

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 (hoghoused) 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, Dadrick, 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

400L0343

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 53** - 02/17/2005

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

1 FOR AN ACT ENTITLED, An Act to provide for adequate access to health care provider
2 networks.

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

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

6 Any person, directly or indirectly, offering a plan or program providing a discount on the
7 fees of any provider of health care goods or services, that is not offered directly by a health
8 carrier as provided by this chapter, shall register in a format as prescribed by the director and
9 shall file reports and conduct business under the same standards as required of utilization review
10 organizations in accordance with provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health
11 carrier may offer or provide coverage through a person not registered but required to be
12 registered pursuant to this Act. Any plan or program that is registered pursuant to § 58-17C-20
13 is not required to maintain a separate registration pursuant to this Act. A plan or program of
14 discounted goods or services that is offered by a health carrier in conjunction with a health
15 benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or a medicare supplement policy as



1 defined in § 58-17A-1, is not required to be registered pursuant to this Act. A plan or program
2 offered by a health care provider as defined in § 34-12C-1 is not required to register pursuant
3 to this Act if the health care provider does not charge for the plan or program.

4 Section 2. That chapter 58-17C be amended by adding thereto a NEW SECTION as follows:

5 Any person subject to registration pursuant to section 1 of this Act shall prominently and
6 boldly disclose that the product is not insurance. Any advertisements or solicitations made by
7 such a person are subject to the provisions of §§ 58-33A-2 to 58-33A-4, inclusive, and §§ 58-
8 33A-7 to 58-33A-8, inclusive, and §§ 58-33A-10 to 58-33A-12, inclusive. Any administrative
9 rule promulgated pursuant to § 58-33A-7 does not apply to those registered pursuant to this Act
10 unless specifically referenced in the rule. If any such person fails to comply with these
11 provisions or the provisions of this Act, the director may take action in the same manner as
12 provided for by § 58-17C-67 and may revoke the registration. Any such action by the director
13 is subject to notice and hearing as provided by chapter 1-26 and § 58-4-7. A person acting as
14 an agent as defined in chapter 58-30 who sells, solicits, or negotiates a plan or program
15 containing insurance benefits shall meet the licensing and appointment requirements of that
16 chapter if such person is otherwise required to be licensed by chapter 58-30.

17 Section 3. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No person subject to registration pursuant to section 1 of this Act may receive personal
20 information, money, or other consideration for enrollment in a plan or program until the
21 consumer has signed a contract or agreement with the person and no later than at the time the
22 contract is signed, provides, at a minimum, the following information, disclosed in a clear and
23 conspicuous manner:

24 (1) The name, true address, telephone number, and website address of the registered

- 1 person who is responsible for customer service;
- 2 (2) A detailed description of the plan or program, including the goods and services
3 covered and all exemptions and discounts that apply to each category thereof;
- 4 (3) All costs associated with the plan or program, including any sign-up fee and any
5 recurring costs;
- 6 (4) An internet website that is updated regularly or a paper copy where the consumer can
7 access the names and addresses of all current participating providers in the
8 consumer's area;
- 9 (5) A statement of the consumer's right to return the plan or program within thirty days
10 of its delivery to the person or agent through whom it was purchased and to have all
11 costs of the plan or program, excluding a nominal process fee refunded if, after
12 examination of the plan or program, the purchaser is not satisfied with it for any
13 reason;
- 14 (6) A statement of the consumer's right to terminate the plan or program at any time by
15 providing written notice or other notice, the form to be used for the termination
16 notice, and the address where the notice is to be sent if different than the address
17 provided in subdivision (1); and
- 18 (7) Notice that the consumer is not obligated to make any further payments under the
19 plan or program, nor is the consumer entitled to any benefits under the plan or
20 program for any period of time after the last month for which payment has been
21 made.

22 The requirement that the contract or agreement be signed prior to any money or
23 consideration being obtained does not apply to a transaction in which payment by the consumer
24 is made by credit card or by means of a telephonic transaction so long as the disclosures

1 required by this section are provided to the consumer by way of postal mail, facsimile, or
2 electronic mail within ten business days of the consumer's enrollment.

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

5 Any plan or program offered by a person subject to registration pursuant to section 1 of this
6 Act shall provide thirty days from the date of the signed consumer contract or agreement, thirty
7 days from the receipt of the disclosures required by section 3 of this Act if the consumer
8 purchased the plan or program over the telephone, or sixty days if payment is by automatic or
9 electronic withdrawal from a bank account, in which the consumer may return the plan or
10 program to the person or agent through whom it was purchased and have all costs of the plan
11 or program, excluding a nominal processing fee as prescribed by the director by rules
12 promulgated pursuant to chapter 1-26, refunded in full.

13 Section 5. That § 58-18-20 be amended to read as follows:

14 58-18-20. Any insurer authorized to write health insurance in this state ~~shall have the power~~
15 ~~to~~ may issue blanket health insurance. No such blanket policy or certificate may be issued or
16 delivered, or coverage solicited, in this state unless a copy of the form thereof ~~shall have~~ has
17 been filed in accordance with § 58-11-12. Every such blanket policy or certificate shall contain
18 provisions, which in the opinion of the director, are at least as favorable to the policyholder and
19 the individual insured as those set forth in §§ 58-18-21 to 58-18-27, inclusive.

20 Section 6. Any person subject to registration pursuant to section 1 of this Act shall maintain
21 a surety bond in the amount of twenty thousand dollars issued by a surety company authorized
22 to do business in this state, or establish and maintain a surety account in the amount of twenty
23 thousand dollars at a federally insured bank, savings and loan association, or federal savings
24 bank located in this state. Each surety bond and surety account is subject to the following:

- 1 (1) A copy of the bond or a statement identifying the depository, trustee, and account
2 number of the surety account, and thereafter proof of annual renewal of the bond or
3 maintenance of the surety account, shall be filed with the director of the Division of
4 Insurance;
- 5 (2) A surety account shall be maintained until two years after the date that the person
6 subject to registration pursuant to section 1 of this Act ceases operations in the state.
7 Funds from any surety account may not be released to the person subject to
8 registration pursuant to section 1 of this Act without the specific consent of the
9 attorney general;
- 10 (3) No surety on the bond of a person subject to registration pursuant to section 1 of this
11 Act may cancel such bond without giving written notice thereof to the secretary of
12 state. Whenever the secretary of state receives notice of a surety's intention to cancel
13 the bond of a person subject to registration pursuant to section 1 of this Act, the
14 secretary of state shall notify the affected person that, unless such person files another
15 twenty thousand dollar surety bond with the secretary of state or establishes a twenty
16 thousand dollar surety account on or before the cancellation date of such surety bond,
17 then such person subject to registration pursuant to section 1 of this Act is no longer
18 authorized to do business in this state;
- 19 (4) The bond or surety account shall be in favor of any person and the director of the
20 Division of Insurance for the benefit of any person who is damaged by any violation
21 of this Act, including any violation by the supplier or by any other person which
22 markets, promotes, advertises, or otherwise distributes a discount card on behalf of
23 the supplier. The bond shall cover any violation occurring during the time period
24 during which the bond is in effect; and

1 (5) Any person claiming against the bond or surety account for a violation of this Act
2 may maintain an action at law against the person subject to registration pursuant to
3 section 1 of this Act and against the surety or trustee of the surety account. The
4 aggregate liability of the surety or trustee of the surety account to all persons
5 damaged by violations of this Act may not exceed the amount of the surety bond or
6 account.

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

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

563L0511

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 95** - 02/18/2005

Introduced by: Senators Sutton (Duane), Abdallah, Broderick, Gray, Hundstad, Koetzle, McNenny, Moore, and Napoli and Representatives Frost, Cutler, Dennert, Elliott, Jensen, Klaudt, Michels, Murschel, O'Brien, Olson (Ryan), Pederson (Gordon), Rounds, Turbiville, and Valandra

1 FOR AN ACT ENTITLED, An Act to authorize account wagering and multi-jurisdictional
2 simulcasting and interactive wagering totalizator hubs and to revise certain provisions
3 regarding pari-mutuel racing.

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

5 Section 1. That § 42-7-56 be amended to read as follows:

6 42-7-56. The commission shall:

- 7 (1) Provide for racing under the certificate system;
- 8 (2) Perform quasi-legislative, quasi-judicial, and advisory functions excluding special
9 budgetary functions as defined in § 1-32-1;
- 10 (3) Set racing dates;
- 11 (4) Promulgate rules pursuant to chapter 1-26 for effectively preventing the use of any
12 substance, compound items, or combination thereof of any medicine, narcotic,
13 stimulant, depressant, or anesthetic which could alter the normal performance of a
14 racing animal unless specifically authorized by the commission;



- 1 (5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and
2 equipment used within the state;
- 3 (6) Promulgate rules pursuant to chapter 1-26 governing, restricting, or regulating bids
4 on licensees' concessions and leases on equipment;
- 5 (7) Approve all proposed extensions, additions, or improvements to the buildings,
6 stables, or tracts upon property owned or leased by a licensee;
- 7 (8) Exclude from race courses or other pari-mutuel facilities any person who violates the
8 racing laws or any rule, ~~regulation~~, or order of the commission or is not eligible for
9 licensing in another racing jurisdiction;
- 10 (9) Compel the production of all documents showing the receipts and disbursements of
11 any licensee and determine the manner in which ~~such~~ the financial records shall be
12 kept;
- 13 (10) Investigate the operations of any licensee and cause the various places where the
14 certificate system is operated to be visited and inspected at reasonable intervals for
15 the purpose of satisfying itself that the rules ~~and regulations~~ are strictly complied
16 with;
- 17 (11) Request appropriate state officials to perform inspections necessary for the health and
18 safety of spectators, employees, participants, and animals that are lawfully on the race
19 track;
- 20 (12) License all participants in the racing industry and require and obtain such information
21 as the commission deems necessary from licensed applicants;
- 22 (13) Promulgate and enforce additional rules pursuant to chapter 1-26, and conditions
23 under which all horse and dog races held shall be conducted and promulgate rules
24 pursuant to chapter 1-26 to preserve the integrity and security of racing; ~~and~~

- 1 (14) License all facilities at which money is collected or disbursed under the certificate
2 system;
- 3 (15) Promulgate rules pursuant to chapter 1-26 for the authorization, regulation, and
4 auditing of account wagering on horse and dog racing authorized by this chapter;
- 5 (16) Promulgate rules pursuant to chapter 1-26 regarding the licensing and regulation of
6 multi-jurisdictional totalizator hubs and the employees of such facilities; and
- 7 (17) Promulgate rules pursuant to chapter 1-26 to establish application fees and initial
8 system audit fees that shall be used to conduct the background investigation of the
9 applicant and the initial system audit of the multi-jurisdictional totalizator hub. If the
10 commission or the executive secretary determines that the actual cost of the
11 background investigation or initial system audit will exceed the amount of the fees
12 paid, the commission may assess the actual cost of the background investigation or
13 initial system audit, including the costs for personnel and travel, against the applicant.

14 Section 2. That § 42-7-58.7 be amended to read as follows:

15 42-7-58.7. Notwithstanding any other provisions of this chapter, the commission may accept
16 and consider applications at any time for operation of satellite facilities and multi-jurisdictional
17 totalizator hubs to be operated under the certificate system and issue a license at any time for
18 the operation of ~~satellite~~ the facilities or hubs, if the facilities or hubs only allow wagering on
19 horse and dog racing authorized by this chapter.

20 Section 3. That § 42-7-60 be amended to read as follows:

21 42-7-60. Every person applying for a license under §§ 42-7-58 ~~and~~, 42-7-58.1, and 42-7-
22 56(16) shall give bond payable to the State of South Dakota with good security to be approved
23 by the commission. The bond shall be the amount which the commission determines is adequate
24 to protect the amount normally due and owing to the commission in a sixty-day period or, in the

1 case of new or altered conditions, based on the projected revenues and to guarantee proper
2 payout of wagers.

3 The commission may waive the bond. In such event, the amount of taxes and fees due and
4 owing the state shall be a lien on the license to operate. The lack of timely payment shall be
5 cause for revocation or suspension of the license to operate.

6 Section 4. That § 42-7-65 be amended to read as follows:

7 42-7-65. All transfers of licenses to ~~operate a meet~~ collect or disburse money under the
8 certificate system or transfers of stock in a corporation holding a license shall be subject to prior
9 review and approval by the commission, and the disclosure requirements as provided in § 42-7-
10 59. The commission may approve minor transfers of stock without a hearing. The commission
11 shall apply the standards provided in § 42-7-91 in determining whether it shall permit a transfer
12 of stock.

13 Section 5. That § 42-7-71 be amended to read as follows:

14 42-7-71. One-fourth of all money received by the state treasurer under this chapter from
15 licensees operating horse racing tracks shall be placed in a special revenue fund to be known
16 as the "South Dakota-bred racing fund." The fund shall be used by the commission to encourage
17 horse racing and the raising and breeding of horses in South Dakota and shall be used for the
18 purpose of providing compensation to South Dakota-bred horses ~~by~~ and providing funds to all
19 horsetracks licensed in South Dakota. ~~However, not more than one-fourth of the moneys~~
20 ~~deposited in the South Dakota-bred racing fund may be used by the commission to provide~~
21 ~~purse supplements to horsetracks for horses other than South Dakota-bred horses.~~

22 Section 6. That § 42-7-82 be amended to read as follows:

23 42-7-82. Claims for any part of a redistribution from a pari-mutuel pool shall be made within
24 ~~sixty days~~ one year from the ~~end of the meet at~~ date on which the race was held or be forever

1 barred. Any sums so barred shall become the property of the licensee conducting the meet or
2 providing the simulcast signal from the host track to the satellite facility or the multi-
3 jurisdictional totalizator hub at which the contribution was made.

4 Section 7. That § 42-7-89 be amended to read as follows:

5 42-7-89. The payments required in §§ 42-7-63, 42-7-79, 42-7-85, ~~and~~ 42-7-88, and 42-7-102
6 to be made by the licensee to the state treasurer are in lieu of all other or further excise or
7 occupational taxes to the state or any county, municipality, or other political subdivision.

8 Section 8. That § 42-7-91 be amended to read as follows:

9 42-7-91. The commission may refuse, suspend, or withdraw licenses under the certificate
10 system and privileges granted by it or terminate ~~racing license~~ privileges for just cause. Those
11 things constituting just cause are:

- 12 (1) Any action or attempted action by a person contrary to the provisions of this chapter
13 and law;
- 14 (2) Corrupt practices, which include but are not limited to:
 - 15 (a) Prearranging or attempting to prearrange the order of finish of a race;
 - 16 (b) Failing to properly pay the winnings to a bettor or to properly return change
17 to a bettor upon purchasing a ticket;
 - 18 (c) Falsifying or manipulating the odds on any entrant in a race;
- 19 (3) Any violation of the rules of racing adopted by the commission;
- 20 (4) ~~Willful falsification~~ Falsification or misstatement of fact in an application for ~~racing~~
21 ~~privileges~~ any license issued pursuant to this chapter;
- 22 (5) Material false statement to a racing official or to the commission;
- 23 (6) Willful disobedience of a commission order or of a lawful order of a racing official
24 other than a commissioner;

- 1 (7) Continued failure or inability to meet financial obligations connected with the
- 2 licensee's business, occupation or profession performed or engaged on the track
- 3 grounds;
- 4 (8) Failure or inability to maintain properly a race track;
- 5 (9) The refusal to license, or the suspension, or the revocation of a racing license by
- 6 another racing jurisdiction.

7 Section 9. That § 42-7-102 be amended to read as follows:

8 42-7-102. Notwithstanding any other provision of this chapter, the commission may
9 authorize any licensee to participate in an interstate combined wagering pool with one or more
10 other racing jurisdictions. If a licensee participates in an interstate combined wagering pool, the
11 licensee may adopt the take-out of the host jurisdiction or facility. The State of South Dakota
12 shall receive one and one-half percent of the total contributed in this state, and the special racing
13 revolving fund and the South Dakota-bred racing fund shall each receive one and one-half
14 percent of the total contributed in this state. However, if the licensee participating in the
15 interstate combined wagering pool is a multi-jurisdictional totalizator hub, the total portion to
16 be received by the state shall be one-fourth of one percent of the total contributed through the
17 hub, of which the special racing revolving fund shall receive one-fifth of one percent of the total
18 contributed through the hub and the South Dakota-bred racing fund shall receive one-twentieth
19 of one percent of the total contributed through the hub. Any such interstate combined wagering
20 pool may only apply to horse and dog racing authorized by this chapter.

21 Section 10. Nothing in this Act authorizes internet gambling otherwise prohibited by chapter
22 22-25A.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

776L0668

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 107 - 02/11/2005

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

Introduced by: Senators Kooistra, Knudson, and Nesselhuf and Representatives Sebert and Thompson

1 FOR AN ACT ENTITLED, An Act to regulate the sale and shipment of cigarettes.

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

3 Section 1. That § 10-50-1 be amended by adding thereto NEW SUBDIVISIONS to read as
4 follows:

5 "Adult," any person who is at least the legal minimum purchase age;

6 "Consumer," any individual who is not a retailer or a licensed distributor or wholesaler
7 pursuant to § 10-50-9;

8 "Delivery sale," any sale of cigarettes to a consumer in the state where:

9 (a) The purchaser submits the order for the sale by means of a telephonic or other
10 method of voice transmission, the mail or any other delivery service, or the
11 internet or other online service; or

12 (b) The cigarettes are delivered by use of the mail or delivery service. A sale of
13 cigarettes shall be a delivery sale regardless of whether the seller is located
14 within or without the state;



1 "Delivery service," any person engaged in the commercial delivery of letters, packages, or
2 other containers;

3 "Legal minimum purchase age," the minimum age at which an individual may legally
4 purchase cigarettes in this state pursuant to § 34-46-2;

5 "Mail," or "mailing," the shipment of cigarettes through the United States Postal Office;

6 "Shipping container," any container in which cigarettes are shipped in connection with a
7 delivery sale;

8 "Shipping document," any bill of lading, airbill, or any other document used to provide
9 evidence of the undertaking by a delivery service to deliver a letter, package, or other container.

10 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No person may make a delivery sale of cigarettes to any individual who is under the legal
13 minimum purchase age in the state.

14 Any person accepting a purchase order for a delivery sale shall comply with:

- 15 (1) The age verification requirements provided in section 3 of this Act;
- 16 (2) The disclosure requirements provided in section 4 of this Act;
- 17 (3) The shipping requirements provided in section 5 of this Act;
- 18 (4) The registration and reporting requirements provided in section 6 of this Act; and
- 19 (5) All other statutes of the state generally applicable to sales of cigarettes that occur
20 entirely within the state, and any law imposing an excise tax, sales tax, license,
21 revenue-stamping requirement, and escrow payment obligation as provided in chapter
22 10-50B.

23 Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 No person may mail, ship, or otherwise deliver cigarettes in connection with a delivery sale
2 unless prior to the first delivery sale to the consumer:

3 (1) The person obtains from the consumer a statement signed by the consumer in writing
4 that certifies the consumer's address and that the consumer is at least eighteen years
5 of age. The statement shall also confirm that the consumer understands that signing
6 another person's name to the certification is illegal, the sale of cigarettes to any
7 individual under the legal minimum purchase age is illegal, the purchase of cigarettes
8 by any individual under the legal minimum purchase age is illegal, and that the
9 consumer wants to receive a mailing from a tobacco company;

10 (2) The person makes a good faith effort to verify the information contained in the
11 certification provided by the consumer pursuant to subdivision (1) against a
12 commercially available database, or obtains a photocopy or other image of the valid,
13 government-issued identification stating the date of birth or age of the individual
14 placing the order;

15 (3) The person provides to the consumer, via e-mail or other means, a notice that meets
16 the requirements of section 4 of this Act; and

17 (4) If an order for cigarettes is made pursuant to an advertisement on the internet or other
18 advertising medium, the person receives payment for the delivery sale from the
19 prospective consumer by a credit or debit card that has been issued in the consumer's
20 name, or by check.

21 Any person accepting a purchase order for a delivery sale may request that the prospective
22 consumer provide an e-mail address.

23 Section 4. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The notice required under section 3 of this Act shall include a prominent and clearly legible
2 statement that:

- 3 (1) Cigarette sales to consumers below the legal minimum purchase age are illegal;
- 4 (2) Consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette
5 Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) as of January 1, 2005, rotated
6 on a quarterly basis;
- 7 (3) Sales of cigarettes are restricted to those consumers who provide verifiable proof of
8 age in accordance with section 3 of this Act; and
- 9 (4) Cigarette sales are subject to tax under § 10-50-3, and an explanation of how the tax
10 has been or will be paid with respect to the delivery sale.

11 Section 5. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery
14 sale shall:

- 15 (1) Include as part of the bill of lading or other shipping documents a clear and
16 conspicuous statement as follows: "Cigarettes: South Dakota Law Prohibits Shipping
17 to Individuals Under 18, and Requires the Payment of all Applicable Taxes"; and
- 18 (2) Use a method of mailing, shipping, or delivery that obligates the delivery service to
19 require the consumer placing the purchase order for the delivery sale, or another adult
20 of legal minimum purchase age residing at the consumer's address, to sign to accept
21 delivery of the shipping container, and provide proof in the form of a valid
22 government-issued identification bearing a photograph of the individual who signs
23 to accept delivery of the shipping container. The person accepting delivery shall be
24 the addressee or another adult of legal minimum purchase age residing at the

1 consumer's address.

2 If the person accepting a purchase order for a delivery sale delivers the cigarettes without
3 using a delivery service, the person shall comply with each requirement of sections 2 to 7,
4 inclusive, of this Act applicable to a delivery service. The person is in violation of the provisions
5 of sections 2 to 7, inclusive, of this Act if the person fails to comply with any such requirement.

6 Section 6. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Prior to making a delivery sale or mailing, shipping, or otherwise delivering cigarettes in
9 connection with any delivery sale, each person shall file with the department a statement
10 providing the person's name, trade name, and the address of the person's principal place of
11 business and any other place of business.

12 Not later than the tenth day of each calendar month, each person that has made a delivery
13 sale or mailed, shipped, or otherwise delivered cigarettes in connection with any delivery sale
14 during the previous calendar month shall file with the department a memorandum or a copy of
15 the invoice that provides for each delivery sale:

- 16 (1) The name and address of the consumer;
- 17 (2) The brand or brands of the cigarettes that were sold; and
- 18 (3) The quantity of cigarettes that were sold.

19 Section 7. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 In addition to any other provision of law, the secretary may assess, for a first violation of any
22 provision of sections 2 to 7, inclusive, of this Act, a civil penalty of one thousand dollars or five
23 times the retail value of the cigarettes involved, whichever is greater. A subsequent violation
24 is punishable by a civil penalty of five thousand dollars or five times the retail value of the

1 cigarettes involved, whichever is greater.

2 Any person who knowingly violates any provision pursuant to sections 2 to 7, inclusive, of
3 this Act, or who knowingly and falsely submits a certification in another person's name, shall
4 for each offense be fined ten thousand dollars or five times the retail value of the cigarettes
5 involved, whichever is greater.

6 Any person failing to collect or remit to the department any tax required in connection with
7 a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the
8 retail value of the cigarettes involved.

9 Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the
10 requirements of sections 2 to 7, inclusive, of this Act shall be forfeited to the state and
11 destroyed. All fixtures, equipment, and all other materials and personal property on the premises
12 of any person who, with the intent to defraud the state, violates any of the requirements of
13 sections 2 to 7, inclusive, of this Act, shall be forfeited to the state.

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

922L0507

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 125 - 02/03/2005

Introduced by: Senators Bogue, Dempster, and Olson (Ed) and Representatives Rhoden,
Dykstra, and Hackl

1 FOR AN ACT ENTITLED, An Act to exempt transfers of funds from certain municipal revenue
2 producing ventures from the calculation of the general fund balance of school districts.

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

4 Section 1. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any funds transferred by a school district to the general fund of the school district pursuant
7 to § 9-21-28 may not be considered a part of the general fund balance for purposes of this
8 chapter.

9 Section 2. That § 9-21-28 be amended to read as follows:

10 9-21-28. Authority is hereby granted to all municipalities to transfer surplus funds
11 accumulated through special municipal revenue producing enterprises to public school districts
12 operating within the municipality; provided such transfer of funds shall be made through a
13 majority vote of the governing body of the municipality and accepted by a majority vote of the
14 governing body of such school district.

15 No funds shall be transferred that are acquired through legal tax levy in the municipality. All



- 1 such funds ~~shall~~ may be transferred by the school district to the general fund or the capital outlay
- 2 fund of such school district.

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

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

327L0562

SENATE ENGROSSED NO. **SB 214** - 02/14/2005

Introduced by: Senators Peterson (Jim), Bartling, Duenwald, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Kloucek, Koetzle, Moore, Nesselhuf, Smidt, and Sutton (Dan) and Representatives Dykstra, Boomgarden, Brunner, Davis, Deadrick, Dennert, Frost, Fryslie, Garnos, Gassman, Gillespie, Glover, Hackl, Halverson, Hargens, Hunhoff, Jensen, Klaudt, Koistinen, Kroger, Lange, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Sigdestad, Street, Tidemann, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide taxation benefits for certain soybean and
2 biodiesel facilities.

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

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

5 10-45B-1. Terms used in this chapter mean:

6 (1) "Department," the Department of Revenue and Regulation;

7 (2) "New agricultural processing facility," a new building or structure, the construction
8 of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B.

9 A new agricultural processing facility is any new building or structure constructed
10 for the initial or subsequent processing of any form of agricultural commodity,
11 product, or by-product. A new agricultural processing facility does not include any
12 building or structure constructed for raising or feeding of livestock or the expansion



1 of an existing agricultural processing facility except as provided in section 2 of this
2 Act;

3 (3) "Person," any individual, firm, copartnership, joint venture, association, limited
4 liability company, corporation, estate, trust, business trust, receiver, or any group or
5 combination acting as a unit;

6 (4) "Project," the construction of a new agricultural processing facility at a single site;

7 (5) "Project cost," the amount paid in money, credits, property, or other money's worth
8 for a project;

9 (6) "Secretary," the secretary of the Department of Revenue and Regulation.

10 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For purposes of this chapter, a new agricultural processing facility as defined in § 10-45B-1
13 includes an addition to an existing soybean processing facility or operation if the addition
14 produces biodiesel or if the addition produces a product or uses a process that is substantially
15 different than the products or processes produced or used by the existing facility or operation.

16 Section 3. That § 10-45B-2 be amended to read as follows:

17 10-45B-2. Any person may apply for and obtain a refund or credit for contractors' excise
18 taxes imposed and paid under the provisions of chapter 10-46A for the construction of a new
19 agricultural processing facility and for sales or use taxes imposed and paid by ~~such~~ the person
20 under the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural
21 processing equipment. For any new agricultural processing facility for the processing or
22 production of soybeans or biodiesel, any tax due under the provisions of chapters 10-45 and 10-
23 46 that is not eligible for a refund under this section may be paid over a four-year period at equal
24 yearly rates beginning with the commencement of plant production.

1 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The owner of a project paying taxes over a four-year period as provided in section 3 of this
4 Act shall file a tax return on or before December thirty-first of each year reporting the project
5 costs subject to tax under chapters 10-45 and 10-46 incurred during the previous twelve months.
6 The tax due from such return shall be paid in four equal annual payments with the first payment
7 due date no later than December thirty-first of the year the plant begins production. Each
8 subsequent annual payment shall be made no later than December thirty-first following the
9 previous payment.

10 Section 5. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any amount refunded pursuant to this Act for a project that is not completed within the time
13 frames prescribed by this chapter, including any extensions granted by the secretary, shall be
14 returned to the state without interest. Any refunded amounts not returned pursuant to this section
15 and all sums previously refunded to the claimant constitute a debt to the state and a lien in favor
16 of the state upon all property and rights to property whether real or personal belonging to the
17 claimant and may be recovered in an action of debt.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

471L0640

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 216** - 02/15/2005

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

Introduced by: Senators Lintz, Duenwald, Greenfield, Hanson (Gary), McNenny, Moore, Napoli, and Peterson (Jim) and Representatives Pederson (Gordon), Brunner, Jensen, and McCoy

1 FOR AN ACT ENTITLED, An Act to enumerate the circumstances under which prairie dogs
2 are to be considered pests.

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

4 Section 1. That § 38-22-1.2 be amended to read as follows:

5 38-22-1.2. Terms used in this chapter, ~~unless the context otherwise clearly requires,~~ mean:

- 6 (1) "Agricultural chemical," any material used to control or eradicate weeds or pests;
- 7 (2) "Board," any county weed and pest board;
- 8 (3) "Board member area," a geographical area within a county from which a member of
9 the board is appointed;
- 10 (4) "Commission," the South Dakota Weed and Pest Control Commission;
- 11 (5) "Control," the prevention or limiting of the growth, spread, or development of weeds
12 or pests;
- 13 (6) "Department," the State Department of Agriculture;
- 14 (7) "Pest," any rodent, bird, other than a game bird or a state or federally protected bird,



1 insect, or nematode which the commission has found to be detrimental to the
2 production of crop or livestock or to the welfare of persons residing within the state,

3 Prairie dogs are included in the definition of a pest if all of the following conditions
4 apply:

5 (a) Sylvatic plague has been reported in any prairie dog colony east of the Rocky
6 Mountains;

7 (b) The South Dakota Department of Game, Fish and Parks has determined that
8 the population of prairie dogs within the state, including tribal lands, exceeds
9 the one hundred forty-five thousand acre level;

10 (c) Prairie dogs are colonizing on lands where the prairie dogs are unwanted by
11 the owner of the impacted land;

12 (d) Lands adjacent to the impacted owner's land do not have a maintained one-
13 mile buffer zone, or other mutually agreed border, in which prairie dog control
14 is applied, and the owner of the impacted land has filed a written complaint of
15 encroachment requesting mitigation or abatement with the South Dakota
16 Department of Agriculture and served a copy upon the owner of adjoining
17 lands from which the prairie dogs are encroaching;

18 (8) "Pesticide," a substance or mixture of substances for preventing, destroying,
19 repelling, or mitigating any pest or any substance or mixture of substances intended
20 for use as a plant regulatory, defoliant, or desiccant or any substance or mixture of
21 substances intended to be used as a spray adjuvant;

22 (9) "Secretary," the state secretary of the Department of Agriculture;

23 (10) "Supervisor," any person appointed or employed by a board for the purpose of
24 carrying out the provisions of this chapter;

- 1 (11) "Weed," any plant which the commission has found to be detrimental to the
- 2 production of crops or livestock or to the welfare of persons residing within the state.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

275L0655

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 217 - 02/18/2005

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain cross references in the code with regard
2 to the implementation of the South Dakota Business Corporation Act and to provide for an
3 exception to the repealers.

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

5 Section 1. That § 36-21A-55 be amended to read as follows:

6 36-21A-55. The holding of a license issued under the provisions of this chapter or
7 participating in a transaction for which a license is required by this chapter is the transaction of
8 business within the state, and a nonresident licensee or unlicensed person so defined is subject
9 to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

10 Service of process shall be made upon corporate licensees as provided by §§ ~~47-2-32 to 47-~~
11 ~~2-35, inclusive~~ section 52 of Senate Bill 70 previously enacted by the 2005 Legislature, and
12 § 47-8-15 to 47-8-18, inclusive section 362 of Senate Bill 70 previously enacted by the 2005
13 Legislature, and otherwise as provided by chapter 15-6.

14 Any person licensed under this chapter shall deliver a copy of any process or pleading to
15 which that licensee is a party to the executive director of the commission within ten days of its



1 being served by or upon him. Failure to file with the executive director is not jurisdictional in
2 any action to which a licensee under this chapter may be a party.

3 Section 2. That § 37-28-1 be amended to read as follows:

4 37-28-1. Terms used in this chapter, unless the context otherwise plainly requires, mean:

5 (1) "Act of Congress," the Act of Congress approved June 18, 1934, entitled an act to
6 provide for the establishment, operation and maintenance of foreign trade zones in
7 ports of entry of the United States, to expedite and encourage foreign commerce, and
8 for other purposes, as amended, and commonly known as the Foreign Trade Zones
9 Act of 1934;

10 (2) "Private corporation," a corporation organized under ~~chapter 47-2~~ sections 1 to 193,
11 inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate
12 Bill 70 previously enacted by the 2005 Legislature, one of the purposes of which is
13 to establish, operate and maintain a foreign trade zone by itself or in conjunction with
14 a public corporation;

15 (3) "Public corporation," this state; a political subdivision of this state; any municipality
16 therein; any public agency of the state, of any public subdivision in the state or of any
17 municipality in the state; or any other corporate instrumentality of this state.

18 Section 3. That § 47-10-24 be amended to read as follows:

19 47-10-24. The provisions of ~~chapters 47-2 to 47-5~~ sections 1 to 193, inclusive, 47-7 sections
20 308 to 346, inclusive, and 47-9 sections 371 to 389, inclusive, of Senate Bill 70 previously
21 enacted by the 2005 Legislature shall apply to corporations incorporated under this chapter,
22 insofar as they may be applicable and not inconsistent with this chapter.

23 Section 4. That § 47-13A-1 be amended to read as follows:

24 47-13A-1. One or more lawyers licensed pursuant to chapter 16-16 may form professional

1 service corporations for the practice of law under ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to
2 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill
3 70 previously enacted by the 2005 Legislature, or may form limited liability companies under
4 the South Dakota Limited Liability Company Act, providing that such corporations and limited
5 liability companies are organized and operated in accordance with the provisions of this chapter.
6 In any corporation formed under this chapter one or more persons may act as the sole
7 stockholders, directors or officers of such corporation. However, any limited liability company
8 formed under this chapter shall comply with the South Dakota Limited Liability Act, as
9 amended.

10 Section 5. That § 47-20-13 be amended to read as follows:

11 47-20-13. The secretary of state shall charge and collect the fees provided by ~~§ 47-9-7 and~~
12 ~~any amendments that may be made thereto~~, sections 7 and 8 of Senate Bill 70 previously enacted
13 by the 2005 Legislature, for filing the instruments and issuing the certificates relating to
14 domestic corporations therein provided. The fees applicable to amended articles of incorporation
15 shall apply to restated articles of incorporation and fees applicable to the articles of
16 incorporation shall apply to articles of merger or consolidation.

17 Section 6. That § 47-20-14 be amended to read as follows:

18 47-20-14. The secretary of state shall charge and collect the fees provided by ~~chapter 47-9~~
19 ~~and any amendments that may be made thereto~~ sections 7 and 8 of Senate Bill 70 previously
20 enacted by the 2005 Legislature for filing instruments and issuing certificates relating to foreign
21 corporations.

22 Section 7. That § 47-33-3 be amended to read as follows:

23 47-33-3. (1) Terms used in this chapter mean:

24 (a) "Acquiring person," a person that makes or proposes to make a control share

1 acquisition. If two or more persons act as a partnership, limited partnership, syndicate
2 or other group pursuant to any written or unwritten agreement, arrangement,
3 relationship, understanding or otherwise, for the purposes of acquiring, owning or
4 voting shares of a domestic public corporation, all members of the partnership,
5 syndicate or other group constitute a "person." "Acquiring person" does not include:

6 (i) A licensed broker/dealer or licensed underwriter who

7 (A) Purchases shares of a domestic public corporation solely for the
8 purposes of resale to the public; and

9 (B) Is not acting in concert with an acquiring person; or

10 (ii) A person who becomes entitled to exercise or direct the exercise of a new
11 range of voting power within any of the ranges specified in subdivision 47-33-
12 9(4) solely as a result of a repurchase of shares by, or recapitalization of, the
13 domestic public corporation or similar action unless:

14 (A) The repurchase, recapitalization or similar action was proposed by or
15 on behalf of, or pursuant to any written or unwritten agreement,
16 arrangement, relationship, understanding, or otherwise with, the person
17 or any affiliate or associate of the person; or

18 (B) The person thereafter acquires beneficial ownership, directly or
19 indirectly, of outstanding voting shares of the domestic public
20 corporation and, immediately after the acquisition, is entitled to
21 exercise or direct the exercise of the same or a higher range of voting
22 power under subdivision 47-33-9(4) as the person became entitled to
23 exercise as a result of the repurchase, recapitalization, or similar action;

24 (b) "Affiliate," a person that directly, or indirectly through one or more intermediaries,

1 controls, is controlled by, or is under common control with, a specified person;

2 (c) "Announcement date," if used in reference to any business combination, means the
3 date of the first public announcement of the final, definitive proposal for the business
4 combination;

5 (d) "Articles," the original or restated articles of incorporation and all amendments
6 thereto;

7 (e) "Associate," if used to indicate a relationship with any person, means any of the
8 following:

9 (i) Any corporation or organization of which the person is an officer or partner
10 or is, directly or indirectly, the beneficial owner of ten percent or more of any
11 class or series of its equity securities;

12 (ii) Any trust or other estate in which the person has a substantial beneficial
13 interest or as to which the person serves as trustee or in a similar fiduciary
14 capacity;

15 (iii) Any relative or spouse of the person, or any relative of the spouse residing in
16 the home of the person;

17 (f) "Beneficial owner," if used with respect to any equity security, means a person:

18 (i) That, individually or with or through any of its affiliates or associates,
19 beneficially owns an equity security, directly or indirectly;

20 (ii) That, individually with or through any of its affiliates or associates has:

21 (A) The right to acquire an equity security, whether that right is exercisable
22 immediately or only after the passage of time, pursuant to any
23 agreement, arrangement, relationship or understanding, whether written
24 or unwritten, or upon the exercise of conversion rights, exchange rights,

1 warrants or options, or otherwise. However, a person may not be
2 deemed the beneficial owner of shares tendered pursuant to a tender or
3 exchange offer made by that person or any of that person's affiliates or
4 associates until those tendered shares are accepted for purchase or
5 exchange; or

6 (B) The right to vote an equity security pursuant to any agreement,
7 arrangement, relationship or understanding, whether written or
8 unwritten. However, a person may not be deemed the beneficial owner
9 of any shares under this subparagraph if the agreement, arrangement,
10 relationship or understanding to vote the shares (1) arises solely from
11 a revocable proxy or consent given in response to a proxy or consent
12 solicitation made in accordance with the applicable rules and
13 regulations under the Exchange Act, and (2) is not then reportable on
14 a Schedule 13D under the Exchange Act or any comparable or
15 successor report; or

16 (iii) That has any agreement, arrangement, relationship or understanding, whether
17 written or unwritten, for the purpose of acquiring, holding, voting (except
18 voting under a revocable proxy or consent described in subparagraph (ii)(B)
19 of this subsection), or disposing of an equity security with any other person
20 that beneficially owns, or whose affiliates or associates beneficially own,
21 directly or indirectly, the equity security;

22 (g) "Board," the board of directors of a corporation;

23 (h) "Business combination," if used in reference to a domestic public corporation and
24 any interested shareholder of the domestic public corporation, means any of the

1 following:

2 (i) Any merger or consolidation of the domestic public corporation or any
3 subsidiary of the domestic public corporation with:

4 (A) The interested shareholder; or

5 (B) Any other foreign or domestic corporation (whether or not itself an
6 interested shareholder of the domestic public corporation) that is, or
7 after the merger or consolidation would be, an affiliate or associate of
8 the interested shareholder, but excluding (1) the merger of a
9 wholly-owned subsidiary of the domestic public corporation into the
10 domestic public corporation, (2) the merger of two or more
11 wholly-owned subsidiaries of the domestic public corporation, or (3)
12 the merger of a domestic or foreign corporation, other than an interested
13 shareholder or an affiliate or associate of an interested shareholder, with
14 a wholly-owned subsidiary of the domestic public corporation pursuant
15 to which the surviving corporation, immediately after the merger,
16 becomes a wholly-owned subsidiary of the domestic public corporation;

17 (ii) Any exchange, pursuant to a plan of exchange under the laws of this state or
18 a comparable statute of any other state or jurisdiction, of shares of the
19 domestic public corporation or any subsidiary of the domestic public
20 corporation for equity securities of either (i) the interested shareholder; or (ii)
21 any other domestic or foreign corporation, whether or not itself an interested
22 shareholder of the domestic public corporation, that is, or after the exchange
23 would be, an affiliate or associate of the interested shareholder;

24 (iii) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in

1 one transaction or a series of transactions, to or with the interested shareholder
2 or any affiliate or associate of the interested shareholder, of assets of the
3 domestic public corporation or any subsidiary of the domestic public
4 corporation to which any of the following applies;

5 (A) Having an aggregate market value equal to ten percent or more of the
6 aggregate market value of all the assets, determined on a consolidated
7 basis, of the domestic public corporation;

8 (B) Having an aggregate market value equal to ten percent or more of the
9 aggregate market value of all the outstanding shares of the domestic
10 public corporation; or

11 (C) Representing ten percent or more of the earning power or net income,
12 determined on a consolidated basis, of the domestic public corporation;

13 (iv) The issuance or transfer by the domestic public corporation or any subsidiary
14 of the domestic public corporation, in one transaction or a series of
15 transactions, of any shares of the domestic public corporation or any
16 subsidiary of the domestic public corporation that have an aggregate market
17 value equal to five percent or more of the aggregate market value of all the
18 outstanding shares of the domestic public corporation to the interested
19 shareholder or any affiliate or associate of the interested shareholder, except
20 pursuant to the exercise of rights or options to purchase shares offered, or a
21 dividend or distribution paid or made, pro rata to all shareholders of the
22 domestic public corporation other than for the purpose, directly or indirectly,
23 of facilitating or effecting a subsequent transaction that would have been a
24 business combination if the dividend or distribution had not been made;

1 (v) The adoption of any plan or proposal for the liquidation or dissolution of the
2 domestic public corporation, or any reincorporation of the domestic public
3 corporation in another state or jurisdiction, proposed by or on behalf of, or
4 pursuant to any written or unwritten agreement, arrangement, relationship,
5 understanding or otherwise with, the interested shareholder or any affiliate or
6 associate of the interested shareholder;

7 (vi) Any reclassification of securities, including any share dividend or split, reverse
8 share split, or other distribution of shares in respect of shares, any
9 recapitalization of the domestic public corporation, any merger or
10 consolidation of the domestic public corporation with any subsidiary of the
11 domestic public corporation, or any other transaction, whether or not with or
12 into or otherwise involving the interested shareholder, proposed by, on behalf
13 of, or pursuant to any written or unwritten agreement, arrangement,
14 relationship, understanding or otherwise with, the interested shareholder or
15 any affiliate or associate of the interested shareholder, that has the effect,
16 directly or indirectly, of increasing the proportionate amount of the
17 outstanding voting shares of any class or series, or securities that are
18 exchangeable for or convertible into, or carry the right to acquire voting
19 shares, of the domestic public corporation or any subsidiary of the domestic
20 public corporation that is, directly or indirectly, owned by the interested
21 shareholder or any affiliate or associate of the interested shareholder, except
22 as a result of immaterial changes due to fractional share adjustments; or

23 (vii) Any receipt by the interested shareholder or any affiliate or associate of the
24 interested shareholder of the benefit, directly or indirectly, except

1 proportionately as a shareholder of the domestic public corporation, of any
2 loans, advances, guarantees, pledges or other financial assistance, or any tax
3 credits or other tax advantages provided by or through the domestic public
4 corporation. However, the term "business combination" may not be deemed
5 to include the receipt of any of the foregoing benefits by that domestic public
6 corporation or any of that corporation's subsidiaries arising from transactions,
7 such as intercompany loans or tax sharing arrangements, between that
8 domestic public corporation and its subsidiaries in the ordinary course of
9 business;

10 (i) "Common shares," any shares other than preferred shares;

11 (j) "Consummation date," with respect to any business combination, the date of
12 consummation of the business combination or, in the case of a business combination
13 as to which a shareholder vote is taken, the later of:

14 (i) The business day before the vote; or

15 (ii) Twenty days before the date of consummation of business combination;

16 (k) "Control," including the terms "controlling," "controlled by," and "under common
17 control with," means the possession, directly or indirectly, of the power to direct or
18 cause the direction of the management and policies of a person, whether through the
19 ownership of voting shares, by contract, or otherwise. A person's beneficial
20 ownership of ten percent or more of the voting power of a corporation's outstanding
21 voting shares creates a presumption that the person has control of the corporation.
22 Notwithstanding the foregoing, a person is not considered to have control of a
23 corporation if the person holds voting shares, in good faith and not for the purpose
24 of circumventing this chapter, as an agent, bank, broker, nominee, custodian or

1 trustee for one or more beneficial owners who do not individually or as a group have
2 control of the corporation;

3 (l) "Control share acquisition," an acquisition, directly or indirectly, by an acquiring
4 person of beneficial ownership of shares of a domestic public corporation that, except
5 for § 47-33-8, would, if added to all other shares of the domestic public corporation
6 beneficially owned by the acquiring person, entitle the acquiring person, immediately
7 after the acquisition, to exercise or direct the exercise of a new range of voting power
8 within any of the ranges specified in subdivision 47-33-9(4) but does not include any
9 of the following:

10 (i) An acquisition before, or pursuant to a contract entered into before,
11 February 21, 1990;

12 (ii) An acquisition by a donee pursuant to an inter vivos gift not made to avoid
13 this chapter or by any person who acquires the shares of a decedent from the
14 representative of the decedent's estate other than as a creditor or purchaser; or

15 (iii) An acquisition pursuant to the satisfaction of a pledge or other security interest
16 created in good faith and not for the purpose of circumventing this chapter;

17 (iv) An acquisition pursuant to a merger, consolidation or share exchange effected
18 under ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature, if the domestic public corporation is a party
20 to the transaction;

21 (v) An acquisition for the benefit of others by a person acting in good faith and
22 not made to avoid this chapter, to the extent that the person may not exercise
23 or direct the exercise of the voting power or disposition of the shares except
24 upon the instruction of others;

1 (vi) The acquisition of shares of a domestic public corporation, in good faith, and
2 not for the purpose of circumventing this chapter, by or from any person
3 whose voting rights had previously been authorized by shareholders in
4 compliance with this chapter, or any person whose previous acquisition of
5 shares of a domestic public corporation would have constituted a control share
6 acquisition but for one or more of the exceptions stated in subparagraphs (i)
7 through (v) of this definition, unless the acquisition entitles the acquiring
8 person, directly or indirectly, alone or as part of a group, to exercise or direct
9 the exercise of voting power of the domestic public corporation in the election
10 of directors in excess of the range of voting power previously authorized by
11 the shareholders pursuant to § 47-33-12.

12 All shares the beneficial ownership of which is acquired within a ninety-day period,
13 and all shares the beneficial ownership of which is acquired pursuant to a plan to
14 make a control share acquisition, shall be deemed to have been acquired in the same
15 acquisition;

16 (m) "Corporation" and "domestic corporation," a corporation for profit incorporated
17 under the laws of this state;

18 (n) "Domestic public corporation," a corporation organized under the laws of this state
19 that is a publicly held corporation, has more than fifty shareholders, and which:

20 (i) Has either its principal place of business or its principal executive office
21 located in this state, and owns or controls assets located in this state having a
22 fair market value of at least one million dollars and has more than one hundred
23 employees in this state; or

24 (ii) Has more than five percent of its shareholders resident in this state, has more

1 than five percent of its shares owned by residents in this state, or has more
2 than two hundred fifty shareholders resident in this state.

3 For the purpose of subparagraph (ii) of this subsection, the residence of each
4 shareholder is the address of the shareholder which appears on the records of the
5 domestic public corporation;

6 (o) "Equity security,":

7 (i) Any share or similar security, any certificate of interest, any participation in
8 any profit sharing agreement, any voting trust certificate, or any certificate of
9 deposit for an equity security; and

10 (ii) Any security convertible, with or without consideration, into an equity
11 security, or any warrant, call or other option or privilege of buying an equity
12 security without being bound to do so, or any other security carrying any right
13 to acquire, subscribe to, or purchase an equity security;

14 (p) "Exchange Act," the Securities Exchange Act of 1934, (48 Stat. 881, 15 U.S.C. § 78a
15 et seq.) as amended;

16 (q) "Interested shareholder," if used in reference to any domestic public corporation, any
17 person, other than the domestic public corporation or any subsidiary of the domestic
18 public corporation, that is either:

19 (i) The beneficial owner, directly or indirectly, of ten percent or more of the
20 outstanding voting shares of the domestic public corporation; or

21 (ii) Is an affiliate or associate of the domestic public corporation and at any time
22 within the four-year period immediately before the date in question was the
23 beneficial owner, directly or indirectly, of ten percent or more of the then
24 outstanding voting shares of the domestic public corporation;

1 For the purposes of determining whether a person is an interested shareholder, the
2 number of voting shares of the domestic public corporation considered to be
3 outstanding includes shares considered to be beneficially owned by the person
4 through the application of subsection (f) of this section, but does not include any
5 other unissued voting shares of the domestic public corporation which may be
6 issuable pursuant to any agreement, arrangement, or understanding, or upon the
7 exercise of rights, options, conversion rights, or otherwise;

8 (r) "Interested shares," the shares of a domestic public corporation owned by any of the
9 following persons:

- 10 (1) The acquiring person or its affiliates or associates;
- 11 (2) Any officer of the domestic public corporation; or
- 12 (3) Any employee of the domestic public corporation who is also a director of the
13 domestic public corporation;

14 (s) "Market value," if used in reference to shares or property of any domestic public
15 corporation, the following:

- 16 (i) In the case of shares, the highest closing sale price of a share during the
17 thirty-day period immediately preceding the date in question on the composite
18 tape for New York Stock Exchange listed shares, or, if the shares are not
19 quoted on the composite tape or not listed on the New York Stock Exchange,
20 on the principal United States securities exchange registered under the
21 Exchange Act on which the shares are listed, or, if the shares are not listed on
22 any such exchange, the highest closing bid quotation with respect to a share
23 during the thirty-day period preceding the date in question on the National
24 Association of Securities Dealers, Inc. Automated Quotations System or any

1 system then in use, or if no such quotations are available, the fair market value
2 on the date in question of a share as determined by the board of the domestic
3 public corporation in good faith; and

4 (ii) In the case of property other than cash or shares, the fair market value of the
5 property on the date in question as determined in good faith by the board of
6 the domestic public corporation;

7 (t) "Person," an individual, corporation, limited liability company, partnership,
8 unincorporated association, organization or other entity;

9 (u) "Preferred shares," any class or series of shares of a domestic public corporation that
10 under the bylaws or articles of incorporation of the domestic public corporation:

11 (i) Is entitled to receive payment of dividends before any payment of dividends
12 on some other class or series of shares; or

13 (ii) Is entitled in the event of any voluntary liquidation, dissolution or winding up
14 of the corporation to receive payment or distribution of a preferential amount
15 before any payments or distributions are received by some other class or series
16 of shares;

17 (v) "Publicly held corporation," a corporation that has a class of equity securities
18 registered pursuant to § 12 of the Exchange Act, or subject to § 15(d) of the
19 Exchange Act;

20 (w) "Share," one of the units, however designated, into which the shareholders'
21 proprietary interests in the corporation are divided;

22 (x) "Share acquisition date," with respect to any person and any domestic public
23 corporation, the date that the person first becomes an interested shareholder of the
24 domestic public corporation;

- 1 (y) "Shareholder," one who is a holder of record of shares in a corporation;
- 2 (z) "Subsidiary," of a specified corporation, any other corporation of which a majority
- 3 of the outstanding voting shares entitled to be cast is owned, directly or indirectly, by
- 4 the specified corporation;
- 5 (aa) "Voting shares," shares of a corporation entitled to vote generally in the election of
- 6 directors;

7 (2) ~~In this chapter the following have the meanings defined in § 47-2-1~~ Terms in this chapter
8 mean:

- 9 (a) "Board," the board of directors of a corporation;
- 10 (b) "Class," if used with reference to shares, means a category of shares that differs in
- 11 designation or one or more rights or preferences from another category of shares of
- 12 the corporation;
- 13 (c) "Director," a member of the board;
- 14 (d) "Good faith," honesty in fact in the conduct of the act or transaction concerned;
- 15 (e) "Intentionally," that the person referred to either has a purpose to do or fail to do the
- 16 act or cause the result specified or believes that the act or failure to act, if successful,
- 17 will cause that result. A person intentionally violates a statute if the person
- 18 intentionally does the act or causes the result prohibited by the statute, or if the
- 19 person intentionally fails to do the act or cause the result required by the statutes,
- 20 even though the person may not know of the existence or constitutionality of the
- 21 statute or the scope or meaning of the term used in the statute;
- 22 (f) "Knows," or has "knowledge," has actual knowledge of it. A person does not know
- 23 of a fact merely because the person has reason to know of the fact;
- 24 (g) "Notice," is given by a corporation to a person when mailed to the person at the last

1 known address of the person, when communicated to the person orally, when handed
2 to the person, when left at the office of the person with a clerk or other person in
3 charge of the office, or if there is no one in charge, when left in a conspicuous place
4 in the office, or if the office is closed or the person to be notified has no office, or
5 when left at the dwelling house or usual place of abode of the person with some
6 person of suitable age and discretion then residing therein. Notice is given to a
7 corporation when mailed or delivered to it at its registered office. Notice by mail is
8 given when deposited in the United States mail with sufficient postage affixed:

9 (h) "Officer," a person elected, appointed, authorized, or otherwise designated as an
10 officer by the board, and any other person considered elected as an officer;

11 (i) "Organization," a domestic or foreign corporation partnership, limited partnership,
12 joint venture, association, business trust, estate, trust, enterprise and any other legal
13 or commercial entity;

14 (j) "Outstanding shares," all shares duly issued and not reacquired by a corporation;

15 (k) "Series;" a category of shares, within a class of shares authorized or issued by a
16 corporation by or pursuant to its articles, that have some of the same rights and
17 preferences as other shares within the same class, but that differ in designation or one
18 or more rights and preferences from another category of shares within that class.

19 Section 8. That § 47-9A-1 be amended to read as follows:

20 47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the
21 family farm to the economic and moral stability of the state, and the Legislature recognizes that
22 the existence of the family farm is threatened by conglomerates in farming. Therefore, it is
23 hereby declared to be the public policy of this state, and shall be the provision of this chapter,
24 that, notwithstanding the provisions of ~~§ 47-2-3~~ section 37 of Senate Bill 70 previously enacted

1 by the 2005 Legislature, no foreign or domestic corporation, except as provided herein, shall be
2 formed or licensed under the South Dakota Business Corporation Act for the purpose of owning,
3 leasing, holding or otherwise controlling agricultural land to be used in the business of
4 agriculture.

5 It is further declared that no foreign or domestic limited liability company, except as
6 provided herein, shall be formed or licensed under the South Dakota Limited Liability Company
7 Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be
8 used in the business of agriculture.

9 Section 9. That § 49-33-1 be amended to read as follows:

10 49-33-1. Any number of persons, not less than three, may form a corporation for the purpose
11 of constructing, maintaining and operating a street railway or railways or for the purpose of
12 generating, transmitting or distributing electricity, the same to be sold to or used by the public
13 for heat, light or power, by making and executing articles of incorporation in compliance with
14 § 47-2-5 sections 28 to 31, inclusive, and sections 74 to 76, inclusive, of Senate Bill 70
15 previously enacted by the 2005 Legislature. Such corporation shall exist perpetually unless
16 otherwise stated in its articles of incorporation and shall have the power to engage in other
17 businesses set forth therein.

18 Any corporation organized under chapter 49-33 may at any time restate its articles of
19 incorporation as theretofore amended by a resolution adopted by its board of directors. The
20 secretary of state shall accept the restated articles of incorporation for filing upon receipt of a
21 certified copy of said resolution.

22 Section 10. That § 49-33-23 be amended to read as follows:

23 49-33-23. Notwithstanding the provisions of ~~chapter 47-3~~ sections 53 to 85, inclusive, of
24 Senate Bill 70 previously enacted by the 2005 Legislature, a corporation, now or hereafter

1 formed under the provisions of this chapter may provide in its articles of incorporation, or in any
2 amendment thereof, for the issuance of preferred stock in series and authorize the board of
3 directors (within the limits, if any, prescribed in such articles of incorporation or amendment)
4 to fix certain or all of the characteristics and rights thereof.

5 Section 11. That § 49-33-30 be amended to read as follows:

6 49-33-30. Any corporation organized under chapter 49-33 may merge with any one or more
7 other corporations, domestic or foreign, into a single corporation, which may be any one of the
8 constituent corporations, or may consolidate with any such corporations into a new corporation
9 formed by the consolidation. Each of the constituent corporations shall enter into a plan of
10 merger or consolidation. Such plan shall, in the case of each corporation organized under this
11 chapter, first be approved by the board of directors of each such corporation and shall thereafter
12 be submitted to and approved by each such corporation by a vote of the stockholders holding
13 a majority, or such greater percentage as is provided in its articles of incorporation, of each class
14 of the corporation's outstanding stock entitled to vote thereon under the corporation's articles
15 of incorporation at an annual or special meeting of stockholders called by the board of directors
16 for the purpose of acting on the plan. Such consolidation or merger shall otherwise be in
17 conformance with and enjoy the benefits of ~~chapter 47-6~~ sections 248 to 271, inclusive, of
18 Senate Bill 70 previously enacted by the 2005 Legislature.

19 Section 12. That § 49-33-5.1 be amended to read as follows:

20 49-33-5.1. In addition to all provisions and powers in chapters 49-33 and 49-34 which are
21 applicable to corporations organized thereunder, all provisions and powers set forth in the South
22 Dakota Business Corporation Act, ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to 193, inclusive,
23 sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously
24 enacted by the 2005 Legislature, applicable to domestic corporations are also applicable to

1 corporations which have been or will be organized under chapters 49-33 and 49-34 except if in
2 conflict with the express provisions of chapters 49-33 and 49-34.

3 Section 13. That § 49-34-11 be amended to read as follows:

4 49-34-11. Any trust deed or mortgage executed by a corporation organized under the
5 provisions of chapter 49-33 or qualified in accordance with the provisions of ~~chapter 47-8~~
6 sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature
7 relative to the qualification of foreign corporations to transact business in this state, and carrying
8 on a street railway, natural or artificial gas or electric public utility business shall be filed and
9 recorded in the office of the secretary of state and such filing for record thereof shall create a
10 lien upon such property, real and personal, from the time of such filing, and shall have the same
11 effect, as to any property in this state described therein, as the record or filing of any similar
12 instrument in the office of the register of deeds as to property in his county as if it were filed or
13 recorded in each and every county in which any property therein described may be situated, and
14 such filing and recording in the office of the secretary of state shall be the only recording or
15 filing required. The deeds of trust or mortgages may by their terms include after-acquired real
16 and personal property, and are as valid and effectual for that purpose as if this after-acquired
17 property were owned by, and in possession of, the corporation giving the deed of trust or
18 mortgage at the time of its execution.

19 Section 14. That § 49-34-11.1 be amended to read as follows:

20 49-34-11.1. As used in §§ 49-34-11.1 to 49-34-11.4, inclusive, the term "public utility"
21 means a corporation, its lessees, its trustees and receivers, operating, maintaining or controlling
22 in this state after July 1, 1967, equipment or facilities for the production, generation,
23 transmission or distribution at retail of gas or electric service for the public and in the
24 transmission and distribution using, or having a right to use, public roads, streets, alleys, or other

1 public ways for the purpose of constructing, using, operating or maintaining wires, pipes,
2 conduits or other facilities, which corporation is organized under the provisions of chapter 49-33
3 or is qualified in accordance with the provisions of ~~chapter 47-8~~ sections 347 to 370, inclusive,
4 of Senate Bill 70 previously enacted by the 2005 Legislature as a foreign corporation authorized
5 to transact business in this state.

6 Section 15. That § 5-19-3.2 be amended to read as follows:

7 5-19-3.2. The Bureau of Administration shall maintain a list of all foreign corporations
8 licensed pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
9 enacted by the 2005 Legislature which are not considered resident bidders under chapter 5-19.

10 Section 16. That § 5-19-4 be amended to read as follows:

11 5-19-4. "Resident," as used in this chapter means any person who has been a bona fide
12 resident of the state for one year or more immediately prior to bidding upon the contract; a
13 partnership or association the majority of the members of which have been bona fide residents
14 of the state for one year or more immediately prior to bidding upon the contract; a limited
15 liability company organized under the laws of this state; a foreign limited liability company
16 licensed to do business within this state pursuant to chapter ~~47-8~~ 47-34A; a corporation
17 organized under the laws of this state; a foreign corporation licensed to do business within this
18 state pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature. All of the persons, partnerships, associations, limited liability
20 companies, foreign limited liability companies, corporations, and foreign corporations licensed
21 to do business within this state shall have maintained a substantial and bona fide place of
22 business and have conducted business therefrom within this state for at least one year prior to
23 the date on which a contract was awarded. A foreign corporation licensed pursuant to ~~chapter~~
24 ~~47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature

1 is not a resident as defined by this section if the state or country in which it is organized enforces
2 or has a preference for resident bidders.

3 Section 17. That § 51A-14-7 be amended to read as follows:

4 51A-14-7. The provisions of ~~§§ 47-6-23 to 47-6-23.3, inclusive, and §§ 47-6-40 to 47-6-50,~~
5 ~~inclusive,~~ sections 266 to 270, inclusive, and sections 281 to 307, inclusive, of Senate Bill 70
6 previously enacted by the 2005 Legislature apply when establishing the valuation of shares of
7 bank stock owned by dissident shareholders.

8 Section 18. That § 51A-15-44 be amended to read as follows:

9 51A-15-44. When the assets have been distributed in accordance with this chapter, the
10 director or receiver shall file an account with the circuit court. Upon approval thereof, the
11 director or receiver shall be relieved of liability in connection with the liquidation and the court
12 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
13 order with the secretary of state shall be deemed authority for the issuance of a certificate of
14 dissolution ~~pursuant to § 47-7-24.~~

15 Section 19. That § 51A-15-9 be amended to read as follows:

16 51A-15-9. The director may require reports of the progress of a bank engaged in voluntary
17 liquidation and whenever he is satisfied that the liquidation has been properly completed he
18 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
19 order with the secretary of state shall be deemed authority for the issuance of a certificate of
20 dissolution ~~pursuant to § 47-7-24.~~

21 Section 20. That § 51A-3-22 be amended to read as follows:

22 51A-3-22. A bank may amend its articles of incorporation in the manner provided under
23 ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to
24 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, upon amendment

1 certified by its president, except that prior approval of the director shall be required for a bank
2 to: change its name or location; acquire or abandon trust powers; change the number or par
3 value of its shares of stock; change the amount of capital; or, extend its corporate existence.
4 Such approval must be based upon a finding that the security of existing creditors will not be
5 impaired by the proposed action. All such amendments shall be filed in the same manner as
6 provided for original articles of incorporation.

7 Section 21. That § 51A-3-31 be amended to read as follows:

8 51A-3-31. A bank may indemnify by purchase of insurance or otherwise any current or
9 former officer, director, employee or agent, his heirs, executors and administrators and
10 successors in interest in the same manner and to the same extent as a business corporation may
11 indemnify, pursuant to the provisions of ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235,
12 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the
13 2005 Legislature.

14 Section 22. That § 51A-5-9 be amended to read as follows:

15 51A-5-9. Before qualifying or serving in this state in any fiduciary capacity, as defined in
16 § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South
17 Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of
18 attorney designating the secretary of state or the secretary of state's successor in office as the
19 person upon whom all notices and processes issued by any court of this state may be served in
20 any action or proceeding relating to any trust, estate, or matter within this state in respect of
21 which the bank or trust company is acting in any fiduciary capacity with like effect as personal
22 service on the bank or trust company. The power of attorney is irrevocable so long as any
23 liability remains outstanding against the bank or trust company in this state. Service of process
24 under this section may be made in the manner provided in ~~§§ 47-8-15 to 47-8-19, inclusive~~

1 section 362 of Senate Bill 70 previously enacted by the 2005 Legislature.

2 Section 23. That § 51A-7-18 be amended to read as follows:

3 51A-7-18. A branch of an out-of-state bank may not be established in South Dakota unless
4 requisite filing fees have been paid and an application as prescribed by the commission has been
5 filed with the commission and after a hearing has been held before the commission pursuant to
6 § 51A-2-16. If the commission approves the application, the director shall issue a certificate of
7 authority after the applicant confirms in writing to the director that as long as it maintains a
8 branch in South Dakota, it will comply with all applicable laws of South Dakota and provides
9 satisfactory evidence to the director of compliance with the applicable laws of ~~§ 47-8-1~~ sections
10 347 and 351 of Senate Bill 70 previously enacted by the 2005 Legislature. An out-of-state state
11 bank which establishes and maintains a branch in South Dakota may conduct any activities at
12 the branch that are authorized under the laws of South Dakota for South Dakota state banks, and
13 has all rights and privileges permitted South Dakota state bank branches.

14 Section 24. That § 52-13-53 be amended to read as follows:

15 52-13-53. When the assets have been distributed in accordance with this chapter, the director
16 of the Division of Banking files an account with the circuit court. Upon approval thereof, the
17 director is relieved of liability in connection with the liquidation, and the court cancels the
18 charter and enters an order of dissolution. The filing of a certified copy of that order with the
19 secretary of state is considered authority for the issuance of a certificate of dissolution ~~pursuant~~
20 ~~to § 47-7-24.~~

21 Section 25. That § 58-27-62 be amended to read as follows:

22 58-27-62. In addition to investments excluded pursuant to other provisions of this title, an
23 insurer shall not invest in or lend its funds upon the security of any note or other evidence of
24 indebtedness secured by its own stock as collateral or other than as authorized by §§ 58-27-31,

1 58-27-36, and 58-27-37, either directly or indirectly, to any of its officers, directors, or affiliates,
2 except that it may make loans of the type described in §§ 58-27-32 to 58-27-40, inclusive, to
3 corporate affiliates, provided that no such loan or loans to an affiliate or affiliates, so made or
4 acquired, shall in the aggregate exceed forty percent of the surplus of the insurer, and no single
5 loan shall exceed twenty percent of such surplus. The real estate involved in any such loan to
6 an affiliate shall be worth at least double the amount loaned thereon, as justified by the appraisal
7 report of an independent, competent, and recognized appraiser or appraisers. The investments
8 authorized by this section may be made notwithstanding the provisions of ~~§ 47-5-18~~ sections
9 157 to 163, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, to the
10 contrary and without liability on the part of the officers and directors specified therein.

11 Section 26. That § 58-35-61 be amended to read as follows:

12 58-35-61. Following the adoption of the resolution approving the plan of merger required
13 by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote
14 upon the proposed merger plan. Written notice of the meeting of the policyholders shall be
15 given to all policyholders, which may be either an annual or special meeting. Written notice
16 shall be given to each policyholder of record whether or not entitled to vote at the meeting, not
17 less than twenty days before the meeting, in the manner provided in ~~chapter 47-4~~ sections 86
18 to 135, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the
19 2005 Legislature for the giving of notice of meetings of shareholders. Whether the meeting is
20 an annual or special meeting, the notice shall state that the purpose or one of the purposes of the
21 meeting is to consider the proposed plan of merger. A copy of the resolution passed by the board
22 of directors shall be included in or enclosed with the notice.

23 Section 27. That § 58-35-69 be amended to read as follows:

24 58-35-69. If a merger has been effected pursuant to §§ 58-35-60 to 58-35-74, inclusive:

- 1 (1) The several corporations to the plan of merger are a single corporation which is that
2 corporation designated in the plan of merger as the surviving corporation;
- 3 (2) The separate existence of all corporations parties to the plan of merger, except the
4 surviving or new corporation shall cease; and
- 5 (3) The surviving or new corporation has all the rights, privileges, immunities, and
6 powers and is subject to all the duties and liabilities of a corporation organized under
7 §§ 58-35-60 to 58-35-74, inclusive, and ~~chapter 47-2~~ sections 1 to 193, inclusive,
8 sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70
9 previously enacted by the 2005 Legislature.

10 Section 28. That § 58-35-74 be amended to read as follows:

11 58-35-74. The provisions of ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70
12 previously enacted by the 2005 Legislature regarding the rights of dissenting members and
13 proxy voting do not apply to mergers of farm mutual insurers pursuant to §§ 58-35-60 to 58-35-
14 74, inclusive.

15 Section 29. That § 58-37A-14 be amended to read as follows:

16 58-37A-14. A domestic society may consolidate or merge with any other society by
17 complying with the provisions of this section and the applicable provisions of ~~chapters 47-6 and~~
18 sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature and
19 chapter 58-5. It shall file with the director:

- 20 (1) A certified copy of the written contract containing in full the terms and conditions of
21 the consolidation or merger;
- 22 (2) A sworn statement by the president and secretary or corresponding officers of each
23 society showing the financial condition thereof on a date fixed by the director but not
24 earlier than December thirty-first, next preceding the date of the contract;

1 (3) A certificate of the officers, verified by their respective oaths, that the consolidation
2 or merger has been approved by a two-thirds vote of the supreme governing body of
3 each society, the vote being conducted at a regular or special meeting of each body,
4 or, if the society's laws permit, by mail; and

5 (4) Evidence that at least sixty days before the action of the supreme governing body of
6 each society, the text of the contract had been furnished to all members of each
7 society either by mail or by publication in full in the official publication of each
8 society.

9 If the director finds that the contract conforms to the provisions of this section, that the
10 financial statements are correct and that the consolidation or merger is just and equitable to the
11 members of each society, the director shall approve the contract and issue a certificate to that
12 effect. Upon approval, the contract shall be in effect unless any society which is a party to the
13 contract is incorporated under the laws of any other state or territory. The consolidation or
14 merger is not effective until it has been approved as provided by the laws of the other state or
15 territory and a certificate of approval filed with the director of insurance of this state or, if the
16 laws of the other state or territory contain no such provision, the consolidation or merger is not
17 effective until it has been approved by the director of the other state or territory and a certificate
18 of approval filed with the director of insurance of this state.

19 Upon the consolidation or merger becoming effective, all the rights, franchises, and interests
20 of the consolidated or merged societies in and to every species of property, real, personal, or
21 mixed, and things in action belonging to the consolidated or merged societies, shall be vested
22 in the society resulting from or remaining after the consolidation or merger without any other
23 instrument. However, conveyances of real property may be evidenced by proper deeds, and the
24 title to any real estate or interest in real estate, vested under the laws of this state in any of the

1 societies consolidated or merged, do not revert and are not impaired by reason of the
2 consolidation or merger, but shall vest in the society resulting from the consolidation or merger.

3 The affidavit of any officer of the society or of anyone authorized by it to mail any notice
4 or document, stating that the notice or document has been addressed and mailed, is prima facie
5 evidence that the notice or document has been furnished to the addressees.

6 Section 30. Notwithstanding the provisions of section 394 of Senate Bill 70, previously
7 enacted by the 2005 Legislature, subdivision 47-5-6(3) remains effective until July 1, 2007.