

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

391L0372

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1089 - 02/10/2005

Introduced by: Representatives Cutler, McCoy, and Miles and Senators Sutton (Dan),
Duniphan, Gray, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for licensure and regulation of massage
2 therapists and to provide funding from licensure fees.

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

4 Section 1. Terms in this Act mean:

5 (1) "Board," the Board of Massage Therapy;

6 (2) "Massage," the systematic mobilization of the soft tissues of the body through the
7 application of hands or devices for the purposes of therapy, relaxation, or education
8 through means which include:

9 (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or
10 stretching;

11 (b) External application of water, heat, cold, lubricants, or other topical agents; or

12 (c) The use of devices that mimic or enhance actions done by hands;

13 (3) "Practice of massage therapy," the performance of massage for a fee or other
14 compensation or holding oneself out to the public as performing massage.

15 Section 2. The board consists of five members appointed by the Governor. The terms of the



1 initial members of the board shall be staggered by the drawing of lots with three of the initial
2 members serving a term of three years, two of the initial members serving a term of two years,
3 and one of the initial members serving a term of one year. Any subsequent term on the board
4 shall be three years. One member of the board shall be a person not licensed by the board. Four
5 members of the board shall be persons licensed by the board. The Governor shall fill any
6 vacancy by appointment to complete the unexpired portion of that member's term. No person
7 may serve more than three consecutive full terms on the board. The appointment to an unexpired
8 term is not considered a full term.

9 Section 3. Any member of the board may resign by giving written notice to the board and
10 to the Governor. Resignations are effective when delivered to the Governor and the board.

11 Section 4. The board shall select a president, vice-president, and secretary at its annual
12 meeting. The board may hire an executive secretary to perform any managerial, clerical, or other
13 duties directed by the board.

14 Section 5. The board shall hold an annual meeting at a place and time set by the board. The
15 board may hold special meetings at a time and place set by the president or a majority of the
16 board by giving written notice to the board prior to the meeting.

17 Section 6. Three board members present at any meeting constitute a quorum. No board
18 action may occur unless approved by a majority vote of the entire board.

19 Section 7. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses
20 at the same rate as other state employees while actually engaged in official duties.

21 Section 8. Any person engaged in the practice of massage in this state shall conspicuously
22 display a valid license or certified duplicate license from the board in the person's place of
23 business.

24 Section 9. Any fees and civil penalties collected under this Act shall be used for the

1 operation of the board and the implementation of this Act.

2 Section 10. Any person who engages in the practice of massage or holds himself or herself
3 out to the public as engaged in the practice of massage without a license pursuant to this Act is
4 guilty of a Class 1 misdemeanor and upon conviction the court shall assess a civil penalty of one
5 thousand dollars payable to the board. The state or the board may file a civil action to enjoin any
6 person engaging in the practice of massage without a license.

7 Section 11. Any person who advertises services to the public as a massage therapist,
8 bodywork therapist, masseur, masseuse, massagist, or any derivation or abbreviation of those
9 terms or any other term commonly recognized to mean the practice of massage therapy while
10 not licensed under this Act is guilty of a Class 1 misdemeanor. Upon conviction the court shall
11 assess a civil penalty of one thousand dollars payable to the board. The state or the board may
12 file a civil action to enjoin any person from violating this section.

13 Section 12. The board may issue a license to engage in the practice of massage to any person
14 who submits an application form and the nonrefundable application fee as approved in section
15 17 of this Act and who demonstrates the following qualifications:

- 16 (1) Eighteen years of age or older;
- 17 (2) Good moral character;
- 18 (3) High school diploma or equivalent;
- 19 (4) Completion of no less than five hundred hours of training or study in the practice of
20 massage with a facility or instructor recognized by the board;
- 21 (5) Absence of unprofessional conduct;
- 22 (6) Malpractice insurance coverage with limits at or above an amount set by the board;
- 23 and
- 24 (7) Passing score on an examination administered by a national certification board

1 accredited by the National Commission of Certifying Agencies and in good standing
2 with the National Organization of Competency Assurance.

3 A license issued under this Act is valid for a period of two years from the date it was issued
4 and automatically expires unless it is renewed. The board may refuse to grant a license to any
5 person based on failure to demonstrate the requirements of this section. An applicant may appeal
6 the denial of a license in compliance with chapter 1-26.

7 Section 13. For the purposes of this Act, any of the following acts constitute unprofessional
8 conduct:

- 9 (1) Conviction of any felony, any crime involving or relating to the practice of
10 massage, or any crime involving dishonesty or moral turpitude;
- 11 (2) Abuse of or addiction to alcohol, marijuana, or any controlled substance;
- 12 (3) Providing the board false or misleading information on any application for a license
13 or renewal of a license;
- 14 (4) Willful misconduct or negligence in the practice of massage;
- 15 (5) Prescribing or administering controlled substances, narcotics, barbiturates, or other
16 potentially habit forming substances unless done through separate licensure under
17 state law;
- 18 (6) Exceeding the scope of practice of massage as defined in section 1 of this Act;
- 19 (7) Engaging in any lewd or immoral conduct;
- 20 (8) Making excessive or fraudulent charges for services;
- 21 (9) Engaging in conduct which endangers the health or welfare of clients or other
22 persons; or
- 23 (10) Failure to comply with any provision of this Act.

24 Section 14. For two years following the effective date of this Act, the board may issue a

1 license to a person who demonstrates completion of a minimum of one hundred hours of
2 training or study in the practice of massage with a facility or instructor recognized by the board
3 or adequate experience derived from the active practice of massage for at least the three years
4 immediately preceding the date of the application. Any person applying for a license under this
5 section is not required to comply with the examination and training or study requirements of
6 section 12 of this Act but shall meet the other criteria set forth in section 12 of this Act. Any
7 person applying for a license under this section shall submit an application as required by
8 section 12 of this Act along with proof of active practice for at least three years prior to the date
9 of application.

10 Section 15. Any person holding a valid license to practice massage from another state whose
11 requirements for licensure are not less restrictive than this state is not required to take the
12 examination for licensure. Any person applying for a license under this section shall submit an
13 application as required by section 12 of this Act along with proof of a current license. This
14 section applies only to persons holding licenses from states which offer reciprocity to persons
15 licensed by this state.

16 Section 16. Any person holding a valid license under this Act may renew that license by
17 paying the required renewal fee and providing proof of compliance with the continuing
18 education requirements set by the board at least thirty days prior to the expiration of the current
19 license. Any person who submits a license renewal late shall submit a seventy-five dollar late
20 fee. Any person whose license has lapsed shall reapply for a license.

21 Section 17. Any applicant for a license under this Act shall submit a nonrefundable
22 application fee of one hundred dollars. Any person who has a license issued or renewed by the
23 board shall submit a license fee in an amount set by the board, but not to exceed three hundred
24 dollars.

1 Section 18. Any person holding a valid license under this Act may obtain a certified
2 duplicate license by submitting a fee of twenty-five dollars for each certified duplicate.

3 Section 19. Any person licensed under this Act shall complete continuing education relating
4 to competence in the practice of massage on an annual basis in an amount, type, and from a
5 facility or instructor approved by the board. The board may waive the continuing education
6 requirement upon proof of illness or hardship.

7 Section 20. The board may inspect the place of business of any person with a license issued
8 pursuant to this Act during normal business hours or upon written notice.

9 Section 21. Any person holding a valid license under this Act and engaged in the practice
10 of massage therapy shall carry professional liability insurance coverage with limits at or in
11 excess of the minimum amount established by the board.

12 Section 22. The board may cancel, suspend, or revoke a license following a contested case
13 hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence,
14 unprofessional conduct, or a violation of any provision of this Act. The board may waive the
15 requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee
16 presents an immediate threat to the public or has engaged in willful misconduct. Any person
17 may appeal the cancellation, suspension, or revocation of a license in compliance with chapter
18 1-26.

19 Section 23. Any person whose license has been cancelled, suspended, or revoked by the
20 board may not reapply for a license until one year after it was cancelled, suspended, or revoked
21 unless a different time has been set by the board.

22 Section 24. The board may promulgate rules pursuant to chapter 1-26 in the following
23 areas:

24 (1) The form and information required for any license application;

- 1 (2) A list of recognized facilities or instructors who may provide training or instruction
2 required for licensure or continuing education requirements;
- 3 (3) The amount of license fees;
- 4 (4) The procedures for conducting disciplinary proceedings; and
- 5 (5) The minimum limits of malpractice insurance to be carried by any person licensed
6 under this Act.

7 Section 25. The provisions of this Act do not apply to any person performing massage for
8 compensation if the massage is done under one of the following circumstances:

- 9 (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse,
10 physical therapist, athletic trainer, or other health care profession licensed or certified
11 under Title 36;
- 12 (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is
13 performing within the scope of the licensed practice and the licensee does not hold
14 himself or herself out to be a massage therapist or to be engaged in the practice of
15 massage therapy;
- 16 (3) In furtherance of duties as an employee of the United States;
- 17 (4) As part of a course of study with a facility or instructor recognized and approved by
18 the board to provide training in massage or the provision of such instruction;
- 19 (5) As part of providing a course of instruction or continuing education in the practice
20 of massage therapy on a temporary basis not in excess of ten days; or
- 21 (6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or
22 ears and the person does not hold himself or herself out to be a massage therapist or
23 to be engaged in the practice of massage therapy.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

717L0081

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 2 - 01/26/2005

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

Introduced by: Senators Lintz, Greenfield, Hundstad, and Peterson (Jim) and Representatives Hargens, Deadrick, Fryslie, and Rhoden at the request of the Interim Committee on Property Assessment

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural
2 property.

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

4 Section 1. That § 10-6-33.25 be amended to read as follows:

5 10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be
6 determined using capitalized annual cash rent. The annual cash rent is the annual cash rent,
7 excluding the per acre tax on agricultural land, determined through an analysis of arms-length
8 rental agreements collected within the county in the year three years prior to the year for which
9 the agricultural income value is being determined. The agricultural income value of cropland
10 shall be based on average rents over a three-year period for cropland under natural conditions.
11 The agricultural income value of noncropland shall be based on average rents over a three-year
12 period for noncropland under natural conditions. However, no arms-length rental agreements
13 for irrigated land may be used to determine the annual cash rent pursuant to this section. The
14 annual cash rent shall be capitalized at seven and three-fourths percent.



1 The secretary of revenue and regulation may enter into a contract for the collection of cash
2 rent information by county. Cash rent information shall be adjusted by soil survey statistics, if
3 available, and pursuant to section 2 of this Act.

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

6 The director of equalization shall annually determine the assessed value of agricultural land
7 as defined by § 10-6-31.3. Any agricultural land assessed based on its agricultural income value
8 pursuant to § 10-6-32.24 and 10-6-33.25 may be value adjusted by the following factors:

9 (1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2;
10 and

11 (2) The location, size, soil survey statistics, terrain, and topographical condition of the
12 land including the climate, accessibility, and surface obstructions which can be
13 documented.

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

16 If the median rent value per acre in an identifiable region within a county deviates by more
17 than ten percent from the county median rent value per acre, the county director of equalization
18 may establish a separate rent value per acre for the land defined by the director of equalization
19 within that identifiable region.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0337

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 25 - 02/02/2005

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

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

1 FOR AN ACT ENTITLED, An Act to revise the purposes for which the extraordinary litigation
2 fund may be used.

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

4 Section 1. That § 1-14-3.1 be amended to read as follows:

5 1-14-3.1. There is established in the state treasury the extraordinary litigation fund. The fund
6 shall be maintained separately and administered by the Bureau of Administration. The fund may
7 be used for plaintiff attorney fee awards, retention of outside counsel, settlement costs, or other
8 ~~extraordinary~~ litigation expenses not otherwise eligible to be paid under § 3-22-1. Unexpended
9 money and any interest that may be credited to the fund shall remain in the fund. The
10 extraordinary litigation fund is hereby continuously appropriated and shall be budgeted through
11 the informational budget process. The creation and funding of this fund does not constitute a
12 waiver of the state's sovereign immunity.



State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0336

SENATE ENGROSSED NO. **SB 26** - 01/27/2005

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

1 FOR AN ACT ENTITLED, An Act to provide monetary penalties for failure of tobacco
2 distributors and wholesalers to comply with certain cigarette regulations.

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

4 Section 1. That § 10-50-80 be amended to read as follows:

5 10-50-80. No later than twenty days after the end of each calendar quarter, and more
6 frequently if so directed by the secretary, each distributor and wholesaler shall submit
7 information concerning each nonparticipating manufacturer as the secretary requires to facilitate
8 compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the
9 total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which
10 the distributor or wholesaler affixed cigarette tax stamps or imprints to a cigarette package, or
11 otherwise paid the cigarette tax due during the previous calendar quarter. The distributor or
12 wholesaler shall maintain and make available to the secretary all invoices and documentation
13 of sales of all nonparticipating manufacturer cigarettes and any other information relied upon
14 in reporting to the secretary for a period of six years. The secretary may, in addition to any other
15 provision of law, impose and collect a monetary penalty in an amount not to exceed five



1 hundred dollars per day, for the failure of a distributor or wholesaler to timely or accurately
2 comply with this section. Any monetary penalty collected pursuant to this section shall be
3 deposited in the state general fund.

4 Section 2. That § 10-50-82 be amended to read as follows:

5 10-50-82. No distributor or wholesaler or other person may:

6 (1) Affix a South Dakota cigarette tax stamp or imprint to a package or other container
7 of cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product
8 manufacturer or brand family not included in the directory; or

9 (2) Sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be
10 imported, cigarettes of a tobacco product manufacturer or brand family not included
11 in the directory that the distributor, wholesaler, or other person knows or should
12 know are intended for distribution or sale in this state.

13 The secretary may, in addition to any other provision of law, impose and collect a monetary
14 penalty in an amount not to exceed the greater of five hundred percent of the retail value of the
15 cigarettes or five thousand dollars for each violation of this section by a distributor or
16 wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the
17 state general fund.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0273

SENATE APPROPRIATIONS COMMITTEE ENGROSSED NO. **SB 34** - 01/28/2005

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to make an additional appropriation to construct a
2 thermophilic anaerobic manure digestion system for the South Dakota Agricultural
3 Experiment Station and to declare an emergency.

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

5 Section 1. That section 2 of chapter 113 of the 2004 Session Laws be amended to read as
6 follows:

7 There is hereby appropriated ~~one million seven hundred fifty thousand dollars (\$1,750,000)~~
8 two million nine hundred fourteen thousand dollars (\$2,914,000) from federal funds awarded
9 to the South Dakota Agricultural Experiment Station for the purpose of constructing the facility
10 described in section 1 of this Act.

11 Section 2. Notwithstanding the provisions of § 13-51-2, no money from the state general
12 fund, student tuition fees, the educational facilities fund, nor any money appropriated for
13 statewide maintenance and repair, may be used to finance the maintenance and repair of the
14 facilities specified in this Act.

15 Section 3. Whereas, this Act is necessary for the support of the state government and its



- 1 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
- 2 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0360

SENATE ENGROSSED NO. **SB 45** - 01/24/2005

Introduced by: The Committee on State Affairs at the request of the Bureau of
Administration

1 FOR AN ACT ENTITLED, An Act to authorize the Bureau of Administration to donate the
2 former Governor's residence for a public purpose and to declare an emergency.

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

4 Section 1. Notwithstanding any other provisions of state law, the Bureau of Administration
5 is authorized to donate the former Governor's residence, which was constructed as a Works
6 Progress Administration project beginning in 1936 and removed from the site of 119 North
7 Washington in Pierre, South Dakota, in November of 2003, to a public or private entity in South
8 Dakota to be used for a public purpose approved by a committee to be appointed by the
9 Governor. Notwithstanding any other provision of state law, no money appropriated by the
10 Legislature, or approved for expenditure by the special committee created by chapter 4-8A, may
11 be expended for the removal of the building specified in section 1 of this Act or for the public
12 purpose for which the building is removed.

13 Section 2. Whereas, this Act is necessary for the support of the state government and its
14 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
15 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0358

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 61** - 01/19/2005

Introduced by: The Committee on State Affairs at the request of the Department of Tourism
and State Development

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Science and Technology
2 Authority to use eminent domain for certain limited purposes.

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

4 Section 1. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purpose of this Act, the term, subsurface property, means complete fee title to real
7 property located one hundred feet or more below the surface, including the right to use such real
8 property to construct, operate, support and maintain underground facilities, for scientific and
9 technological experimentation and exploration, for the commercial exploitation of the
10 subsurface for purposes other than mineral extraction, and for any other lawful purpose. The
11 term, subsurface property, does not include ownership or the right to occupancy of the surface.

12 Section 2. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The authority may condemn private and public subsurface property for public use for the
15 purposes of acquiring, developing, constructing, maintaining, or operating projects. The



1 authority may only condemn subsurface property upon or through which it already owns or
2 controls some, but not all, property rights. If the authority deems it necessary to condemn any
3 subsurface property for such purpose, it shall, by resolution, declare the condemnation
4 necessary, stating the purposes and extent thereof. Thereupon, proceedings for condemnation
5 shall be undertaken in the name of the authority, as provided in chapter 21-35 and this chapter.

6 Section 3. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
7 follows:

8 In any proceeding initiated under this chapter and chapter 21-35, the authority may, at any
9 time before final judicial determination of the rights of the parties, file a declaration of taking,
10 signed by the authority, declaring the extent of the subsurface property interest taken for the use
11 of the authority.

12 The declaration of taking shall contain:

- 13 (1) A statement of the authority under which and the use for which the subsurface
14 property interest is taken;
- 15 (2) A description of the subsurface property interest taken sufficient for identification
16 thereof;
- 17 (3) A legal description of the subsurface property subject to or affected by the taking;
- 18 (4) The names of the owners of the property or persons in interest in the subsurface
19 property, and a description of the interest claimed by each, as are known;
- 20 (5) A statement of the sum of money estimated by the authority to be just compensation
21 for the subsurface property interest taken and damaged; and
- 22 (6) A detailed appraisal upon which the amount of the authority's estimate is based.

23 Section 4. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Title to the subsurface property interest specified in the declaration shall vest in the authority
2 and the subsurface property interest shall be deemed condemned and taken for the use of the
3 authority, and the right to just compensation for the subsurface property interest shall vest in the
4 persons entitled thereto either on the date the decision is rendered pursuant to the hearing
5 provided for in § 21-35-10.1 or the date the hearing is waived, either by consent in writing or
6 by failing to make demand for the hearing within the time allowed.

7 Section 5. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Upon filing of a declaration of taking pursuant to section 3 of this Act, the court may fix the
10 time within which, and the terms upon which, the parties in possession are required to surrender
11 possession to the authority. A notice shall be issued stating that if the defendants do not appear
12 in or respond to the proceedings with thirty days after service of the notice, exclusive of the day
13 of service, the authority shall apply to the court for an order of possession. A notice of hearing
14 shall then be issued by the court and served as provided in section 6 of this Act upon the record
15 owners of all subsurface property sought to be acquired or damaged. The notice shall state a
16 time and place for hearing not less than thirty days from the date of service, unless the waiver
17 of hearing provided by § 21-35-10.1 is filed, in which case the hearing may be held sooner. The
18 court may make such orders in respect to encumbrances, liens, rents, taxes, assessments,
19 insurance and other charges, if any, as are just and equitable.

20 Section 6. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A copy of the declaration of taking filed pursuant to section 2 of this Act and any
23 amendments thereto shall be served with the condemnation petition or by mailing a copy thereof
24 to each of the known defendants by registered mail at the defendant's last known post office

1 address.

2 Section 7. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If any person who is a proper party defendant or if any affected subsurface property is
5 omitted from the declaration of taking filed pursuant to section 2 of this Act, the authority may
6 file amendments to include the person or subsurface property. Any amendment from the time
7 of filing has the same force and effect as if it were included in the original proceedings. The
8 misnaming or omission of any defendant's name does not defer the effect of the declaration of
9 taking.

10 Section 8. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If the authority elects to utilize the procedures set forth in sections 2 to 7, inclusive, of this
13 Act for possession of subsurface property, the authority shall deposit with the court the money
14 required by § 21-35-11 as a condition to the exercise of such power. In that case, the court and
15 the attorneys shall expedite the proceedings for the distribution of the money deposited and for
16 the ascertainment and payment of just compensation.

17 Section 9. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Upon application of the parties in interest, the court may order that all of the money
20 deposited in court pursuant to section 8 of this Act, or any part thereof, be paid for or on account
21 of the just compensation to be awarded in the proceeding. If the compensation finally awarded
22 for the subsurface property interest taken, or any part thereof, exceeds the amount of money
23 received by any person so entitled, the court shall enter judgment against the authority for the
24 amount of the deficiency.

1 Section 10. That chapter 1-16H be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The provisions of chapters 45-4 and 45-5A do not apply to subsurface property rights taken
4 by the authority pursuant to this Act.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0385

SENATE ENGROSSED NO. **SB 66** - 01/27/2005

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to provide certain options to school boards in
2 reorganization, to increase the percentage of voters necessary to petition for school district
3 reorganization, and to declare an emergency.

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

5 Section 1. That § 13-6-10 be amended to read as follows:

6 13-6-10. If the school board or the voters of two or more districts or parts of districts express
7 a desire to consolidate their respective districts to create a new entity; or the school board or the
8 voters of an existing district express a desire to divide the district to create one or more new
9 entities; or the school board or the voters of an existing district express a desire to dissolve and
10 be annexed to an existing district, the school board may by resolution, or shall, if presented by
11 a petition signed by ~~fifteen~~ the lesser of one thousand registered voters or twenty percent of the
12 registered voters residing in the district, based upon the total number of registered voters at the
13 last preceding general election, develop a plan to accomplish the desire expressed in the
14 resolution or contained in the petition. If more than one district is involved, their respective
15 school boards shall act jointly in the preparation of the plan. Within fifteen days after a petition
16 is filed as provided in this section, the school district shall acknowledge the receipt of the



1 petition in writing to the person who filed the petition. Within one hundred eighty days after the
2 petition was filed, the school board shall develop the plan required in this section and shall file
3 the plan as required in § 13-6-17. The Department of Education may grant two extensions of
4 the filing deadline, not to exceed ninety days each.

5 The school board shall call conferences and hold hearings to develop the plan. The school
6 board may employ a consultant. If the school boards involved in the creation of a plan initiated
7 by a petitioner cannot agree on a single plan within the time allowed in this section, the
8 Secretary of Education shall submit a plan to the voters of each affected school board within
9 ninety days.

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

569L0202

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 72** - 01/27/2005

Introduced by: Senators Olson (Ed), Dempster, Duniphan, Knudson, McCracken, Moore, Peterson (Jim), and Sutton (Dan) and Representatives Dykstra, Dennert, Elliott, Haley, Halverson, Hennies, Hunt, McLaughlin, Murschel, Roberts, and Thompson

1 FOR AN ACT ENTITLED, An Act to include legal costs as allowable expenditures from the
2 special education fund.

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

4 Section 1. That § 13-16-32 be amended to read as follows:

5 13-16-32. The South Dakota Board of Education may promulgate rules pursuant to chapter
6 1-26 to identify allowable expenditures from the special education fund. Legal costs incurred
7 by a school district as a direct result of providing special education or special education and
8 related services to a child for whom the district is financially responsible are allowable
9 expenditures. The allowable expenditures may include any legal costs incurred by the school
10 district in the referral, evaluation, and placement processes as well as any other legal expenses
11 for which the district is determined to be legally responsible to pay as a result of due process
12 hearings.

13 Section 2. That § 13-37-48 be repealed.

14 ~~13-37-48. Extraordinary expenses in §§ 13-37-39 and 13-37-40 include the following costs~~



1 ~~associated with any special education due process hearing; the appointment of a hearing officer;~~
2 ~~the hearing officer's preparation; conduct of the due process hearing; hearing officer's~~
3 ~~preparation of the decision; and providing a copy of the tape recording to the opposing parties.~~
4 ~~Notwithstanding any other provision of law or administrative rule, neither a school district's~~
5 ~~special education tax levy nor any other measure of a school district's finances may be~~
6 ~~considered factors by an oversight board and the secretary of the Department of Education when~~
7 ~~approving special education due process hearings costs as extraordinary expenses.~~

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

679L0099

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 73** - 01/31/2005

Introduced by: Senators Lintz, McNenny, and Napoli and Representatives Pederson
(Gordon), Brunner, Howie, and McCoy

1 FOR AN ACT ENTITLED, An Act to revise the power of rural fire protection districts to
2 contract with certain entities.

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

4 Section 1. That § 34-31A-18 be amended to read as follows:

5 34-31A-18. Any rural fire protection district may ~~elect to~~ enter into a contract with another
6 rural fire protection district to consolidate or cooperate for mutual fire protection and prevention
7 purposes, or may enter into a contract with any federal, state, or local government agency for
8 fire protection service or fire protection cooperation upon terms suitable to all concerned, ~~and~~
9 power. Power to make such contracts is hereby conferred upon such state or local government
10 agency in addition to such powers as are otherwise provided by law. Any rural fire protection
11 district may enter into a contract with any nonprofit corporation, organized under the laws of
12 this state and whose sole purpose is fire protection, for fire protection service or fire protection
13 cooperation upon terms suitable to all concerned. Any contract between a rural fire protection
14 district and a nonprofit corporation that was entered into prior to the effective date of this Act,
15 and which now complies with the provisions of this section is hereby declared to be valid and



1 legal.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

812L0477

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 83 - 01/25/2005

Introduced by: Senators Kelly, Abdallah, Broderick, Dempster, Gant, Hundstad, McCracken, McNenny, Moore, and Olson (Ed) and Representatives Michels, Bradford, Cutler, Dadrick, Dykstra, Faehn, Frost, Garnos, Hargens, Hennies, Howie, Kraus, Krebs, McCoy, O'Brien, Rave, Rhoden, Sebert, Valandra, Weems, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the seller's property condition disclosure
2 statement.

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

4 Section 1. That § 43-4-44 be amended to read as follows:

5 43-4-44. The following form shall be used for the property condition disclosure statement:

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

7 (This disclosure shall be completed by the seller. This is a disclosure required by law. If you do
8 not understand this form, seek legal advice.)

9 Seller _____

10 Property Address _____

11 _____

12 This Disclosure Statement concerns the real property identified above situated in the City of

13 _____ County of _____, State of South Dakota.



1 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE
 2 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY
 3 OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN
 4 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
 5 WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent
 6 representing any party in this transaction to provide a copy of this statement to any person or
 7 entity in connection with any actual or anticipated sale of the property.

8 ~~IF ANY MATERIAL FACT COMES TO THE ATTENTION OF THE SELLER WHICH~~
 9 ~~WOULD AFFECT ANY STATEMENT MADE BY THE SELLER FOLLOWING THE~~
 10 ~~SIGNING OF THIS STATEMENT AND BEFORE THE TIME OF SETTLEMENT, THE~~
 11 ~~SELLER SHALL NOTIFY THE BUYER AND ANY AGENT REPRESENTING ANY~~
 12 ~~PARTY TO THIS TRANSACTION IN WRITING OF SUCH MATERIAL FACT OR OTHER~~
 13 ~~INFORMATION~~ CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY,
 14 THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN
 15 AMENDMENT TO THIS DISCLOSURE STATEMENT.

16 I. LOT OR TITLE INFORMATION

17 1. When did you purchase or build the home? _____

18 If the answer is yes to any of the following, please explain under additional comments or on an
 19 attached separate sheet.

20 2. Were there any title problems when you purchased the property?

21 Yes ____ No ____ ~~Unknown~~ ____

22 If yes, describe: _____

23 3. Are there any ~~unrecorded~~ or recorded liens or financial instruments against the property, other
 24 than a first mortgage?

1 Yes ____ No ____ ~~Unknown ____~~

2 ~~If yes, explain: _____~~

3 4. Are there any unrecorded liens or financial instruments against the property, other than a first
4 mortgage?

5 Yes ____ No ____ ~~Unknown ____~~

6 5. Are there any easements which have been granted in connection with the property (other than
7 normal utility easements for public water and sewer, gas and electric service, telephone service,
8 cable television service, drainage, and sidewalks)?

9 Yes ____ No ____ ~~Unknown ____~~

10 ~~If yes, explain on separate page and attach hereto.~~

11 56. Are there any problems related to establishing the lot lines/boundaries?

12 Yes ____ No ____ ~~Unknown ____~~

13 7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach
14 a copy.

15 Yes ____ No ____ ~~Unknown ____~~

16 ~~If yes, attach a copy of same.~~

17 68. Are you aware of any encroachments or shared features, from or on adjoining property (i.e.
18 fences, driveway, sheds, outbuildings, or other improvements)?

19 Yes ____ No ____

20 ~~If yes, explain: _____~~

21 79. Are you aware of any covenants or restrictions affecting the use of the property in
22 accordance with local law? If yes, attach a copy of the covenants and restrictions.

23 Yes ____ No ____

24 ~~If yes, attach a copy of the covenants and restrictions, if available.~~

1 810. Are you aware of any current or pending litigation, foreclosure, zoning, building code or
 2 restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning
 3 changes, or changes that could affect your property?

4 Yes ____ No ____ Unknown ____

5 If yes, explain: _____
 6 _____

7 911. Is the property currently occupied by the owner?

8 Yes ____ No ____

9 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-
 10 3-1?

11 Yes ____ No ____

12 13. Is the property currently part of a property tax freeze for any reason?

13 Yes ____ No ____ Unknown ____

14 14. If no, is Is the property leased?

15 Yes ____ No ____

16 ~~If yes, please attach a copy of any written lease or a statement as to the terms and conditions of~~
 17 ~~the lease.~~

18 ~~1015. If leased, does the property use comply with local zoning laws, if any?~~

19 Yes ____ No ____ Unknown ____

20 ~~11. Is there ground rent? Yes ____ No ____ Unknown ____~~

21 ~~If so, what is the ground rent payment (i.e. annually, semi-annually, monthly)? \$ _____~~
 22 ~~per _____~~

23 16. Does this property or any portion of this property receive rent? If yes, how much \$ _____ and
 24 how often _____?

1 Yes _____ No _____

2 ~~17.~~ Do you pay any mandatory fees or special assessments to a homeowners' or condominium
3 association?

4 Yes _____ No _____

5 If ~~so~~ yes, what are the fees or assessments? \$ _____ per _____ (i.e. annually, semi-annually,
6 monthly)

7 Payable to whom: _____

8 For what purpose?: _____

9 ~~13. Does~~ 18. Are you aware if the property has ever have had standing water in either the front,
10 rear, or side yard more than forty-eight hours after heavy rain?

11 Yes _____ No _____ Unknown _____

12 If yes, describe: _____

13 19. Is the property located in or near a flood plain?

14 Yes _____ No _____ Unknown _____

15 ~~14~~ 20. Are wetlands located upon any part of the property?

16 Yes _____ No _____ Unknown _____

17 If yes, describe: _____

18 ~~15. Are any features of the property (i.e. walls, fences, roads or driveways) shared in common~~
19 ~~with adjoining landowners whose use or responsibility for maintenance may have an effect on~~
20 ~~the property?~~

21 Yes _____ No _____ Unknown _____

22 If yes, describe: _____

23 II. STRUCTURAL INFORMATION

24 If the answer is yes to any of the following, please explain under additional comments or on an

1 attached separate sheet.

2 1. ~~Have you experienced~~ Are you aware of any water penetration problems in the walls,
3 windows, doors, basement, or crawl space?

4 Yes ____ No ____ ~~Unknown~~ ____

5 2. What water damage related repairs, if any, have been made?

6 ~~If so~~ any, when? _____

7 ~~Is~~ 3. Are you aware if drain tile is installed on the property?

8 Yes ____ No ____ ~~Unknown~~ ____

9 24. Are ~~there~~ you aware of any interior cracked walls or floors, or cracks or defects in exterior
10 driveways, sidewalks, patios, or other hard surface areas?

11 Yes ____ No ____ ~~Unknown~~ ____

12 ~~If yes, explain:~~ What related repairs, if any, have been made?

13 _____

14 ~~35. Have you ever experienced~~ Are you aware of any roof leakage, past or present?

15 Yes ____ No ____ ~~Unknown~~ ____

16 Type of roof covering: _____

17 Age: _____

18 What roof repairs, if any, have been made, when and by whom?

19 _____

20 ~~If so~~, when? _____

21 Describe any existing unrepaired damage to the roof: _____

22 ~~4. Have you received notice that fire retardant treated plywood may have been used during roof~~
23 construction of the property?

24 Yes ____ No ____

1 ~~If yes, has an inspection of the roof been performed?~~

2 ~~Yes _____ No _____ Unknown _____~~

3 ~~If yes, explain results: _____~~

4 ~~56. Is there~~ Are you aware of insulation in:

5 the ceiling/attic? Yes _____ No _____ ~~Unknown _____~~

6 the walls? Yes _____ No _____ ~~Unknown _____~~

7 the floors? Yes _____ No _____ ~~Unknown _____~~

8 ~~67. Are you aware of any termite or wood boring pest~~ infestation or damage, either past or
9 present?

10 Yes _____ No _____ ~~Unknown _____~~

11 ~~If yes, explain: _____~~

12 ~~Has~~ 8. Are you aware of the property having been treated for any ~~termite or wood boring pest~~
13 infestation or damage?

14 Yes _____ No _____ ~~Unknown _____~~

15 If yes, who treated it and when? _____

16 ~~79. Have~~ Are you performed aware of any work upon the property ~~within the last five years~~
17 which required a building, plumbing, electrical, or any other permit?

18 Yes _____ No _____

19 If yes, describe the work: _____

20 Was a permit obtained? Yes _____ No _____

21 Was the work approved by an inspector? Yes _____ No _____

22 Explain: _____

23 ~~8. Has~~ 10. Are you aware of any past or present damage to the property, structures, or
24 ~~improvements thereon ever been damaged?~~ (i.e. fire, smoke, wind, floods, hail, or snow)?

1 Yes ____ No ____ ~~Unknown ____~~

2 ~~If yes, describe~~ _____

3 ~~Have any insurance claims been made?~~

4 ~~Yes ____ No ____ Unknown ____~~

5 ~~Was an insurance payment received?~~

6 ~~Yes ____ No ____ Unknown ____~~

7 ~~If yes, has~~ Has the damage been repaired?

8 Yes ____ No ____

9 ~~If yes, describe in detail:~~ _____

10 _____

11 ~~911.~~ Are you aware of any problems with sewer blockage or backup, past or present?

12 Yes ____ No ____ ~~Unknown ____~~

13 III. SYSTEMS/UTILITIES INFORMATION

14 _____ ~~NONE/NOT~~ _____ ~~NOT~~ _____

15 _____ ~~INCLUDED WORKING WORKING UNKNOWN~~ _____

16 ~~A. ELECTRICAL SYSTEM~~

17 ~~Burglar Alarm and/or Security~~

18 ~~System~~

19 ~~Ceiling Fan~~

20 ~~Garage Wiring~~

21 ~~Garage Door/Opener Control(s)~~

22 ~~Doorbell~~

23 ~~Intercom~~

24 ~~Light Fixtures~~

- 1 ~~Sauna~~
- 2 ~~Smoke and/or Fire Alarm~~
- 3 ~~Switches & Outlets~~
- 4 ~~Vent Fan~~
- 5 ~~220 Volt Service~~
- 6 ~~B. HEATING AND COOLING SYSTEM~~
- 7 ~~Air Exchanger~~
- 8 ~~Attic Fan~~
- 9 ~~Air Purifier~~
- 10 ~~Central Air -- Electric~~
- 11 ~~Central Air -- Water Cooled~~
- 12 ~~Fireplace~~
- 13 ~~Fireplace Insert~~
- 14 ~~Furnace/Heat -- Electric or Gas~~
- 15 ~~Humidifier~~
- 16 ~~Propane Tank -- Leased or Owned~~
- 17 ~~Solar House -- Heating~~
- 18 ~~Woodburning Stove~~
- 19 ~~C. WATER/SEWER SYSTEMS~~
- 20 ~~Cistern~~
- 21 ~~Hot Tub, Whirlpool, and Controls~~
- 22 ~~Plumbing and Fixtures~~
- 23 ~~Pool & Equipment~~
- 24 ~~Septic/Leaching Field~~

- 1 ~~Sump Pump~~
- 2 ~~Underground Sprinkler & Heads~~
- 3 ~~Water Heater -- Electric or Gas~~
- 4 ~~Water Purifier~~
- 5 ~~Water Softener -- Leased or Owned~~
- 6 ~~Well & Pump~~
- 7 ~~Sewer Systems/Drains~~

8	<u>NONE/NOT</u>		<u>NOT</u>
9	<u>INCLUDED</u>	<u>WORKING</u>	<u>WORKING</u>
10	<u>1. 220 Volt Service</u>	_____	_____
11	<u>2. Air Exchanger</u>	_____	_____
12	<u>3. Air Purifier</u>	_____	_____
13	<u>4. Attic Fan</u>	_____	_____
14	<u>5. Burglar Alarm and Security System</u>	_____	_____
15	<u>6. Ceiling Fan</u>	_____	_____
16	<u>7. Central Air - Electric</u>	_____	_____
17	<u>8. Central Air - Water Cooled</u>	_____	_____
18	<u>9. Cistern</u>	_____	_____
19	<u>10. Dishwasher</u>	_____	_____
20	<u>11. Disposal</u>	_____	_____
21	<u>12. Doorbell</u>	_____	_____
22	<u>13. Fireplace</u>	_____	_____
23	<u>14. Fireplace Insert</u>	_____	_____
24	<u>15. Garage Door/Opener Control(s)</u>	_____	_____
25	<u>16. Garage Wiring</u>	_____	_____
26	<u>17. Heating System</u>	_____	_____
27	<u>18. Hot Tub, Whirlpool, and Controls</u>	_____	_____

1	<u>19. Humidifier</u>	_____	_____	_____
2	<u>20. Intercom</u>	_____	_____	_____
3	<u>21. Light Fixtures</u>	_____	_____	_____
4	<u>22. Microwave/Hood</u>	_____	_____	_____
5	<u>23. Plumbing and Fixtures</u>	_____	_____	_____
6	<u>24. Pool and Equipment</u>	_____	_____	_____
7	<u>25. Propane Tank</u>	_____	_____	_____
8	<u>26. Radon System</u>	_____	_____	_____
9	<u>27. Sauna</u>	_____	_____	_____
10	<u>28. Septic/Leaching Field</u>	_____	_____	_____
11	<u>29. Sewer Systems/Drains</u>	_____	_____	_____
12	<u>30. Smoke/Fire Alarm</u>	_____	_____	_____
13	<u>31. Solar House - Heating</u>	_____	_____	_____
14	<u>32. Sump Pump(s)</u>	_____	_____	_____
15	<u>33. Switches and Outlets</u>	_____	_____	_____
16	<u>34. Underground Sprinkler and Heads</u>	_____	_____	_____
17	<u>35. Vent Fan</u>	_____	_____	_____
18	<u>36. Water Heater - Electric or Gas</u>	_____	_____	_____
19	<u>37. Water Purifier</u>	_____	_____	_____
20	<u>38. Water Softener - Leased or Owned</u>	_____	_____	_____
21	<u>39. Well and Pump</u>	_____	_____	_____
22	<u>40. Wood Burning Stove</u>	_____	_____	_____

IV. HAZARDOUS CONDITIONS

24 ~~Are there any existing hazardous conditions of the property such as methane gas, lead paint,~~
25 ~~radon gas in the house or well, radioactive material, a landfill mineshaft, expansive soil, toxic~~
26 ~~materials, ureaformaldehyde foam insulation, asbestos insulation, or buried fuel or chemical~~
27 ~~storage tanks?~~

28 Yes _____ No _____ Unknown _____

1 Have any tests been performed? Yes _____ No _____ Unknown _____

2 Explain: _____

3 Are you aware of any existing hazardous conditions of the property and are you aware of any
4 tests having been performed?

5 EXISTING CONDITIONS TESTS PERFORMED

	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				

22 If the answer is yes to any of the questions above, please explain in additional comments or on
23 an attached separate sheet.

24 IV. MISCELLANEOUS INFORMATION

25 1. Is the street or road located at the end of the driveway to the property public or private?

26 Public _____ Private _____ Unknown _____

27 2. If private, is there a written road maintenance agreement?

1 If yes, attach a copy of the maintenance agreement.

2 Yes ____ No ____ ~~Unknown ____~~

3 ~~If yes, attach a copy of the maintenance agreement, if available.~~

4 ~~2. Is this property located in or near a flood plain?~~

5 ~~Yes ____ No ____ Unknown ____~~

6 3. When was the fireplace/wood stove/chimney flue last cleaned?

7 ~~Date: _____~~

8 4. ~~In~~ Within the previous twelve months prior to ~~the date of signing this document, did~~ are you
9 aware of any of the following occur occurring on the subject property:?

10 _____ ~~YES NO UNKNOWN~~

11 a. ~~A human death by homicide~~ _____

12 b. ~~Other felony committed against the~~
13 ~~property or a person on the property~~ _____

14 ~~If yes to any of the above explain:~~

15 _____

16 a. A human death by homicide or suicide? If yes, explain:

17 _____

18 Yes _____ No _____

19 b. Other felony committed against the property or a person on the property? If yes, explain:

20 _____

21 Yes _____ No _____

22 5. ~~Are the improvements connected to a~~ Is the water source public or private ~~water system~~
23 (select one)?

24 6. If private, what is the date and result of the last water test?

1 _____

2 7. ~~Are the improvements connected to a public or private~~ Is the sewer system public or
3 private (select one)?

4 _____

5 8. If private, what is the date of the last time the septic tank was pumped? _____

6 89. Are there broken window panes or seals?

7 Yes ____ No ____ ~~Unknown~~ ____

8 If ~~so~~ yes, specify: _____

9 910. Are there any items attached to the property that will not be left, such as: towel bars,
10 mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines,
11 swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

12 Yes ____ No ____

13 If yes, please list _____

14 ~~10~~11. Are ~~there~~ you aware of any other material facts or problems that have not been disclosed
15 ~~above~~ on this form?

16 Yes ____ No ____

17 If yes, explain: _____

18 VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

19 _____

20 _____

21 CLOSING SECTION

22 The Seller hereby certifies that the information contained herein is true and correct to the best
23 of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.

24 If any of these conditions change before conveyance of title to this property, the change will be

1 disclosed in a written amendment to this disclosure statement.

2 SELLER _____ DATE _____

3 SELLER _____ DATE _____

4 THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE
5 AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE
6 CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS
7 IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE
8 BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

9 I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our
10 signature(s) below. Any agent representing any party to this transaction makes no
11 representations and is not responsible for any conditions existing in the property.

12 BUYER _____ DATE _____

13 BUYER _____ DATE _____

14 Section 2. That § 43-4-45 be repealed.

15 ~~43-4-45. In any selling of a residential premises, any seller who has actual knowledge of the~~
16 ~~existence of any prior manufacturing of methamphetamines on the premises shall disclose that~~
17 ~~information to any purchaser or any person who may become a purchaser.~~

18 Section 3. That § 36-21A-89.1 be repealed.

19 ~~36-21A-89.1. The commission shall develop a disclosure form, to be filled out by the seller,~~
20 ~~regarding a purchaser's knowledge of the existence of any prior manufacturing of~~
21 ~~methamphetamines.~~

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0525

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 96** - 01/26/2005

Introduced by: Senators Duenwald and Nesselhuf and Representatives Schafer, Boomgarden,
Davis, Hackl, and Kroger

1 FOR AN ACT ENTITLED, An Act to allow municipalities to offer full food services at certain
2 licensed municipal facilities and to declare an emergency.

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

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any municipality holding a license pursuant to Title 35 may serve or provide for the service
7 of food at any establishment operating under such license.

8 Section 2. Whereas, this Act is necessary for the support of the state government and its
9 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
10 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

942L0482

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 97** - 02/14/2005

Introduced by: Senator Schoenbeck and Representative Peters

1 FOR AN ACT ENTITLED, An Act to establish a maximum value for certain protected
2 homesteads.

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

4 Section 1. That § 43-31-1 be amended to read as follows:

5 43-31-1. The homestead of every family, resident in this state, as hereinafter defined, so long
6 as it continues to possess the character of a homestead is exempt from judicial sale, from
7 judgment lien, and from all mesne or final process from any court, to the extent and as provided
8 ~~in this code, except that~~ by statute. However, a creditor or lien holder of a mobile home
9 classified as a homestead under § 43-31-2 prior to January 1, 1973 ~~shall,~~ may not be cut off ~~or~~
10 and is not subject to a homestead exemption. In addition, ~~the~~ a homestead with a value of less
11 than one hundred seventy thousand dollars of a person seventy years of age or older, and the
12 unmarried surviving spouse of such person, is exempt from sale for taxes for so long as it
13 continues to possess the character of a homestead, ~~is exempt from sale for taxes.~~



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

475L0485 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 117 - 02/01/2005

Introduced by: Senators McNenny, Hansen (Tom), Hundstad, Kloucek, and Lintz and
Representatives Jensen, Brunner, Davis, Dykstra, Fryslie, Olson (Ryan),
Pederson (Gordon), and Tidemann

1 FOR AN ACT ENTITLED, An Act to provide for the development and implementation of
2 certain animal identification programs to maintain animal health and ensure the safety of the
3 food supply.

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

5 Section 1. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Animal Industry Board may develop and implement specific programs for the
8 identification of animals and premises involved in animal movements. Any program
9 implemented pursuant to this Act shall provide for confidentiality of identification records other
10 than those records requested by law enforcement officers of the state and those records used for
11 mandatory disease control or eradication efforts.

12 Any identification program implemented pursuant to this Act shall be for the sole purpose
13 of maintaining animal health and ensuring the safety of the food supply.

14 Section 2. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 The Animal Industry Board may not develop and implement any identification program that
3 conflicts with or supercedes any provision of the state brand laws.

4 Section 3. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Animal Industry Board shall promulgate rules pursuant to chapter 1-26 for the
7 implementation of identification programs concerning:

- 8 (1) Descriptions of the systems used to implement identification programs;
- 9 (2) Methods and procedures to foster cooperation with industry, other states, and the
10 federal government in implementing identification programs;
- 11 (3) Definitions to be used in identification programs;
- 12 (4) Types of identification approved in identification programs;
- 13 (5) Methods for tracking movements of animals included in identification programs;
- 14 (6) Penalties for intentional removal of official identification devices from animals
15 within the state or from animals imported into the state;
- 16 (7) Confidentiality of identification records other than those used for mandatory disease
17 control and eradication programs;
- 18 (8) Types and species of animals included in identification programs; and
- 19 (9) Criteria for defining programs as voluntary or mandatory.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

637L0292

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 151** - 02/07/2005

Introduced by: Senators Hanson (Gary), Abdallah, Broderick, Duenwald, Gant, Greenfield, Hundstad, Koskan, Lintz, Moore, Peterson (Jim), and Sutton (Dan) and Representatives Sigdestad, Dennert, Dykstra, Garnos, Glover, Halverson, Hargens, Hennies, Klaudt, Rhoden, Thompson, and Valandra

1 FOR AN ACT ENTITLED, An Act to permit the cremation and inurnment of indigents in lieu
2 of burial and to revise and clarify certain provisions regarding indigent funeral expenses.

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

4 Section 1. That § 28-17-1 be amended to read as follows:

5 28-17-1. If any person ~~shall die~~ dies within any county, who ~~shall~~ does not have the money
6 or means necessary to defray ~~his~~ the funeral expenses, and whose relatives or friends are unable
7 or unwilling to defray the ~~same, it shall be the duty of~~ funeral expenses, the county
8 commissioners ~~to~~ shall employ a person to provide for and superintend the burial or cremation
9 and inurnment of such deceased person. However, if the board of county commissioners adopts
10 a general policy of cremation, the board shall, nevertheless, provide for burial if the next of kin
11 of the indigent decedent makes an objection to cremation within seventy-two hours.

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

13 28-17-2. Whenever any ~~person who is destitute and has no estate shall die~~ destitute person
14 dies within the state, and ~~who has~~ no one is legally bound for the funeral expenses, and ~~where~~



1 there is no other source to pay the cost of burial ~~expense, cremation, or inurnment~~, the funeral
2 expenses shall ~~then~~ be borne by the county in which the deceased was a resident at time of
3 death, ~~and if~~. If no residence can be fixed, then by the county in which death occurred shall bear
4 the funeral expenses.

5 Section 3. That § 28-17-3 be amended to read as follows:

6 28-17-3. The selection of a funeral director shall be made by the next of kin, if any,
7 otherwise by the county commissioner in whose district the death occurred. In no case ~~shall~~ may
8 the county commissioners advertise for bids on burial of indigent poor. However, in the case
9 of selection of a funeral director by the next of kin, the county is not bound to bear any unusual,
10 extraordinary, or unnecessary funeral expense.

11 Section 4. That § 28-17-4 be amended to read as follows:

12 28-17-4. On county burials, the funeral director in charge shall furnish casket and outside
13 container or, in the case of cremation, urn and conduct the funeral services in customary form;
14 ~~and the~~. The county shall allow the funeral director for merchandise and such services rendered,
15 a sum to be established by resolution of the board of county commissioners in such county at
16 their organizational meeting.

17 Section 5. That § 28-17-5 be amended to read as follows:

18 28-17-5. In addition to the burial expenses provided in § 28-17-4, the county commissioners
19 may contract with cemeteries within the state for burial space in a cemetery and the opening and
20 closing of the grave or may contract for an appropriate disposition of the cremated remains.

21 Section 6. That § 28-17-6 be amended to read as follows:

22 28-17-6. The necessary and reasonable expenses of burial under this chapter shall be paid
23 by the county treasurer, upon the order of such commissioners; ~~and if~~. If the decedent ~~shall have~~
24 had an established residency according to § 28-13-3 in a county in this state different from that

1 in which ~~he died~~ the death occurred, the county paying ~~such~~ the funeral expenses shall be
2 reimbursed by the county in which the decedent had an established residency. ~~When the person~~
3 ~~so dying shall be~~ If the decedent was an honorably discharged United States soldier, sailor,
4 marine, or aviator, the funeral shall be conducted and expenses paid as provided in chapter 33-
5 19.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

634L0716

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 163 - 02/08/2005

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

Introduced by: Senators Dempster, Broderick, Earley, McCracken, and Schoenbeck and
Representatives Vehle, Murschel, O'Brien, and Peters

1 FOR AN ACT ENTITLED, An Act to authorize certain multiple employer trusts.

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

3 Section 1. That chapter 58-18B be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The rating requirements of this chapter do not apply to an association if all of the following
6 criteria are met:

7 (1) The trade, industry, or professional association is comprised in part of homogenous
8 small employers, meets the requirements for the issuance of group health insurance
9 pursuant to § 58-18-3 and if applicable, § 58-18-4, has a constitution or bylaws, has
10 been organized under the laws of South Dakota and maintained in good faith for
11 purposes other than providing insurance for at least ten continuous years, and will
12 provide coverage to not fewer than five hundred employees by January 1, 2007;

13 (2) The group health plan provides coverage to association members' employees and
14 dependents on a community rated basis;



1 (3) The director, after consideration of the impact on the insurance-buying public, has
2 determined that the arrangement is in the best interest of the public.

3 Section 2. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A self-funded multiple employer trust, as defined in section 3 of the federal Employee
6 Retirement Income Security Act of 1974, 29 U.S.C. §1002, paragraph 40, may be authorized
7 by the director if the multiple employer trust meets all of the following conditions:

8 (1) The multiple employer trust is administered by an authorized insurer or a licensed
9 third-party administrator;

10 (2) The multiple employer trust meets all of the requirements of section 1 of this Act;

11 (3) The multiple employer trust is established by a homogenous trade, industry, or
12 professional association of employers that has a constitution or bylaws, is organized
13 under the laws of South Dakota and has been maintained in good faith for purposes
14 other than providing insurance for at least ten continuous years;

15 (4) The association sponsoring the multiple employer trust is engaged in substantial
16 activity for its members other than sponsorship of an employer welfare benefit plan;

17 (5) The association sponsoring the multiple employer trust is a nonprofit entity organized
18 under applicable South Dakota law;

19 (6) The multiple employer trust, upon authorization by the director, participates in the
20 South Dakota Life and Health Insurance Guaranty Association pursuant to chapter
21 58-29C and is a member pursuant to subdivision 58-29C-48(12);

22 (7) The multiple employer trust:

23 (a) Meets the capital and surplus requirements of § 58-6-23;

24 (b) Meets the risk based capital requirements of § 58-4-48;

- 1 (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to
- 2 58-4-42, inclusive;
- 3 (d) Invests its assets pursuant to the requirements of chapters 58-26 and 58-27;
- 4 (e) Is subject to chapter 58-3 on the same basis as insurers;
- 5 (f) Is subject to the insurers supervision, rehabilitation, and liquidation provisions
- 6 of chapter 58-29B.

7 Section 3. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The director shall promulgate rules, pursuant to chapter 1-26, pertaining to multiple
10 employer trusts in the following areas:

- 11 (1) Consumer protection issues including minimum coverage standards for health
- 12 policies; claims processing and payment practices; resolution of consumer
- 13 complaints; compliance with federal HIPAA standards; plan termination processes
- 14 and managed care protections; financial and market conduct record keeping and
- 15 reporting; and unfair trade practices; and
- 16 (2) Financial and plan solvency issues including investment capital requirements; surplus
- 17 and deposit requirements; claims reserves, stop loss coverage, and standards for entry
- 18 and exit of plan members including a nonrefundable minimum deposit of not less
- 19 than two thousand five hundred dollars plus two percent of first year contributions
- 20 on an annual basis; and production of financial statements, audited financial
- 21 statements, and actuarial opinions.

22 Section 4. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Except as otherwise provided in this Act, a multiple employer trust organized pursuant to

1 this Act may not be deemed to be or considered to be an insurance company or association of
2 any kind or character under Title 58, or subject to the provisions of §§ 58-8-6 to 58-8-19,
3 inclusive.

4 Section 5. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A multiple employer trust authorized by this Act may have its authorization suspended or
7 revoked by the director for violating any provision of this Act or because its capital is impaired,
8 and in either instance the director may take action in lieu of suspension or revocation as though
9 the trust were an insurer as provided by § 58-4-28.1.

10 Section 6. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If not otherwise provided, a multiple employer trust doing business in this state on a self-
13 funded basis shall pay premium taxes as required in chapter 10-44 based upon the amount each
14 participating employer contributes, including any amounts contributed by employees and
15 dependents, to the plan on an annual basis. If a multiple employer trust purchases excess or stop
16 loss coverage, the multiple employer trust may not be taxed additionally for that coverage.

17 Section 7. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No agent may sell, solicit, or negotiate a self-funded multiple employer trust authorized by
20 this Act unless the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

21 Section 8. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The provisions of this Act do not apply to any single employer self-funded plan as
24 preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any

1 arrangement exempted pursuant to § 1-24-17. A self-funded multiple employer trust authorized
2 by this Act may include as participating employers both small employers and large employers.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0690

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 171** - 02/05/2005

Introduced by: Senators Schoenbeck and Sutton (Dan) and Representatives Murschel, McLaughlin, Roberts, and Valandra

1 FOR AN ACT ENTITLED, An Act to prohibit certain officials from voting if a conflict of
2 interest exists.

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

4 Section 1. No county, municipal, or school official may vote on any issue in which the
5 official has a conflict of interest. Each official shall decide if any potential conflict of interest
6 requires such official to be disqualified from voting. However, no such official may vote on an
7 issue if the following circumstances apply:

8 (1) The official has a direct pecuniary interest in the matter before the governing body;
9 or

10 (2) At least two-thirds of the governing body votes that an official has an identifiable
11 conflict of interest that should prohibit such official from voting on a specific matter.

12 If an official with a direct pecuniary interest votes on a matter before the governing body,
13 the legal sole remedy is to invalidate that official's vote.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

565L0732

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 178 - 02/16/2005

Introduced by: Senators Schoenbeck and Gray and Representatives Murschel, Cutler, Faehn,
and Koistinen

1 FOR AN ACT ENTITLED, An Act to provide for the creation of county interdisciplinary child
2 information teams and to regulate their memberships, authority, and responsibilities.

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

4 Section 1. The following persons and agencies operating within a county may, by written
5 agreement, form a county interdisciplinary child information team:

6 (1) The state's attorney;

7 (2) The county sheriff;

8 (3) The chief of police of any municipality;

9 (4) The superintendent or the chief executive officer of any school district;

10 (5) The Department of Social Services;

11 (6) The Department of Corrections; and

12 (7) The administrator of the county teen court.

13 Section 2. The persons and agencies signing a written agreement to form a county
14 interdisciplinary child information team may, from time to time, by majority vote, allow the
15 following persons to sign the written agreement and join the team:



- 1 (1) Any physician, psychologist, psychiatrist, nurse, or other provider of medical and
2 mental health care;
- 3 (2) Any administrator of any private elementary and secondary school;
- 4 (3) Any attorney practicing law in the county; and
- 5 (4) Any responsible person that has a legitimate interest in one or more of the children
6 that the team is serving.

7 Section 3. The county interdisciplinary child information team may form one or more
8 auxiliary teams for the purpose of providing service to a single child, a group of children, or
9 specific children with a particular type of problem, or for any other purpose. Each auxiliary team
10 is subject to the written agreement. Each member of an auxiliary team must be a person who has
11 personal knowledge of or experience with some child serviced by the auxiliary team.

12 Section 4. The county interdisciplinary child information team and the written agreement
13 shall facilitate the exchange and sharing of information that one or more team members may be
14 able to use in serving a child in the course of their professions, specialties, interests, or
15 occupations for the purpose of holding each child accountable, ensuring the safety of the child
16 and the community, and providing early intervention to avert more serious problems.
17 Information regarding any child that a team member supplies to other team members is
18 confidential and may not be disseminated beyond the team.

19 Section 5. The terms of the written agreement shall provide for the rules under which the
20 team will operate, the method by which information will be shared, distributed, and managed,
21 the means by which the confidentiality of the information will be safeguarded, and any other
22 matters necessary to the purpose and functions of the team. The terms of the written agreement
23 shall also provide how the team will coordinate its efforts with child protection teams as
24 provided in § 26-8A-17 and local interagency teams, if any, as provided in § 27A-15-54. The

1 written agreement shall be filed with the county auditor.

2 Section 6. To the extent that the county interdisciplinary child information team is involved
3 in a proceeding that is held prior to adjudication by a court, the team satisfies the requirements
4 of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974.
5 South Dakota school districts may release education records to the team. The terms of the
6 written agreement, as provided for in section 5 of this Act, shall include a requirement that the
7 officials and authorities to whom the information is disclosed certify in writing to the school
8 district that is releasing the education records that the education records or information from the
9 education records will not be disclosed to any other party without the prior written consent of
10 the parent or guardian of the student.

11 Section 7. Any person serving as a member of a county interdisciplinary child information
12 team as provided in section 1 of this Act whose action in facilitating the exchange and sharing
13 of information in serving any child in the course of their professions, specialities, interests, or
14 occupations for the purpose of holding each child accountable, ensuring the safety of the child
15 and the community, and providing early intervention to avert more serious problems, is immune
16 from any civil liability, arising out of any good faith act relevant to participation on any county
17 interdisciplinary child information team, that might otherwise be incurred or imposed.

18 Section 8. Any agreement pursuant to this Act shall include a requirement for notice to the
19 parent or guardian unless the parent or guardian is the subject of an investigation by one of the
20 participating agencies with respect to the child's conduct or welfare.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

453L0572

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 207** - 02/08/2005

Introduced by: Senators Apa, Greenfield, Hansen (Tom), Hundstad, Knudson, McNenny, and Napoli and Representatives Novstrup, Glover, Hargens, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain mobile and manufactured home provisions
2 related to taxation, fees, titling, and penalties.

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

4 Section 1. That § 10-45-2.1 be amended to read as follows:

5 10-45-2.1. Sales of sectional homes are subject to sales tax, which shall be based upon the
6 fair market value of the raw materials used to construct each home.

7 For the purpose of this section, "~~sectional homes~~" the term, sectional homes, means any
8 home pre-built in whole or in part for the purpose of permanent placement on a foundation.
9 Mobile homes as defined in subdivision 32-3-1(8) and manufactured homes as defined in
10 subdivision 32-3-1(6) are not sectional homes.

11 Section 2. That § 10-46-5.1 be amended to read as follows:

12 10-46-5.1. If a sectional home is permanently affixed to real property, it is not a vehicle
13 subject to registration under chapter 32-3, and shall be classified as real property. A contractor
14 who erects such a home shall hold a sales tax or use tax license and pay use tax based upon the
15 fair market value of the raw materials used to construct and erect the home.



1 For the purpose of this section, the term, sectional home, means any home pre-built in part
2 or in whole for the purpose of permanent placement on a foundation. ~~A mobile home~~ Mobile
3 homes as defined by subdivision 32-3-1(8) and manufactured homes as defined in subdivision
4 32-3-1(6) is are not a sectional ~~home~~ homes.

5 Section 3. That § 32-5-16.1 be amended to read as follows:

6 32-5-16.1. In addition to any other license fees, registration fees, and compensation for the
7 use of the highways, the registrant shall pay to the county treasurer upon application for the ~~first~~
8 ~~or original~~ initial registration of a mobile home or manufactured home in this state, an additional
9 license fee at the rate of ~~three~~ four percent of the purchase price of ~~such~~ the mobile home or
10 manufactured home. ~~Purchase~~ The purchase price shall be established by a bill of sale.
11 However, if a bill of sale is not available, the retail book value shall be used to establish the
12 purchase price. The retail value ~~shall be~~ is the value in a nationally recognized dealer's guide
13 adopted by the secretary. ~~The secretary shall file notice of adoption of the guide with the~~
14 ~~secretary of state. Such adoption and filing is not subject to chapter 1-26. The payment of such~~
15 ~~license fee shall be in full and in lieu of all occupational, sales, excise, privilege, and franchise~~
16 ~~taxes levied by this state upon the gross receipts from all sales of mobile homes. The~~
17 ~~governmental or public entities set forth in §§ 32-5-42 and 32-5-42.1, are exempted from the~~
18 ~~initial registration imposed by this section. The payment of the initial registration fee is in lieu~~
19 ~~of the tax imposed pursuant to chapters 10-45, 10-46, and 10-46A, and all other occupational,~~
20 ~~sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from the~~
21 ~~sale or installation of mobile or manufactured homes. The governmental or public entities set~~
22 ~~forth in §§ 32-5-42 and 32-5-42.1 are exempted from the initial registration imposed by this~~
23 section.

24 Section 4. That § 32-5-16.2 be amended to read as follows:

1 32-5-16.2. ~~Fifteen~~ Eleven and one-fourth percent of the ~~license~~ four percent initial
2 registration fee prescribed by § 32-5-16.1 shall be deposited in the state motor vehicle fund to
3 defray costs of titling, registration, and for unusual use of the highway. ~~The remaining~~
4 ~~eighty-five~~ Sixty-three and three-fourths percent shall be distributed to the county highway and
5 bridge fund in the county where the mobile or manufactured home is registered. The remaining
6 twenty-five percent shall be distributed to the state general fund.

7 Section 5. That § 32-5-16.3 be amended to read as follows:

8 32-5-16.3. Any person who moves a mobile home or manufactured home shall obtain a
9 permit, as prescribed by the secretary of revenue and regulation , from the county treasurer
10 where the home is located. The permit ~~fee~~ is valid for a single trip from the point of origin to
11 a point of destination within the state. Before the county treasurer may issue a permit, the owner
12 of the mobile home or manufactured home or regulated lender as defined in § 54-3-14 that is
13 repossessing the mobile home or manufactured home shall obtain an affidavit, as prescribed by
14 the secretary of revenue and regulation , from the county treasurer stating that the current year's
15 taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. The permit fee
16 for mobile homes and manufactured homes for use on the public highways is fifteen dollars. The
17 fees collected shall be credited to the license plate special revenue fund. The fee and permit
18 imposed by this section does not apply to a new or used mobile home or manufactured home
19 owned and transported by or for a dealer licensed under chapter 32-7A. A violation of this
20 section is a Class 2 misdemeanor. A dealer shall obtain from the department self-issued permits
21 and shall display a self-issued permit when moving a used or new mobile or manufactured
22 home.

23 Section 6. That § 32-5-16.4 be repealed.

24 ~~32-5-16.4. Any transport of a used mobile home or manufactured home by a transporter shall~~

1 ~~be accompanied with a notification form, as prescribed by the secretary of revenue and~~
2 ~~regulation, stating the point of origin and the point of destination. The transporter shall provide~~
3 ~~a copy of the notification form to the director of equalization in the county of origin and the~~
4 ~~county of destination. This section does not apply to any transport regulated under chapter 32-~~
5 ~~7A. A violation of this section is a Class 2 misdemeanor.~~

6 Section 7. That § 32-5-16.5 be repealed.

7 ~~— 32-5-16.5. Any transport of a used mobile home or manufactured home by a transporter shall~~
8 ~~be accompanied with an affidavit from the county treasurer of the county in which the used~~
9 ~~mobile home or manufactured home is registered, stating that the current year's taxes are paid~~
10 ~~as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. This section does not apply to~~
11 ~~any transport regulated under chapter 32-7A. A violation of this section is a Class 2~~
12 ~~misdemeanor.~~

13 Section 8. That § 32-5-16.6 be amended to read as follows:

14 32-5-16.6. If the owner of the used mobile home or manufactured home, prior to moving the
15 home, fails to obtain an affidavit from the county treasurer of the county in which the used
16 mobile home or manufactured home is registered, stating that the current year's taxes are paid
17 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall
18 assess a ~~civil~~ monetary penalty on the owner. If a regulated lender, as defined in § 54-3-14, is
19 repossessing a used mobile home or manufactured home and fails to obtain an affidavit, prior
20 to moving the home, from the county treasurer of the county in which the used mobile home or
21 manufactured home is registered, stating that the current year's taxes are paid as described in
22 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a ~~civil~~
23 monetary penalty on the lender. The ~~court~~ department shall levy a ~~civil~~ monetary penalty of two
24 hundred fifty dollars for the first violation within a one-year period, five hundred dollars for the

1 second violation within a one-year period, and one thousand dollars for each subsequent
2 violation within a one-year period. All civil monetary penalties collected pursuant to this section
3 shall be deposited in the ~~county general fund of the county in which the used mobile home or~~
4 ~~manufactured home is registered~~ motor vehicle fund. The county treasurer shall notify the
5 Department of Revenue and Regulation in writing of any violation ~~resulting in a civil penalty~~
6 ~~assessment~~ for failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

7 Section 9. That § 32-5-16.7 be amended to read as follows:

8 32-5-16.7. If a transporter of a used mobile home or manufactured home, prior to
9 transporting, fails to obtain an affidavit from the county treasurer of the county in which the
10 used mobile home or manufactured home is registered, stating that the current year's taxes are
11 paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall
12 assess a civil monetary penalty on the transport owner. If a manufacturer or licensed dealer, as
13 defined in chapter 32-7A, is moving, repossessing, trading, purchasing, or receiving onto the
14 manufacturer's or licensed dealer's lot a used mobile home or manufactured home and fails to
15 obtain an affidavit from the county treasurer of the county in which the used mobile home or
16 manufactured home is registered, stating that the current year's taxes are paid as described in
17 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a civil
18 monetary penalty on the manufacturer or licensed dealer. The transporter or dealer who was
19 responsible for moving the mobile or manufactured home is liable for any property taxes due
20 the county.

21 The ~~court~~ department shall levy a civil monetary penalty of two hundred fifty dollars for the
22 first violation within a one-year period, five hundred dollars for the second violation within a
23 one-year period, and one thousand dollars for each subsequent violation within a one-year
24 period. All civil monetary penalties collected pursuant to this section shall be deposited in the

1 ~~county general fund of the county in which the used mobile home or manufactured home is~~
2 ~~registered~~ motor vehicle fund. The county treasurer shall notify the Department of Revenue and
3 Regulation in writing of any violation ~~resulting in a civil penalty assessment~~ for failure to obtain
4 a tax affidavit prior to moving a mobile or manufactured home.

5 Section 10. That § 32-5-16.8 be amended to read as follows:

6 32-5-16.8. For the purposes of §§ 32-5-16.6 and 32-5-16.7, if the owner, lender, licensed
7 dealer, or transporter are the same party the ~~court~~ department may not assess multiple ~~civil~~
8 monetary penalties for any one violation.

9 Section 11. That § 32-9-57 be amended to read as follows:

10 32-9-57. Any commercial motor carrier located in the state hauling a new trailer ~~or a new~~
11 ~~or used manufactured or mobile home~~ with a manufacturer's statement of origin or certificate
12 of title and who has registered with the Department of Revenue and Regulation as a transporter
13 may use a transporter plate upon the streets and highways for in-transit purposes. The fee for
14 a transporter plate is fifty dollars and the fee shall be deposited in the license plate special
15 revenue fund. Any new trailer with a transporter plate may be used to haul other new trailers.
16 No transporter may use a transporter plate for any other purpose. A violation of this section is
17 a Class 1 misdemeanor.

18 Section 12. That § 32-9-57.1 be amended to read as follows:

19 32-9-57.1. The department may, pursuant to chapter 1-26, revoke or suspend the transporter
20 plate issued pursuant § 32-9-57 which belongs to any transporter ~~who the court has assessed a~~
21 ~~civil penalty pursuant to § 32-5-16.7 four or more times within a one-year period~~. It is a Class
22 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its
23 lawful demand any transporter plate which has been revoked or suspended.

24 Section 13. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person against whom a penalty is assessed pursuant to section 8 or 9 of this Act may
3 request a hearing before the secretary if the person believes that the assessment is based upon
4 a mistake of fact or an error of law. A request for hearing shall be made in writing within twenty
5 days from the date of the assessment and shall contain a statement indicating the mistake of fact
6 or error of law the person believes resulted in an invalid assessment. Amended or additional
7 statements of facts or errors of law may be made not less than fourteen days prior to the hearing
8 if the hearing examiner determines such additional or amended statements are in the interest of
9 justice and do not prejudice either party. Hearings are conducted and appeals taken pursuant to
10 the provisions of chapters 1-26 and 1-26D.

11 A copy of the hearing examiner's proposed decision, findings of fact and conclusions of law
12 shall be served on all parties when furnished to the secretary. If the secretary, pursuant to chapter
13 1-26D, accepts the final decision of the hearing examiner, no appeal from a final decision of the
14 secretary upon an assessment may be taken unless any amount ordered paid by the secretary is
15 paid or a bond filed to insure payment of such amount. However, if the final decision of the
16 secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner
17 regarding the amount due on the assessment, an appeal may be taken without payment of the
18 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
19 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
20 secretary is paid or a bond is filed to insure payment of such amount.

21 Section 14. That § 32-7A-11 be amended to read as follows:

22 32-7A-11. New and used mobile homes and manufactured homes owned by a dealer may
23 be transported upon the streets and highways to the dealer's place of business and to the
24 purchaser of such a home and between a dealer's place of business and a supplemental lot or a

1 temporary supplemental lot. ~~Any mobile home or manufactured home purchased or transported~~
2 ~~by or for a dealer shall be accompanied with a notification form stating the point of origin. The~~
3 ~~dealer shall provide a copy of the notification form to the director of equalization in the county~~
4 ~~of origin.~~

5 Section 15. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 An owner of a mobile or manufactured home fixed to real property owned by the applicant
8 may request that the title to the home be surrendered if a title has been issued in accordance with
9 § 32-3-3.1 and payment of the initial registration fee has been made in accordance with § 32-5-
10 16.1. A request shall be submitted on forms prescribed by the secretary. If the application and
11 the request to surrender the statement of ownership are submitted simultaneously, the
12 department shall only create an electronic record indicating ownership of the home and may not
13 issue a paper title. The department may not notate any liens on a title if a paper title is not
14 issued.

15 Section 16. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 An owner of a mobile or manufactured home may choose to obtain a title on a mobile or
18 manufactured home whose title was surrendered. Before the mobile or manufactured home is
19 removed from real property, the owner shall submit to the department a current tax affidavit
20 from the county treasurer in which the mobile or manufactured home was located and an
21 affidavit stating that the home is no longer subject to a real property mortgage or any other liens.
22 The owner shall also furnish the department an independent report that lists the legal description
23 of the real estate upon which the mobile or manufactured home is located, any liens or
24 encumbrances against the mobile or manufactured home or the real estate upon which the

1 mobile or manufactured home is located, and the current owner of the mobile or manufactured
2 home. The independent report shall also contain an affidavit stating a lien search was conducted
3 of all records of the register of deeds, clerk of courts, the treasurer in the county where the
4 mobile or manufactured home is located, and the secretary of state and shall describe any liens
5 revealed by that search. If any liens or encumbrances exist against the mobile or manufactured
6 home, the applicant shall obtain a release from each lienholder prior to issuance of a title. The
7 department is not responsible for any mistakes in the issuance of the title resulting from
8 documents provided pursuant to this section.