by the board by rules  
8 promulgated pursuant to chapter 1-26;

9 (c) The specific theories of psychotherapy for initiating, maintaining, and  
10 terminating therapy with a mentally and emotionally impaired client or a client  
11 with disabilities in a variety of settings using a variety of modalities, including  
12 crisis intervention, brief, intermediate, and long-term modalities;

13 (d) The basic classification, indications, and contraindications of the commonly  
14 prescribed psychopharmacological medications for the purpose of identifying  
15 the effects and side effects of prescribed psychotropic medications;

16 (e) The guidelines for conducting an intake interview and mental health history  
17 for planning and managing of client caseload;

18 (f) The specific concepts and ideas related to mental health education, outreach,  
19 prevention, and mental health promotion;

20 (3) Completes ~~three~~ two years of clinical experience and supervision under a licensed  
21 mental health professional after receiving a master's degree. The supervising mental  
22 health professional must hold the highest level of licensure within that supervisor's  
23 profession. Clinical experience must consist of two thousand hours of direct client  
24 contact in a clinical setting. Supervision must consist of one hundred ~~fifty~~ hours of

1           ~~direct, face-to-face~~ supervision, at least fifty hours of which shall be face-to-face. The  
2           balance may be face-to-face or by telephone conferencing or interactive video  
3           conferencing. However, any telephone conferencing or interactive video conferencing  
4           must be secure such that reasonable precautions have been taken to ensure that the  
5           conference will not be intercepted or listened to by unauthorized persons;

6           (4) Passes an examination approved by the board for the purpose of assessing an  
7           applicant's knowledge in the content areas of mental health counseling.

8           Section 2. That chapter 36-32 be amended by adding thereto a NEW SECTION to read as  
9           follows:

10           Supervision received in pursuit of licensure as a licensed professional counselor, if the  
11           supervising mental health professional holds the highest level of licensure within that  
12           supervisor's profession, and clinical experience consisting of direct client contact in a clinical  
13           setting accumulated in pursuit of licensure as a licensed professional counselor, may be applied  
14           to fulfill the certification requirements of a licensed professional counselor - mental health. No  
15           more than fifty hours of such supervision and no more than one thousand hours of such clinical  
16           experience may be applied to the certification requirements of a licensed professional counselor  
17           - mental health.

18           Section 3. That chapter 36-32 be amended by adding thereto a NEW SECTION to read as  
19           follows:

20           Any person pursuing certification as a licensed professional counselor or a licensed  
21           professional counselor - mental health who filed a supervision plan before July 1, 2004, may  
22           submit a revised supervision plan in accordance with this Act. The period of time during which  
23           the person accumulated clinical experience and received qualifying supervision and the actual  
24           hours of clinical experience completed and supervision received before July 1, 2004, shall be

1 credited to the person's revised supervision plan. The board shall accept the period of time and  
2 the actual hours in the revised plan if the period of time and the actual hours are in accord with  
3 section 2 of this Act.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

763J0685

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 148** - 02/04/2004

Introduced by: Senators Dempster and Sutton (Dan) and Representatives Williamson and Engels

1 FOR AN ACT ENTITLED, An Act to repeal and reenact the standard nonforfeiture statute for  
2 individual deferred annuities.

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

4 Section 1. That §§ 58-15-72 to 58-15-81, inclusive, be repealed.

5 Section 2. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 This Act does not apply to any reinsurance, group annuity purchased under a retirement plan  
8 or plan of deferred compensation established or maintained by an employer (including a  
9 partnership or sole proprietorship) or by an employee organization, or by both, other than a plan  
10 providing individual retirement accounts or individual retirement annuities under Section 408  
11 of the Internal Revenue Code, as amended to January 1, 1977, premium deposit fund, variable  
12 annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity  
13 payments have commenced, or reversionary annuity, nor to any contract which shall be  
14 delivered outside this state through an agent or other representative of the company issuing the  
15 contract.



1 Section 3. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 In the case of contracts issued on or after the operative date of this Act as defined in section  
4 13 of this Act, no contract of annuity, except as stated in section 2 of this Act, may be delivered  
5 or issued for delivery in this state unless it contains in substance the following provisions, or  
6 corresponding provisions which in the opinion of the director are at least as favorable to the  
7 contractholder, upon cessation of payment of considerations under the contract:

8 (1) That upon cessation of payment of considerations under a contract, or upon the  
9 written request of the contract owner, the company shall grant a paid-up annuity  
10 benefit on a plan stipulated on the contract of such value as is specified in sections  
11 5, 6, 7, 8, and 10 of this Act;

12 (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that  
13 upon surrender of the contract at or prior to the commencement of any annuity  
14 payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender  
15 benefit of such amount as is specified in sections 5, 6, 8, and 10 of this Act. The  
16 company may reserve the right to defer the payment of the cash surrender benefit for  
17 a period not to exceed six months after demand therefor with surrender of the  
18 contract after making written request and receiving written approval of the director.  
19 The request shall address the necessity and equitability to all policyholders of the  
20 deferral;

21 (3) A statement of the mortality table, if any, and interest rates used in calculating any  
22 minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under  
23 the contract, together with sufficient information to determine the amounts of the  
24 benefits; and

1       (4)    A statement that any paid-up annuity, cash surrender, or death benefits that may be  
2            available under the contract are not less than the minimum benefits required by any  
3            statute of the state in which the contract is delivered and an explanation of the  
4            manner in which the benefits are altered by the existence of any additional amounts  
5            credited by the company to the contract, and indebtedness to the company on the  
6            contract, or any prior withdrawals from or partial surrenders of the contract.

7        Notwithstanding the requirements of this section, a deferred annuity contract may provide  
8        that if no considerations have been received under a contract for a period of two full years and  
9        the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract  
10       arising from prior considerations paid would be less than twenty dollars monthly, the company  
11       may, at its option, terminate the contract by payment in cash of the then present value of the  
12       portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and  
13       interest rate specified in the contract for determining the paid-up annuity benefit, and by this  
14       payment shall be relieved of any further obligation under the contract.

15       Section 4. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
16       follows:

17       The minimum values as specified in sections 5, 6, 7, 8, and 10 of this Act of any paid-up  
18       annuity, cash surrender, or death benefits available under an annuity contract shall be based  
19       upon minimum nonforfeiture amounts as defined in this section:

- 20       (1)    The minimum nonforfeiture amount at any time at or prior to the commencement of  
21            any annuity payments shall be equal to an accumulation up to such time at rates of  
22            interest as indicated in the second paragraph of this section of considerations (as  
23            hereinafter defined) paid prior to such time, decreased by the sum of the following:  
24            (a)   Any prior withdrawals from or partial surrenders of the contract accumulated

1 at rates of interest as indicated in the second paragraph of this section; and

2 (b) An annual contract charge of fifty dollars accumulated at rates of interest as  
3 indicated in second paragraph of this section;

4 (c) Any premium tax paid by the company for the contract, accumulated at rates  
5 of interest as indicated in second paragraph of this section; and

6 (d) The amount of any indebtedness to the company on the contract, including  
7 interest due and accrued;

8 (2) The net considerations for a given contract year used to define the minimum  
9 nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent  
10 of the gross considerations credited to the contract during that contract year.

11 The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate  
12 of interest determined as the lesser of three percent per annum and the following, which shall  
13 be specified in the contract if the interest rate will be reset:

14 (1) The five-year constant maturity treasury rate reported by the Federal Reserve as of  
15 a date, or average over a period, rounded to the nearest one-twentieth of one percent,  
16 specified in the contract no longer than fifteen months prior to the contract issue date  
17 or redetermination date pursuant to this section;

18 (2) Reduced by one hundred twenty-five basis points;

19 (3) Where the resulting interest rate is not less than one percent; and

20 (4) The interest rate shall apply for an initial period and may be redetermined for  
21 additional periods.

22 The redetermination date, basis, and period, if any, shall be stated in the contract. The basis  
23 is the date or average over a specified period that produces the value of the five-year constant  
24 maturity treasury rate to be used at each redetermination date.

1 During the period or term that a contract provides substantive participation in an equity  
2 indexed benefit, it may increase the reduction described above by up to an additional one  
3 hundred basis points to reflect the value of the equity index benefit. The present value at the  
4 contract issue date, and at each redetermination date thereafter, of the additional reduction may  
5 not exceed the market value of the benefit. The director may require a demonstration that the  
6 present value of the additional reduction does not exceed the market value of the benefit.  
7 Lacking such a demonstration that is acceptable to the director, the director may disallow or  
8 limit the additional reduction.

9 The director may promulgate rules pursuant to chapter 1-26 to implement the provisions of  
10 this section and to provide for further adjustments to the calculation of minimum nonforfeiture  
11 amounts for contracts that provide substantive participation in an equity index benefit and for  
12 other contracts that the director determines adjustments are justified.

13 Section 5. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Any paid-up annuity benefit available under a contract shall be such that its present value  
16 on the date annuity payments are to commence is at least equal to the minimum nonforfeiture  
17 amount on that date. Present value shall be computed using the mortality table, if any, and the  
18 interest rates specified in the contract for determining the minimum paid-up annuity benefits  
19 guaranteed in the contract.

20 Section 6. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 For contracts that provide cash surrender benefits, the cash surrender benefits available prior  
23 to maturity may not be less than the present value as of the date of surrender of that portion of  
24 the maturity value of the paid-up annuity benefit that would be provided under the contract at

1 maturity arising from considerations paid prior to the time of cash surrender reduced by the  
2 amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract,  
3 such present value being calculated on the basis of an interest rate not more than one percent  
4 higher than the interest rate specified in the contract for accumulating the net considerations to  
5 determine maturity value, decreased by the amount of any indebtedness to the company on the  
6 contract, including interest due and accrued, and increased by any existing additional amounts  
7 credited by the company to the contract. In no event may any cash surrender benefit be less than  
8 the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be  
9 at least equal to the cash surrender benefit.

10 Section 7. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 For contracts that do not provide cash surrender benefits, the present value of any paid-up  
13 annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less  
14 than the present value of that portion of the maturity value of the paid-up annuity benefit  
15 provided under the contract arising from considerations paid prior to the time the contract is  
16 surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being  
17 calculated for the period prior to the maturity date on the basis of the interest rate specified in  
18 the contract for accumulating the net considerations to determine maturity value, and increased  
19 by any additional amounts credited by the company to the contract. For contracts that do not  
20 provide any death benefits prior to the commencement of any annuity payments, present values  
21 shall be calculated on the basis of such interest rate and the mortality table specified in the  
22 contract for determining the maturity value of the paid-up annuity benefit. However, in no event  
23 may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture  
24 amount at that time.

1 Section 8. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 For the purpose of determining the benefits calculated under sections 6 and 7 of this Act,  
4 in the case of annuity contracts under which an election may be made to have annuity payments  
5 commence at optional maturity dates, the maturity date shall be deemed to be the latest date for  
6 which election shall be permitted by the contract, but may not be deemed to be later than the  
7 anniversary of the contract next following the annuitant's seventieth birthday or the tenth  
8 anniversary of the contract, whichever is later.

9 Section 9. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A contract that does not provide cash surrender benefits or does not provide death benefits  
12 at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity  
13 payments shall include a statement in a prominent place in the contract that such benefits are  
14 not provided.

15 Section 10. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Any paid-up annuity, cash surrender, or death benefits available at any time, other than on  
18 the contract anniversary under any contract with fixed scheduled considerations, shall be  
19 calculated with allowance for the lapse of time and the payment of any scheduled considerations  
20 beyond the beginning of the contract year in which cessation of payment of considerations under  
21 the contract occurs.

22 Section 11. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 For a contract which provides, within the same contract by rider or supplemental contract

1 provision, both annuity benefits and life insurance benefits that are in excess of the greater of  
2 cash surrender benefits or a return of the gross considerations with interest, the minimum  
3 nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the  
4 annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion  
5 computed as if each portion were a separate contract. Notwithstanding the provisions of sections  
6 5, 6, 7, 8, and 10 of this Act, additional benefits payable in the event of total and permanent  
7 disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy  
8 benefits additional to life insurance, endowment and annuity benefits, and considerations for all  
9 such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture  
10 amounts, paid-up annuity, cash surrender, and death benefits that may be required by this Act.  
11 The inclusion of such benefits may not be required in any paid-up benefits, unless the additional  
12 benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash  
13 surrender, and death benefits.

14 Section 12. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 After the effective date of this Act, a company may elect to apply its provisions to annuity  
17 contracts on a contract form-by-contract form basis before the second anniversary of the  
18 effective date of this Act. In all other instances, this Act shall become operative with respect to  
19 annuity contracts issued by the company after the second anniversary of this Act.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

574J0760

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 163** - 02/04/2004

Introduced by: Senators Symens and Bogue and Representatives Peterson (Bill) and Olson  
(Mel)

1 FOR AN ACT ENTITLED, An Act to revise certain county zoning laws to provide for certain  
2 agricultural zoning.

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

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

5 11-2-1. Terms used in this chapter mean:

- 6 (1) "Board," the board of county commissioners;
- 7 (2) "Commission," "planning and zoning commission," "zoning commission," or  
8 "planning commission," any county planning and zoning commission created under  
9 the terms of this chapter;
- 10 (3) "Comprehensive plan," a document which describes in words, and may illustrate by  
11 maps, plats, charts, and other descriptive matter, the goals, policies, and objectives  
12 of the board to interrelate all functional and natural systems and activities relating to  
13 the development of the territory under its jurisdiction;
- 14 (4) "Governing body," the board of county commissioners, the city council or city  
15 commission;



- 1 (5) "Municipality," a city or town however organized;
- 2 (6) "Temporary zoning or subdivision ordinance," an ordinance adopted as an emergency  
3 measure for a limited duration;
- 4 (7) "Subdivision ordinance," any ordinance adopted by the board to regulate the  
5 subdivision of land so as to provide coordination of streets with other subdivisions  
6 and the major street plan, adequate areas set aside for public uses, water and  
7 sanitation facilities, drainage and flood control, and conformity with the  
8 comprehensive plan;
- 9 (8) "Subdivision," the division of any tract or parcel of land into two or more lots, sites,  
10 or other division for the purpose, whether immediate or future, of sale or building  
11 development. The term includes resubdivision. This definition does not apply to the  
12 conveyance of a portion of any previously platted tract, parcel, lot, or site if the  
13 conveyance does not cause the tract, parcel, lot, or site from which the portion is  
14 severed to be in violation of any existing zoning ordinance or subdivision ordinance  
15 applying to the tract, parcel, lot, or site;
- 16 (9) "Zoning map," the map that delineates the extent of each district or zone established  
17 in the zoning ordinance;
- 18 (10) "Zoning ordinance," any ordinance adopted by the board to implement the  
19 comprehensive plan by regulating the location and use of buildings and uses of land;
- 20 (11) "Agricultural zoning plan," a necessary and integral component of a comprehensive  
21 plan, and a written plan which identifies any portions of the county where agriculture  
22 is the preferred use and establishes specific procedures for resolving conflicts  
23 between agricultural use and other uses;
- 24 (12) "Agricultural zoning ordinance," a necessary action for implementing any

1 comprehensive plan, and an ordinance which protects the rights and economic  
2 viability of existing agricultural operations and establishes a specific set of goals,  
3 policies and objectives which will be followed by any decisions of the county to grant  
4 or deny a permit for agricultural uses in the county.

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

7 In adopting an agricultural zoning plan and related agricultural zoning ordinances, the  
8 county shall be guided by the following policies of the State of South Dakota:

- 9 (1) Agricultural development is necessary for the preservation of our rural economy;
- 10 (2) Development of new agricultural products and new uses of products is to be  
11 encouraged;
- 12 (3) Existing agricultural uses are to be protected from urban sprawl;
- 13 (4) In areas where agriculture is the preferred use, new construction of rural homes  
14 should not occur unless the construction is related to an agricultural use of the land  
15 where the home is to be built;
- 16 (5) Environmental regulation is primarily a function of federal and state governments;
- 17 (6) Existing agricultural development projects and those for which a plan is pending  
18 before the county prior to July 1, 2004, should be approved, if the use meets or  
19 exceeds all county requirements and federal and state environmental regulations; and
- 20 (7) County zoning may not be used in any manner to discriminate against any person or  
21 business because of race, color, creed, national origin, sex, age, or place of residence.

22 Section 3. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Any agricultural zoning plan shall include a permitting system for proposed agricultural

1 activities. The plan shall specify the types of activities for which a permit is required; all general  
2 restrictions rationally related to the type of activity; the procedures of obtaining permits; and the  
3 reasons and policy related to the denial, revocation, or suspension of any permit. A permit  
4 applicant, who has met or exceeded all conditions in the plan and any applicable laws and  
5 zoning ordinances, shall be granted a permit until revoked or suspended for good cause after  
6 notice and a meaningful opportunity to hear the causes presented and offer refuting evidence.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

760J0540

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 181 - 02/04/2004**

Introduced by: Senators Kooistra and Schoenbeck and Representatives Gillespie, Cutler, and Deadrick (Thomas)

1 FOR AN ACT ENTITLED, An Act to require notice before relocating a child not living with  
2 both legal parents.

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

4 Section 1. If an existing custody order or other enforceable agreement does not expressly  
5 govern the relocation of the principal residence of a child, a parent who intends to change his  
6 or her principal residence shall, provide reasonable written notice by certified mail or admission  
7 of service to the other legal parent of the child. Reasonable notice is notice that is given at least  
8 forty-five days before relocation unless the court of record finds good cause for a shorter period  
9 of notice. Proof of the notice shall be filed with the court of record unless notice is waived by  
10 the court.

11 No notice need be provided pursuant to this section if:

- 12 (1) The relocation results in the child moving closer to the noncustodial parent; or  
13 (2) The relocation is within the boundaries of the child's current school district; or  
14 (3) There is an existing valid protection order in favor of the child or the custodial parent  
15 against the noncustodial parent; or



1 (4) Within the preceding twelve months, the nonrelocating parent has been convicted of  
2 violation of a protection order, criminal assault, child abuse, or other domestic  
3 violence and either the child or the custodial parent was the victim of the crime or  
4 violation.

5 Section 2. The notice required in section 1 of this Act shall contain the following:

- 6 (1) The address and telephone number, if known, of the new residence;  
7 (2) The purpose for relocating;  
8 (3) Why the relocation is in the best interest of the child; and  
9 (4) The relocating party's proposed visitation plan for the nonrelocating parent upon  
10 relocation.

11 Section 3. At the request of the nonrelocating parent, made within thirty days of the notice  
12 of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made  
13 within thirty days of notice, the relocation is presumed to be consented to by the nonrelocating  
14 parent.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

714J0771

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 209** - 02/04/2004

Introduced by: Senator LaPointe

1 FOR AN ACT ENTITLED, An Act to authorize municipalities located on Indian reservations  
2 to provide housing for police officers.

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

4 Section 1. Any municipality that is located within the boundaries of a federally-recognized  
5 Indian reservation within the State of South Dakota may erect, purchase, lease, rent, equip,  
6 furnish, insure, sell, and move dwellings to be used as housing for police officers and other  
7 police personnel of the municipality. The municipality may establish the terms and rental  
8 amounts under which such dwellings are occupied.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

228J0288

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 211 - 02/04/2004**

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

Introduced by: Senators LaPointe, Abdallah, Brown, de Hueck, Dempster, Dennert, Greenfield, Jaspers, Kelly, Kloucek, Koetzle, Moore, Nachtigal, Olson (Ed), Reedy, Schoenbeck, Sutton (Dan), and Symens and Representatives Van Norman, Burg, Gillespie, McCoy, Thompson, and Valandra

1 FOR AN ACT ENTITLED, An Act to establish a commission to study compliance with the  
2 federal Indian Child Welfare Act, to afford due regard to the Act, and to declare an  
3 emergency.

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

5 Section 1. There is hereby established the Governor's Commission on the Indian Child  
6 Welfare Act. The commission shall study the requirements of the federal Indian Child Welfare  
7 Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, including compliance with the  
8 requirements for notice, placement, expert witness testimony, intervention, transfer of  
9 jurisdiction, and active efforts, and the role of Indian tribes in pursuing the policies of the Act.

10 Section 2. The Governor shall appoint an independent reviewer to complete an analysis of  
11 compliance with the Act by the Department of Social Services, the states attorneys, the Unified  
12 Judicial System, and private agencies involved in foster care and adoption, and the role of Indian  
13 tribes in achieving compliance. Upon completion, the independent reviewer shall submit the



1 analysis of compliance to the commission.

2 Section 3. The commission may not exceed twenty-nine members. The Governor shall  
3 appoint up to eighteen members including a representative of each of the nine Indian tribes of  
4 South Dakota upon the written recommendation of the tribal chairman or the appointed  
5 representative of the tribal chairman, a representative from a Court Appointed Special  
6 Advocates program, two representatives of private child placement agencies, four  
7 representatives from the Department of Social Services, and two representatives from the  
8 Department of Corrections, one of whom is a member of the Council of Juvenile Services. The  
9 President of the Senate shall appoint two members, including one from each political party. The  
10 Speaker of the House shall appoint two members, including one from each political party. The  
11 Chief Justice of the Supreme Court of South Dakota shall appoint five members. The South  
12 Dakota State's Attorney Association shall appoint two members.

13 Section 4. The commission is administered by the Office of the Governor. The commission  
14 shall hold not less than four meetings and shall dissolve and cease to exist on December 31,  
15 2004. The study by the commission shall include the following areas:

- 16 (1) Review the analysis of compliance completed by the independent reviewer and based  
17 upon the results, identify and prioritize any issues or barriers preventing or hindering  
18 compliance;
- 19 (2) Review the efforts of the Department of Social Services and Indian tribes to enter  
20 into agreements regarding licensing of foster homes, access to federal funding, and  
21 contracting of child protection services;
- 22 (3) Explore and evaluate options to address and resolve identified issues and barriers  
23 preventing or hindering compliance; and
- 24 (4) Make recommendations to improve compliance with the federal Indian Child

1 Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, and identify  
2 additional resources needed to implement the recommendations.

3 Section 5. The commission shall provide a final report to the Eightieth Session of the  
4 Legislative Assembly which shall include the findings of the commission and any  
5 recommendations to improve compliance with the federal Indian Child Welfare Act, (25 U.S.C.  
6 §§ 1901-1963), as amended to January 1, 2004.

7 Section 6. Notwithstanding §§26-7A-28, 26-7A-37 and 26-8A-13, the records and files of  
8 the Department of Social Services and its licensees, and the records of court proceedings  
9 pursuant to chapter 26-7A and chapter 26-8A involving an apparent, alleged or adjudicated  
10 abused or neglected child, including transcripts contained in such records, are open to inspection  
11 by the independent reviewer to complete the analysis of compliance described in section 2 of  
12 this Act. Any information received by the independent reviewer and its agents or employees  
13 which identifies a parent, guardian, custodian, or child shall be held confidential as required by  
14 § 26-8A-13.

15 Section 7. That § 25-5A-35 be amended to read as follows:

16 25-5A-35. Sixty days after the emergency medical services provider or licensed child  
17 placement agency takes possession of the child a hearing shall be held in circuit court to  
18 terminate parental rights. ~~Due regard in the administration of §§ 25-5A-27 to 25-5A-35,~~  
19 ~~inclusive, shall be afforded to the Indian Child Welfare Act (25 U.S.C. Secs. 1901-1963) if that~~  
20 ~~act is applicable.~~

21 Section 8. That chapter 25-5A be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as  
24 amended to January 1, 2004, if that Act is applicable.

1       Section 9. That chapter 25-6 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as  
4 amended to January 1, 2004, if that Act is applicable.

5       Section 10. That chapter 26-8A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7       Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as  
8 amended to January 1, 2004, if that Act is applicable.

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