

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0341

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1038** - 02/01/2005

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

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the responsibility of
2 alcohol licensees that sell alcohol to underage people.

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

4 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The department shall, on or before the first of July of each year, develop and publish on its
7 public internet website, a directory listing all nationally recognized training programs which
8 have been approved by the department. The department shall annually notify each licensee in
9 writing and by posting on the department's internet website a list of the nationally recognized
10 training programs approved pursuant to § 35-2-10.1. Any alcohol licensee making a prohibited
11 sale or service of an alcoholic beverage to a person under the age of twenty-one years has the
12 burden of proof to show that its employees have attended an approved alcohol training program
13 to be eligible for any reduction in the penalty imposed for the violation.



State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0347

HOUSE TRANSPORTATION COMMITTEE
ENGROSSED NO. **HB 1060** - 01/19/2005

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

1 FOR AN ACT ENTITLED, An Act to authorize the secretary of Revenue and Regulation to
2 issue a cease and desist order to vehicle, snowmobile, manufactured home, and boat dealers
3 for certain violations, to authorize imposition of monetary penalties for failure to comply
4 with a cease and desist order, and to modify the reasons for suspending or revoking a
5 dealer's license.

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

7 Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
8 follows:

9 In addition to any other remedy provided by law, the secretary of revenue and regulation
10 may issue an order directing a vehicle dealer to cease and desist from engaging in any act or
11 practice enumerated in § 32-6B-41. A cease and desist order issued pursuant to this section shall
12 be effective for a period of five years.

13 Section 2. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Within twenty days after service of the order to cease and desist, the vehicle dealer may



1 request a hearing in writing on the question of whether acts or practices in violation of this title
2 have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be
3 available as provided by, chapter 1-26.

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

6 A cease and desist order pursuant to section 1 of this Act becomes final upon expiration of
7 the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is
8 taken, upon final decision of the court if the court affirms the secretary's order or dismisses the
9 appeal.

10 Section 4. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 1 of this
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state
19 motor vehicle fund.

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

22 A dealer may request a hearing to contest an order issued pursuant to section 4 of this Act.
23 The request shall be submitted to the secretary in writing within twenty days after service of the
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

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

4 An order issued pursuant to section 4 of this Act becomes final upon expiration of the time
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 7. That § 32-6B-41 be amended to read as follows:

8 32-6B-41. The department may deny any application, ~~or suspend or revoke~~ or apply the
9 provisions of sections 1 to 6, inclusive, of this Act on any license issued under the provisions
10 of this chapter, for ~~the violation of~~ any of the following:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in
12 obtaining a license;
- 13 (2) Conviction of a felony involving vehicle theft or odometer fraud in the last five years;
- 14 (3) ~~Second or subsequent~~ A violation of any law of this state which relates to dealing in
15 vehicles;
- 16 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the
17 department;
- 18 (5) Perpetration of a fraud upon any person as a result of dealing in vehicles;
- 19 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapter 32-3;
- 20 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual
21 inspections, complaint investigations, and necessary follow-up inspections;
- 22 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading
23 statements with regard to the sale or financing of vehicles which a dealer has, or
24 causes to have, advertised, printed, displayed, published, distributed, broadcast,

1 televised, or made in any manner with regard to the sale or financing of vehicles;

2 (9) Refusal to comply with a licensee's responsibility under the terms of the new vehicle
3 warranty issued by its respective manufacturer, unless such refusal is at the direction
4 of the manufacturer;

5 (10) ~~Repeated failure to provide customers or purchasers with an odometer disclosure~~
6 ~~statement;~~

7 ~~(11) Willful failure~~ Failure to comply with the terms of any bona fide written, executed
8 agreement pursuant to the sale of a vehicle;

9 ~~(12)~~(11) Inability to obtain or renew surety bond or to participate in a dealer asset pool;

10 ~~(13)~~(12) Failure to maintain and continuously occupy a principal place of business; or

11 ~~(14)~~(13) Failure to obtain or renew a public liability insurance policy of not less than
12 three hundred thousand dollars, if the dealer has been given thirty days written
13 notice to comply.

14 Section 8. That § 32-6B-40 be repealed.

15 ~~32-6B-40. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~
16 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~
17 ~~continue, the inspection will cease. In either case however, the department may initiate~~
18 ~~revocation proceedings against the dealer's license.~~

19 Section 9. That § 32-6B-43 be repealed.

20 ~~32-6B-43. The department may prepare and serve written notice upon a licensee which has~~
21 ~~violated § 32-6B-41. The notice shall state that the department intends to revoke and cancel the~~
22 ~~license thirty days after the notice was sent by certified mail or hand delivered and shall state~~
23 ~~that the licensee is entitled to a hearing if the licensee submits a written request for a hearing to~~
24 ~~the department prior to the effective date of the revocation. The notice may contain the~~

1 ~~requirements the licensee shall meet to correct the violation or to come into compliance with~~
2 ~~the provisions of this chapter.~~

3 Section 10. That § 32-6B-44 be repealed.

4 ~~— 32-6B-44. If a licensee, after receiving a license revocation notice pursuant to § 32-6B-43,~~
5 ~~decides to challenge the revocation, the licensee shall submit a request for a hearing in writing~~
6 ~~to the department prior to the effective date of the revocation. If no request is received by the~~
7 ~~department prior to the effective date of the revocation, the license shall be revoked and~~
8 ~~canceled. If a hearing request is made the department shall, in accordance with chapter 1-26 and~~
9 ~~at the time and place fixed pursuant to § 32-6B-43, hear and determine the matter on its merits.~~
10 ~~If the department finds the existence of any cause for suspension or revocation as set forth in~~
11 ~~§ 32-6B-41, it shall suspend or revoke the license. A copy of the order shall be served upon the~~
12 ~~licensee in the manner provided by chapter 1-26. Upon suspension or revocation the licensee~~
13 ~~shall immediately return to the department all dealers' metal plates issued to the licensee and~~
14 ~~shall immediately surrender the license certificate to a representative of the department serving~~
15 ~~the written order upon the licensee.~~

16 Section 11. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
17 follows:

18 In addition to any other remedy provided by law, the secretary of revenue and regulation
19 may issue an order directing a snowmobile dealer to cease and desist from engaging in any act
20 or practice enumerated in § 32-6C-14. A cease and desist order issued pursuant to this section
21 is effective for a period of five years.

22 Section 12. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Within twenty days after service of the order to cease and desist, the snowmobile dealer may

1 request a hearing in writing on the question of whether acts or practices in violation of this title
2 have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be
3 available as provided by, chapter 1-26.

4 Section 13. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A cease and desist order pursuant to section 11 of this Act becomes final upon expiration
7 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal
8 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses
9 the appeal.

10 Section 14. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 11 of this
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state
19 motor vehicle fund.

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

22 A dealer may request a hearing to contest an order issued pursuant to section 14 of this Act.
23 The request shall be submitted to the secretary in writing within twenty days after service of the
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

2 Section 16. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
3 follows:

4 An order issued pursuant to section 14 of this Act becomes final upon expiration of the time
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 17. That § 32-6C-14 be amended to read as follows:

8 32-6C-14. The department may deny any application, ~~or suspend or revoke~~ or apply the
9 provisions of sections 11 to 16, inclusive, of this Act on any license issued under the provisions
10 of this chapter, for the violation of any of the following provisions:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in
12 obtaining a license;
- 13 (2) Conviction of a felony involving the theft of snowmobiles or other motor vehicles
14 in the last five years;
- 15 (3) ~~Second or subsequent violations~~ A violation of any law of this state which relates to
16 dealing in snowmobiles;
- 17 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the
18 department;
- 19 (5) Perpetration of a fraud upon any person as a result of dealing in snowmobiles;
- 20 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapters 32-3 and
21 32-20A;
- 22 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual
23 inspections, complaint investigations, and necessary follow-up inspections;
- 24 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading

1 statements with regard to the sale or financing of snowmobiles which a dealer has,
2 or causes to have, advertised, printed, displayed, published, distributed, broadcast,
3 televised, or made in any manner with regard to the sale or financing of
4 snowmobiles;

5 (9) Refusal to comply with a licensee's responsibility under the terms of a snowmobile
6 warranty issued by its respective manufacturer, unless such refusal is at the direction
7 of the manufacturer;

8 (10) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed
9 agreement pursuant to the sale of a snowmobile;

10 (11) ~~Willful failure~~ Failure to disclose damage to a new snowmobile of which the dealer
11 had knowledge if the dealer's actual cost to repair, exceeds five percent of the
12 manufacturer's suggested retail price; or

13 (12) Inability to obtain or renew surety bond.

14 Section 18. That § 32-6C-13 be repealed.

15 ~~— 32-6C-13. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection
16 need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to
17 continue, the inspection shall cease. In either case, however, the department may initiate
18 revocation proceedings against the dealer's license.~~

19 Section 19. That § 32-6C-15 be repealed.

20 ~~— 32-6C-15. The department may prepare and serve written notice upon a licensee which it
21 received complaints on in the manner provided by chapter 1-26. The notice shall require the
22 licensee to appear before the department at a time and place, not less than five days after service
23 of the notice, to show cause why the license should not be revoked.~~

24 Section 20. That § 32-6C-16 be repealed.

1 ~~32-6C-16. The department shall, in accordance with chapter 1-26 and at the time and place~~
2 ~~fixed pursuant to § 32-6C-15, hear and determine the matter on its merits. If the department~~
3 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-6C-14, it shall~~
4 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~
5 ~~manner provided by chapter 1-26. Upon suspension or revocation the licensee shall immediately~~
6 ~~surrender his license certificate to a representative of the department serving the written order~~
7 ~~upon him.~~

8 Section 21. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 In addition to any other remedy provided by law, the secretary of revenue and regulation
11 may issue an order directing a dealer to cease and desist from engaging in any act or practice
12 enumerated in § 32-7A-4.2. A cease and desist order issued pursuant to this section is effective
13 for a period of five years.

14 Section 22. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Within twenty days after service of the order to cease and desist, the dealer may request a
17 hearing in writing on the question of whether acts or practices in violation of this title have
18 occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as
19 provided by, chapter 1-26.

20 Section 23. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 A cease and desist order pursuant to section 21 of this Act becomes final upon expiration
23 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal
24 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses

1 the appeal.

2 Section 24. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 If a dealer fails to comply with a cease and desist order issued pursuant to section 21 of this
5 Act, the secretary may issue an order which:

- 6 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation
7 of the cease and desist order;
- 8 (2) Suspends dealer's license for not more than thirty days; or
- 9 (3) Revokes the dealer's license.

10 All monetary penalties collected pursuant to this section shall be deposited into the state
11 motor vehicle fund.

12 Section 25. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A dealer may request a hearing to contest an order issued pursuant to section 24 of this Act.
15 The request shall be submitted to the secretary in writing within twenty days after service of the
16 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as
17 provided by, chapter 1-26.

18 Section 26. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 An order issued pursuant to section 24 of this Act becomes final upon expiration of the time
21 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,
22 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

23 Section 27. That § 32-7A-4.2 be amended to read as follows:

24 32-7A-4.2. The department may deny any application, ~~or suspend or revoke~~ or apply the

1 provisions of sections 21 to 26, inclusive, of this Act on any license issued under the provisions
2 of this chapter, for ~~a violation of any of the following provisions:~~

3 (1) Commission of fraud or willful misrepresentation in the application for or in
4 obtaining a license;

5 (2) A previous manufacturer or dealer license revocation in this or any other state;

6 (3) ~~Willful violation, which leads to a conviction,~~ A violation of any law of this state
7 which relates to dealing in manufactured homes or mobile homes;

8 (4) ~~Willful failure~~ Failure to comply with any administrative rule promulgated by the
9 department;

10 (5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes
11 or mobile homes;

12 (6) Failure to allow department inspections, including initial and annual inspections,
13 complaint investigations and necessary follow-up inspections;

14 (7) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading
15 statements with regard to the sale or financing of manufactured homes or mobile
16 homes which a dealer has, or causes to have, advertised, printed, displayed,
17 published, distributed, broadcast, televised, or made in any manner with regard to the
18 sale or financing of manufactured homes or mobile homes;

19 (8) Refusal to comply with a licensee's responsibility under the terms of the new
20 manufactured home or mobile home warranty issued by its respective manufacturer,
21 unless such refusal is at the direction of the manufacturer;

22 (9) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed
23 agreement pursuant to the sale of a manufactured home or mobile home;

24 (10) Violation by the dealer of any applicable manufactured home building or safety code;

- 1 (11) Failure to continuously occupy a principal place of business licensed under § 32-7A-
- 2 2;
- 3 (12) ~~Willful failure~~ Failure to deliver the manufacturer's statement of origin to the county
- 4 treasurer or the certificate of title to a person entitled to it within thirty days after date
- 5 of delivery;
- 6 (13) Conviction within the previous ~~ten~~ five years, of a crime that related directly to the
- 7 business of the dealer or manufacturer involving fraud, misrepresentation or misuse
- 8 of funds;
- 9 (14) Inability to obtain or renew a surety bond; or
- 10 (15) Misuse of the dealers' metal plates and lending for use on mobile homes or
- 11 manufactured homes not owned by the manufacturer or dealer;
- 12 ~~— (16) Transporting a used mobile home or manufactured home without an affidavit, four~~
- 13 ~~or more times within a one-year period, from the county treasurer of the county in~~
- 14 ~~which the mobile home or manufactured home is registered, stating that the current~~
- 15 ~~year's taxes are paid; or~~
- 16 ~~— (17) Having a used mobile home or manufactured home located on the licensed dealer's~~
- 17 ~~or manufacturer's lot without an affidavit, four or more times within a one-year~~
- 18 ~~period, from the county treasurer of the county in which the mobile home or~~
- 19 ~~manufactured home is registered, stating that the current year's taxes were paid when~~
- 20 ~~the licensed dealer acquired the home.~~

21 Section 28. That § 32-7A-20 be repealed.

22 ~~— 32-7A-20. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~

23 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~

24 ~~continue, the inspection shall cease. In either case however, the department may immediately~~

1 ~~initiate revocation proceedings against the dealer's license.~~

2 Section 29. That § 32-7A-21 be repealed.

3 ~~—32-7A-21. The department may prepare and serve written notice upon a licensee which it~~
4 ~~receives complaints on in the manner provided by chapter 1-26. The notice shall require the~~
5 ~~licensee to appear before the department at a time and place, not less than five days after service~~
6 ~~of the notice, to show cause why the license should not be revoked.~~

7 Section 30. That § 32-7A-22 be repealed.

8 ~~—32-7A-22. The department shall, in accordance with chapter 1-26 and at the time and place~~
9 ~~fixed pursuant to § 32-7A-21, hear and determine the matter on its merits. If the department~~
10 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-7A-4.2, it shall~~
11 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~
12 ~~manner provided by chapter 1-26. Upon suspension or revocation, the licensee shall~~
13 ~~immediately return to the department all dealers' metal plates issued to him and shall~~
14 ~~immediately surrender his license certificate to a representative of the department serving such~~
15 ~~written order upon him.~~

16 Section 31. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
17 follows:

18 In addition to any other remedy provided by law, the secretary of revenue and regulation
19 may issue an order directing a boat dealer to cease and desist from engaging in any act or
20 practice enumerated in § 32-7B-17. A cease and desist order issued pursuant to this section is
21 effective for a period of five years.

22 Section 32. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Within twenty days after service of the order to cease and desist, the boat dealer may request

1 a hearing in writing on the question of whether acts or practices in violation of this title have
2 occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as
3 provided by, chapter 1-26.

4 Section 33. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A cease and desist order pursuant to section 31 of this Act becomes final upon expiration
7 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal
8 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses
9 the appeal.

10 Section 34. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 31 of this
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state
19 motor vehicle fund.

20 Section 35. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A dealer may request a hearing to contest an order issued pursuant to section 34 of this Act.
23 The request shall be submitted to the secretary in writing within twenty days after service of the
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

2 Section 36. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 An order issued pursuant to section 34 of this Act becomes final upon expiration of the time
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 37. That § 32-7B-17 be amended to read as follows:

8 32-7B-17. The department may deny any application, ~~or suspend or revoke~~ or apply the
9 provisions of sections 31 to 36, inclusive, of this Act on any license issued under the provisions
10 of this chapter, for the violation of any of the following provisions:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in
12 obtaining a license;
- 13 (2) Conviction of a felony involving the theft of boats or other motor vehicles in the last
14 five years;
- 15 (3) ~~Second or subsequent violations~~ A violation of any law of this state that relates to
16 dealing in boats;
- 17 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the
18 department;
- 19 (5) Perpetration of a fraud upon any person as a result of dealing in boats;
- 20 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapters 32-3 and
21 42-8;
- 22 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual
23 inspections, complaint investigations and necessary follow-up inspections;
- 24 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading

1 statements with regard to the sale or financing of boats which a dealer has, or causes
2 to have, advertised, printed, displayed, published, distributed, broadcasted, televised,
3 or made in any manner with regard to the sale or financing of boats;

4 (9) Refusal to comply with a licensee's responsibility under the terms of a boat warranty
5 issued by its respective manufacturer, unless such refusal is at the direction of the
6 manufacturer;

7 (10) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed
8 agreement pursuant to the sale of a boat;

9 (11) Inability to obtain or renew surety bond; or

10 (12) Failure to maintain a principal place of business.

11 Section 38. That § 32-7B-16 be repealed.

12 ~~— 32-7B-16. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~
13 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~
14 ~~continue, the inspection shall cease. In either case, however, the department may initiate~~
15 ~~revocation proceedings against the dealer's license.~~

16 Section 39. That § 32-7B-18 be repealed.

17 ~~— 32-7B-18. The department may prepare and serve written notice upon a licensee that it~~
18 ~~received complaints in the manner provided by chapter 1-26. The notice shall require the~~
19 ~~licensee to appear before the department at a time and place, not less than five days after service~~
20 ~~of the notice, to show cause why the license should not be revoked.~~

21 Section 40. That § 32-7B-19 be repealed.

22 ~~— 32-7B-19. The department shall, in accordance with chapter 1-26 and at the time and place~~
23 ~~fixed pursuant to § 32-7B-18, hear and determine the matter on its merits. If the department~~
24 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-7B-17, it shall~~

1 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~
2 ~~manner provided by chapter 1-26. Upon suspension or revocation, the licensee shall~~
3 ~~immediately surrender the license certificate to a representative of the department serving the~~
4 ~~written order upon the licensee.~~

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

391L0372

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1089 - 02/10/2005

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

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

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

4 Section 1. Terms in this Act mean:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

671L0610

SENATE TRANSPORTATION COMMITTEE
ENGROSSED NO. **HB 1111** - 02/10/2005

Introduced by: Representatives Krebs, Buckingham, Dykstra, Lange, McLaughlin, Michels,
and Weems and Senators Olson (Ed), Abdallah, Bartling, Earley, Hundstad,
Koskan, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the records required
2 to be kept by certain dealers and to require that certain liens be paid by a dealer before a
3 vehicle, snowmobile, mobile or manufactured home, or boat is offered for sale, sold, or
4 exchanged.

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

6 Section 1. That § 32-6B-20 be amended to read as follows:

7 32-6B-20. Each dealer licensed under the provisions of this chapter, shall keep books,
8 records, or files, in such form as prescribed or approved by the department. ~~The dealer shall~~
9 ~~keep a record of the purchase, sale, or exchange, of any vehicle, a description of the vehicle,~~
10 ~~together with the name and address of the owner or other person from whom the vehicle was~~
11 ~~purchased or received, and to whom it was sold or delivered. The description shall include the~~
12 ~~vehicle identification number, manufacturer's make and model, and odometer mileage. The~~
13 ~~dealer shall also possess a certificate of title from the previous owner of any vehicle not~~
14 ~~purchased from the manufacturer, from the time the vehicle is delivered to the dealer until it has~~



1 ~~been disposed of by the dealer. However, for any vehicle with a manufacturer's weight of sixteen~~
2 ~~thousand pounds or greater, if a copy of the front and back of any certificate of title which has~~
3 ~~been assigned to the dealer is kept at the location where the vehicle is being offered for sale, the~~
4 ~~certificate of title for the vehicle may be kept at another South Dakota dealership owned by the~~
5 ~~same dealer or kept by a lending institution. Prior to keeping any certificate of title at another~~
6 ~~dealership or at a lending institution, the dealer shall notify the department in writing where the~~
7 ~~certificate of title is to be kept. Such record shall be open to inspection by any peace officer or~~
8 ~~department dealer inspector, including the following:~~

- 9 (1) A record of the purchase, sale, or exchange, of any vehicle;
- 10 (2) A description of each vehicle purchased, sold, or exchanged, together with the name
11 and address of the owner or other person from whom the vehicle was purchased or
12 received and to whom it was sold or delivered. The description shall include the
13 vehicle identification number, manufacturer's make and model, and odometer
14 mileage; and
- 15 (3) A certificate of title from the previous owner of any vehicle not purchased from the
16 manufacturer, from the time the vehicle is delivered to the dealer until it has been
17 disposed of by the dealer.

18 The books and records and other papers and documents shall, at all times during business
19 hours of the day, be subject to inspection by the secretary of revenue and regulation.

20 Section 2. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A dealer is not required to keep a certificate of title for any vehicle with a manufacturer's
23 weight of sixteen thousand pounds or greater if a copy of the front and back of the certificate
24 of title which has been assigned to the dealer is kept at the location where the vehicle is being

1 offered for sale and the original certificate of title for the vehicle is kept at another South Dakota
2 dealership owned by the same dealer or kept by a lending institution.

3 Prior to keeping any certificate of title at another dealership or at a lending institution, the
4 dealer shall notify the department in writing where the certificate of title is to be kept.

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

7 A dealer may offer for sale, sell, or exchange a vehicle without a certificate of title if the
8 dealer complies with the following applicable provisions:

- 9 (1) The dealer has a record of purchase, sale, or exchange of a vehicle to include the
10 satisfaction of any outstanding liens or encumbrances and a secured power of
11 attorney;
- 12 (2) If the vehicle is encumbered by a lien noted on the title, the dealer shows that
13 payment has been tendered to the lienholder for the amount of the lien, except a lien
14 that is the result of dealer inventory financing; or
- 15 (3) If the dealer is required by law to obtain title prior to offering the vehicle for sale and
16 the dealer has applied for title through the electronic on-line title system and has
17 submitted the documents to the department.

18 This section does not relieve a dealer from the provisions of § 32-3-7.

19 Section 4. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If a person trades in a vehicle to a dealer or enters into a consignment agreement with a
22 dealer whereby the dealer will sell the vehicle and the vehicle has a lien noted on the title, the
23 dealer and person may agree that the dealer shall satisfy the lien amount by paying the lienholder
24 who is noted on the title. Failure to satisfy a lien pursuant to this section constitutes theft

1 pursuant to chapter 22-30A. The degree of theft is determined by the amount of the unsatisfied
2 lien. Multiple violations of this section occurring within any thirty-day period may be
3 aggregated in amount to determine the degree of theft.

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

6 If a dealer enters into an agreement pursuant to section 4 of this Act, the dealer shall satisfy
7 the lien within ten business days after the receipt of funds. No dealer may offer the vehicle for
8 sale until payment has been tendered to the lienholder, except on a consigned vehicle, whereby
9 the dealer shall comply with the terms of the consignment agreement.

10 Section 6. That § 32-6C-6 be amended to read as follows:

11 32-6C-6. Any dealer licensed under the provisions of this chapter, shall keep books, records,
12 or files, in such form as prescribed or approved by the department. ~~The licensee shall keep a~~
13 ~~record of the purchase, sale, or exchange, of any snowmobile, a description of the snowmobile~~
14 ~~together with the name and address of the owner or other person from whom the snowmobile~~
15 ~~was purchased or received, and to whom it was sold or delivered. The description shall include~~
16 ~~the snowmobile serial number, manufacturer's make, and model. The dealer shall also have in~~
17 ~~his possession a certificate of title from the previous owner of any snowmobile not purchased~~
18 ~~from the manufacturer from the time the snowmobile is delivered to him until it has been~~
19 ~~disposed of by him. Such record shall be opened to inspection by any law enforcement officer~~
20 ~~or department inspector, including the following:~~

- 21 (1) A record of the purchase, sale, or exchange, of any snowmobile;
22 (2) A description of each snowmobile purchased, sold, or exchanged, together with the
23 name and address of the owner or other person from whom the snowmobile was
24 purchased or received and to whom it was sold or delivered. The description shall

1 include the snowmobile identification number and manufacturer's make and model;
2 and

3 (3) A certificate of title from the previous owner of any snowmobile not purchased from
4 the manufacturer, from the time the snowmobile is delivered to the dealer until it has
5 been disposed of by the dealer.

6 The books and records and other papers and documents shall, at all times during business
7 hours of the day, be subject to inspection by the secretary of revenue and regulation.

8 Section 7. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A dealer may offer for sale, sell, or exchange a snowmobile without a certificate of title if
11 the dealer complies with the following applicable provisions:

12 (1) The dealer has a record of purchase, sale, or exchange of a snowmobile to include the
13 satisfaction of any outstanding liens or encumbrances and a secured power of
14 attorney;

15 (2) If the snowmobile is encumbered by a lien noted on the title, the dealer shows that
16 payment has been tendered to the lienholder for the amount of the lien, except a lien
17 that is the result of dealer inventory financing; or

18 (3) If the dealer is required by law to obtain title prior to offering the snowmobile for sale
19 and the dealer has applied for title through the electronic on-line title system and has
20 submitted the documents to the department.

21 This section does not relieve a dealer from the provisions of § 32-3-7.

22 Section 8. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
23 follows:

24 If a person trades in a snowmobile to a dealer or enters into a consignment agreement with

1 a dealer whereby the dealer will sell the snowmobile and the snowmobile has a lien noted on
2 the title, the dealer and person may agree that the dealer shall satisfy the lien amount by paying
3 the lienholder who is noted on the title. Failure to satisfy a lien pursuant to this section
4 constitutes theft pursuant to chapter 22-30A. The degree of theft is determined by the amount
5 of the unsatisfied lien. Multiple violations of this section occurring within any thirty-day period
6 may be aggregated in amount to determine the degree of theft.

7 Section 9. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
8 follows:

9 If a dealer enters into an agreement pursuant to section 8 of this Act, the dealer shall satisfy
10 the lien within ten business days after the receipt of funds. No dealer may offer the snowmobile
11 for sale until payment has been tendered to the lienholder, except on a consigned snowmobile,
12 whereby the dealer shall comply with the terms of the consignment agreement.

13 Section 10. That § 32-7A-12 be amended to read as follows:

14 32-7A-12. ~~Every~~ Any dealer or manufacturer licensed under the provisions of this chapter,
15 shall keep ~~a record~~ books, records, or files, in such form as may be prescribed by the
16 Department of Revenue and Regulation. ~~The licensee shall keep a record of the purchase, sale~~
17 ~~or exchange, or receipt for the purpose of sale, of any mobile home or manufactured home. The~~
18 ~~licensee shall also keep a record of a description of the home together with the name and address~~
19 ~~of the seller, the purchaser, or other person from whom it was received or to whom it was~~
20 ~~delivered, including the following:~~

- 21 (1) A record of the purchase, sale, or exchange, of any mobile or manufactured home;
- 22 (2) A description of each mobile or manufactured home purchased, sold, or exchanged,
23 together with the name and address of the owner or other person from whom the
24 mobile or manufactured home was purchased or received and to whom it was sold

1 or delivered. The description shall include the mobile or manufactured home
2 identification number and manufacturer's make and model; and

3 (3) A certificate of title from the previous owner of any mobile or manufactured home
4 not purchased from the manufacturer, from the time the mobile or manufactured
5 home is delivered to the dealer until it has been disposed of by the dealer.

6 The books and records and other papers and documents shall, at all times during business
7 hours of the day, be subject to inspection by the secretary of revenue and regulation.

8 Section 11. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A dealer may offer for sale, sell, or exchange a mobile or manufactured home without a
11 certificate of title if the dealer complies with the following applicable provisions:

12 (1) The dealer has a record of purchase, sale, or exchange of a mobile or manufactured
13 home to include the satisfaction of any outstanding liens or encumbrances and a
14 secured power of attorney;

15 (2) If the mobile or manufactured home is encumbered by a lien noted on the title, the
16 dealer shows that payment has been tendered to the lienholder for the amount of the
17 lien, except a lien that is the result of dealer inventory financing; or

18 (3) If the dealer is required by law to obtain title prior to offering the mobile or
19 manufactured home for sale and the dealer has applied for title through the electronic
20 on-line title system and has submitted the documents to the department.

21 This section does not relieve a dealer from the provisions of § 32-3-7.

22 Section 12. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 If a person trades in a mobile or manufactured home to a dealer or enters into a consignment

1 agreement with a dealer whereby the dealer will sell the mobile or manufactured home and the
2 mobile or manufactured home has a lien noted on the title, the dealer and person may agree that
3 the dealer shall satisfy the lien amount by paying the lienholder who is noted on the title. Failure
4 to satisfy a lien pursuant to this section constitutes theft pursuant to chapter 22-30A. The degree
5 of theft is determined by the amount of the unsatisfied lien. Multiple violations of this section
6 occurring within any thirty-day period may be aggregated in amount to determine the degree of
7 theft.

8 Section 13. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 If a dealer enters into an agreement pursuant to section 12 of this Act, the dealer shall satisfy
11 the lien within ten business days after the receipt of funds. No dealer may offer the mobile or
12 manufactured home for sale until payment has been tendered to the lienholder, except on a
13 consigned mobile or manufactured home, whereby the dealer shall comply with the terms of the
14 consignment agreement.

15 Section 14. That § 32-7B-9 be amended to read as follows:

16 32-7B-9. Any dealer licensed under the provisions of this chapter, shall keep books, records,
17 or files, in such form as prescribed or approved by the department. ~~The licensee shall keep a~~
18 ~~record of the purchase, sale or exchange, of any boat, a description of the boat together with the~~
19 ~~name and address of the owner or other person from whom the boat was purchased or received,~~
20 ~~and to whom it was sold or delivered for a period of five years. The description shall include~~
21 ~~the boat serial number, manufacturer's make and model. The dealer shall also have in possession~~
22 ~~a certificate of title from the previous owner of any boat not purchased from the manufacturer~~
23 ~~from the time the boat is delivered to the dealer until it has been disposed of by the dealer. Such~~
24 ~~record shall be opened to inspection by any law enforcement law officer or department~~

1 inspector, including the following:

2 (1) A record of the purchase, sale, or exchange, of any boat;

3 (2) A description of each boat purchased, sold, or exchanged, together with the name and
4 address of the owner or other person from whom the boat was purchased or received
5 and to whom it was sold or delivered. The description shall include the boat
6 identification number and manufacturer's make and model; and

7 (3) A certificate of title from the previous owner of any boat not purchased from the
8 manufacturer, from the time the boat is delivered to the dealer until it has been
9 disposed of by the dealer.

10 The books and records and other papers and documents shall, at all times during business
11 hours of the day, be subject to inspection by the secretary of revenue and regulation.

12 Section 15. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
13 follows:

14 A dealer may offer for sale, sell, or exchange a boat without a certificate of title if the dealer
15 complies with the following applicable provisions:

16 (1) The dealer has a record of purchase, sale, or exchange of a boat to include the
17 satisfaction of any outstanding liens or encumbrances and a secured power of
18 attorney;

19 (2) If the boat is encumbered by a lien noted on the title, the dealer shows that payment
20 has been tendered to the lienholder for the amount of the lien, except a lien that is the
21 result of dealer inventory financing; or

22 (3) If the dealer is required by law to obtain title prior to offering the boat for sale and
23 the dealer has applied for title through the electronic on-line title system and has
24 submitted the documents to the department.

1 This section does not relieve a dealer from the provisions of § 32-3-7.

2 Section 16. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If a person trades in a boat to a dealer or enters into a consignment agreement with a dealer
5 whereby the dealer will sell the boat and the boat has a lien noted on the title, the dealer and
6 person may agree that the dealer shall satisfy the lien amount by paying the lienholder who is
7 noted on the title. Failure to satisfy a lien pursuant to this section constitutes theft pursuant to
8 chapter 22-30A. The degree of theft is determined by the amount of the unsatisfied lien.
9 Multiple violations of this section occurring within any thirty-day period may be aggregated in
10 amount to determine the degree of theft.

11 Section 17. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 If a dealer enters into an agreement pursuant to section 16 of this Act, the dealer shall satisfy
14 the lien within ten business days after the receipt of funds. No dealer may offer the boat for sale
15 until payment has been tendered to the lienholder, except on a consigned boat, whereby the
16 dealer shall comply with the terms of the consignment agreement.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

474L0424

HOUSE TRANSPORTATION COMMITTEE
ENGROSSED NO. **HB 1171** - 02/02/2005

Introduced by: Representatives Weems, Faehn, Gassman, Krebs, Lange, Miles, Pederson (Gordon), Schafer, Sebert, and Willadsen and Senators Gant, Bartling, Kelly, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to permit certain dealers or public auctions to sell
2 snowmobiles and vehicles on consignment.

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

4 Section 1. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any snowmobile dealer or public auction may sell, or offer to sell, new or used snowmobiles
7 on consignment. For the purposes of this chapter, consignment means the delivery of a
8 snowmobile by the owner into the possession of another without transfer of title for the purpose
9 of sale or where there is any condition that the purchaser does not have an absolute obligation
10 to pay for the snowmobile or has a right to return the snowmobile to the seller. Any snowmobile
11 dealer or public auction who sells, or offers to sell, a South Dakota titled snowmobile on
12 consignment shall enter into a contract with the consignor. The department shall prescribe the
13 form of the contract.

14 Section 2. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as



1 follows:

2 No person may sell or offer to sell a snowmobile, to which a manufacturer's statement of
3 origin has not been transferred, on consignment.

4 Section 3. That § 32-6B-3 be amended to read as follows:

5 32-6B-3. Any ~~vehicle~~ dealer or public auction may sell, or offer to sell, new or used vehicles
6 on consignment. For the purposes of this chapter, consignment means the delivery of a vehicle
7 by the owner into the possession of another without transfer of title for the purpose of sale or
8 where there is any condition that the purchaser does not have an absolute obligation to pay for
9 the vehicle or has a right to return the vehicle to the seller. Any ~~vehicle~~ dealer or public auction
10 who sells, or offers to sell, South Dakota titled vehicles on consignment shall enter into a
11 contract with the consignor. The department shall prescribe the form of the contract.

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

354L0447

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 114** - 02/08/2005

Introduced by: Senators Duenwald, Hansen (Tom), Hanson (Gary), and Koskan and
Representatives Davis, Fryslie, Hackl, Hargens, and Jensen

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff on pulse crops.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Council," the South Dakota Pulse Crop Council;

5 (2) "First purchaser," any person, firm, corporation, association, partnership, agent, or
6 broker buying, accepting for sale, or otherwise acquiring pulse crops after harvest
7 from a grower. A grower selling unharvested pulse crops or delivering pulse crops
8 from the farm on which they are produced to storage facilities, packing shed, or
9 processing plant is not a first purchaser;

10 (3) "Grower," any person who is the legal initial owner of pulse crops harvested from
11 more than ten acres;

12 (4) "Participating grower," a grower who has not requested a refund from the payment
13 of assessments on pulse crops under this Act for the current or previous year;

14 (5) "Pulse crops," lentils, dry peas, chickpeas, and lupines;

15 (6) "Secretary," the secretary of the Department of Agriculture.



1 Section 2. The South Dakota Pulse Crops Council is composed of five members who are
2 participating growers of dry peas, lentils, chickpeas, or lupines. The secretary shall make the
3 initial appointments to the council and the secretary or a designee may serve as a nonvoting ex
4 officio member. Initial appointments to the council shall include five participating growers,
5 including a dry pea grower, a chickpea grower, a lentil or lupine grower, and two at-large pulse
6 producers. If no grower representing one of these crops is available or willing to serve, then
7 another at-large grower shall be appointed.

8 Section 3. The term of the members of the council is three years. However, the initial
9 appointments shall be for staggered terms. Succeeding council members shall be nominated and
10 elected by participating growers pursuant to rules promulgated by the secretary pursuant to
11 chapter 1-26. No council member may serve more than two consecutive elected terms. If a
12 member ceases to be a participating grower, the secretary shall declare the member's office
13 vacant, and the secretary shall appoint a successor for the balance of the term of the office
14 vacated.

15 Section 4. The council shall annually elect a chair and vice-chair. A majority of voting
16 members constitutes a quorum. All meetings of the council shall be called by the chair.
17 However, special meetings may be called by three members of the council. The council shall
18 adopt procedures for the calling of special meetings.

19 Section 5. Compensation for the members of the council shall be paid pursuant to § 4-7-
20 10.4.

21 Section 6. Funds collected pursuant to this Act shall be deposited with the state treasurer in
22 a special fund known as the pulse crops fund. Expenditures of these funds shall be made in
23 accordance with the provisions of chapter 4-7.

24 Section 7. The council shall promote the development, marketing, processing, and

1 production of pulse crops in South Dakota. In the administration of this Act, the council may:

- 2 (1) Contract and cooperate with any person or with any governmental department or
3 agency for research, education, promotion, and transportation;
- 4 (2) Expend the funds collected pursuant to this Act and appropriated for its
5 administration;
- 6 (3) Appoint, discharge, fix compensation for, and prescribe the duties of personnel as
7 necessary, subject to approval of the secretary;
- 8 (4) Accept donations of funds, property, services, or other assistance from public or
9 private sources for the purpose of furthering the objectives of the council.

10 Section 8. The council shall promulgate rules pursuant to chapter 1-26 concerning:

- 11 (1) The procedures for obtaining a declaratory ruling;
- 12 (2) The procedures by which assessments are collected for pulse crops grown or sold to
13 a first purchaser;
- 14 (3) The procedures for obtaining a refund of the assessment;
- 15 (4) The procedures for collecting delinquent assessments and assessing penalties; and
- 16 (5) The record-keeping and reporting requirements of first purchasers.

17 Section 9. Nothing in this Act abrogates or limits the rights, powers, duties, and functions
18 of the Department of Agriculture or any other agency of the state.

19 Section 10. An assessment at the rate of one percent of the net market price is levied and
20 imposed on any pulse crop grown or sold in South Dakota to a first purchaser. The council may
21 enter into reciprocal agreements with other states that also have a pulse checkoff to remit the
22 assessment to the state where the crop is grown. This assessment is due on any identifiable lot
23 or quantity of a pulse crop.

24 Section 11. Each first purchaser of pulse crops shall collect the assessment imposed by this

1 Act by charging and collecting from the seller the assessment at the prescribed rate by deducting
2 the assessment from the purchase price of the crops subject to the assessment and purchased by
3 the first purchaser. The assessments shall be paid to the department within thirty days of the end
4 of each calendar quarter.

5 Section 12. Each first purchaser of pulse crops shall file an application or affidavit with the
6 council on forms prescribed and furnished by the council which contain the name under which
7 the first purchaser is transacting business within the state, the place of business, and the location
8 of loading places of the first purchaser.

9 Section 13. Each first purchaser shall keep a permanent record of all purchases of pulse
10 crops, which may be examined by the council at any reasonable time. The first purchaser shall
11 report to the council the quantity of pulse crops received by the first purchaser. The report and
12 remittance of the assessment shall be made at the times and in the manner prescribed by the
13 council in rules promulgated pursuant to chapter 1-26.

14 Section 14. In the case of a pledge or mortgage of pulse crops as security for a loan under
15 the federal price support program, the assessment established under section 10 of this Act shall
16 be deducted from the proceeds of the loan at the time the loan is made, or be deducted thereafter
17 by agencies of the federal government. The producer's note and loan agreement, producer's note
18 and supplemental loan agreement, or delivery instructions issued by the federal agency to the
19 grower fulfill the requirements for invoices, and these documents constitute proof of payment
20 of the assessment on the pulse crops. Forms supplemental or alternate to those approved in this
21 section that are provided by the Commodity Credit Corporation of the United States Department
22 of Agriculture and contain the necessary information may be used for the purposes of this
23 section. Identification numbers created by the Commodity Credit Corporation for use in lieu of
24 the name of the grower from whom the assessment was collected are approved, if authorized

1 officials of the State of South Dakota have access at all reasonable times to records in the United
2 States Department of Agriculture Farm Service Agency county offices showing the names of
3 growers to whom such identification numbers have been assigned.

4 Section 15. If pulse crops described in section 14 of this Act remain in farm storage for the
5 duration of the pledge or mortgage, the assessment paid at the time the loan was made
6 completely satisfies the assessment liability unless upon subsequent actual delivery of the pulse
7 crop from farm storage in satisfaction of the pledge, or mortgage in the amount of one dollar or
8 more, any underpayment is due solely to the necessity of estimating the quantity of the pulse
9 crops placed in farm storage.

10 Section 16. In connection with the collection of the pulse crop assessment on Commodity
11 Credit Corporation pulse loans disbursed and purchase agreement settlement made,
12 undercollections or overcollections of the pulse crop assessment amounting to one dollar or less
13 as a result of errors do not require collection of the underpayment or refund of the overpayment
14 by the Commodity Credit Corporation, and its responsibility in such cases is waived.

15 Section 17. If any first purchaser fails to pay the assessment provided in this Act, the council
16 may enforce collection in any appropriate court within this state.

17 Section 18. Any grower subject to the assessment provided in this Act, within sixty days
18 following the assessment, may apply to the council for a refund of the assessment. Upon return
19 of the refund application accompanied by a record of the assessment by the first purchaser, the
20 grower shall, within sixty days, be refunded the net amount of the assessment collected.
21 Additionally, a grower, who for any reason, pays the assessment more than once on the same
22 pulse crops, upon furnishing proof of this to the council, is entitled to a refund of the
23 overpayment.

24 Section 19. The council shall develop and disseminate information and instructions relating

1 to the purpose of the pulse crop assessment and manner in which refunds may be claimed.

2 Section 20. If fifteen percent of the participating growers, as disclosed by the records of the
3 council for the preceding year, petition the council, the council shall conduct a referendum
4 among the participating growers of the state to determine whether they wish the Legislature to
5 raise or reduce the assessment imposed by this Act. The referendum may be conducted only
6 among participating growers who have paid all assessments pursuant to this Act for the
7 preceding year, and the ballots shall be prepared by the council and mailed to each participating
8 grower at least thirty days before the last date for filing ballots. In addition, each ballot shall be
9 accompanied by a notice to each participating grower:

- 10 (1) Of the date of the filing of the petition by the growers for the referendum and the
11 number of signatures contained on the petition;
- 12 (2) Of the date and place where the council will open and tabulate the ballots. The date
13 may be not less than five days after the last date for filing the ballots;
- 14 (3) Of the last date upon which ballots may be filed with the council, or postmarked if
15 delivered to the council by mail; and
- 16 (4) That any participating grower may attend the meeting of the council at the time the
17 ballots are opened and the votes tabulated.

18 If a majority of the participating growers voting upon the question are in favor of the
19 proposed change, the council shall certify the result to the secretary with the request that the
20 secretary prepare a bill to submit to the next legislative session to modify this Act accordingly.
21 The results of the referendum are advisory only, and the Legislature is not obligated to adopt
22 legislation enacting the proposals contained in the referendum.

23 Section 21. The council may contract with the Public Utilities Commission to inspect the
24 records of licensed grain dealers to determine compliance with the assessment and checkoff

1 requirements of this Act. The contract shall cover the dealers to be inspected and the amount
2 the council shall reimburse the Public Utilities Commission for the inspections.

3 Section 22. That § 49-45-21 be amended to read as follows:

4 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
5 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
6 Promotion Council pursuant to § 38-29-14, ~~and~~ the South Dakota Corn Utilization Council
7 pursuant to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to section 21 of this
8 Act. Under the terms of any such contract, the commission may inspect the records of licensed
9 grain dealers to determine compliance with assessment and checkoff requirements imposed by
10 chapters 38-10, 38-27, 38-29, and 38-32.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

718L0599

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 168** - 02/09/2005

Introduced by: Senators Adelstein, Broderick, Knudson, Nesselhuf, and Two Bulls and
Representatives Murschel, Bradford, Elliott, Halverson, Thompson, Valandra,
and Van Norman

1 FOR AN ACT ENTITLED, An Act to ensure appropriate emergency health care for certain rape
2 survivors and to require health care facilities and the Department of Health to provide
3 information to certain rape survivors.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Emergency contraception," any drug or device approved by the Food and Drug
7 Administration that can prevent pregnancy after sex;
- 8 (2) "Emergency care," any medical examination or treatment provided by a health care
9 facility to a rape survivor following an alleged rape;
- 10 (3) "Medically and factually accurate and objective," verified or supported by the weight
11 of research conducted in compliance with accepted scientific methods and either: (1)
12 published in peer-reviewed journals; or (2) comprising information that leading
13 professional organizations and agencies with relevant expertise in the field recognize
14 as accurate and objective;



1 (4) "Rape," as defined in § 22-22-1;

2 (5) "Rape survivor," any female person who alleges or is alleged to have been raped and
3 who presents as a patient.

4 Section 2. Every health care facility providing emergency treatment to a rape survivor shall
5 promptly:

6 (1) Provide such survivor with medically and factually accurate and objective written
7 and oral information pursuant to section 3 of this Act, relating to emergency
8 contraception;

9 (2) Orally inform such survivor of the availability of emergency contraception, its use
10 and efficacy; and

11 (3) Provide to such survivor:

12 (a) Emergency contraception upon her request, if medically necessary; or

13 (b) A prescription for the medication if it can be confirmed that there is a
14 pharmacy open and able to meet this need within seventy-two hours of the
15 rape; or

16 (c) A referral to a physician or a clinic where the patient can receive emergency
17 contraception within seventy-two hours of the rape.

18 Any religiously affiliated health care facility is exempt from subdivision (3) of this section.

19 No health care facility is required to provide emergency contraception to a pregnant woman.

20 Section 3. The Department of Health shall develop, prepare, and produce informational
21 materials relating to emergency contraception for distribution to and use in all health care
22 facilities in the state, in quantities sufficient to comply with the requirements of this Act. The
23 Department of Health may also approve informational materials from medically recognized
24 sources for the purposes of this Act. Such informational material shall be in clear and concise

1 language, readily comprehensible, in such varieties and forms as the Department of Health
2 deems necessary to inform rape survivors in English and languages other than English. Such
3 materials shall explain the nature of emergency contraception including its use, safety, efficacy,
4 and availability.

5 Section 4. The Department of Health shall respond to complaints and shall periodically
6 determine whether health care facilities are complying with this Act.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

893L0750 SENATE EDUCATION COMMITTEE ENGROSSED NO.
SB 184 - 02/10/2005

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

Introduced by: Senators Bogue, Bartling, and Koskan and Representatives Deadrick, Dennert, and Klautd

1 FOR AN ACT ENTITLED, An Act to establish a program in the Department of Education to
2 assist certain school districts with capital improvement needs.

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

4 Section 1. There is hereby created within the Department of Education a program to provide
5 state aid to school districts with critical need for capital construction.

6 Section 2. As used in this Act, a school district with critical need for capital construction is
7 one which:

8 (1) Has an average daily membership as defined in subdivision 13-13-10.1(1) per square
9 mile of 0.6 or less;

10 (2) Has a geographical area of more than five hundred square miles;

11 (3) Has an emergency need, be it through catastrophe or condemnation by the state fire
12 marshal or designee for structural concerns, for replacement of an academic building;

13 and

14 (4) Levies taxes at the maximum levels prescribed in § 13-16-7 and still does not have



1 the ability to raise local effort sufficient enough to build or acquire adequate,
2 permanent classroom building space needed to replace lost space or buildings.

3 Section 3. Upon receipt of a school district's application for aid pursuant to this Act, the
4 secretary of the department shall evaluate the district's request and plan for permanent
5 construction. State aid for critical capital construction will be calculated by the secretary as the
6 difference between the cost of the approved construction project and the district's local effort
7 ability for capital construction.

8 Section 4. The entitlement provided by sections 1 to 3, inclusive, of this Act, shall be paid
9 by the Department of Education out of any money appropriated by the Legislature for the
10 purposes of this Act.

11 Section 5. The secretary of the Department of Education shall promulgate rules, pursuant
12 to chapter 1-26, to establish criteria for: approval of proposed replacement buildings; calculation
13 of local construction effort; notification and acceptance of requests for aid; and review of
14 projects upon completion.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0681

**SENATE AGRICULTURE AND NATURAL RESOURCES
COMMITTEE ENGROSSED NO. **SB 220** - 02/11/2005**

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Governor

1 FOR AN ACT ENTITLED, An Act to establish the South Dakota Certified beef program, to
2 create the South Dakota Certified beef fund, to make a continuous appropriation from the
3 fund, and to declare an emergency.

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

5 Section 1. This Act shall be cited as the South Dakota Certified Beef Program Act of 2005.

6 Section 2. Only beef products, whether live animals or finished consumer products, which
7 have been produced by registered participants in full compliance with all the applicable
8 requirements of this Act may be certified, identified, classified, packaged, labeled, or otherwise
9 designated for sale inside or outside this state as South Dakota Certified™ Beef.

10 Section 3. The secretary of the Department of Agriculture may establish quality protocols,
11 guidelines, program requirements, license fees, and license requirements and operate, supervise,
12 and control the South Dakota Certified beef program.

13 Section 4. The use of any certification mark, trademark, service mark, copyright, or label
14 of the South Dakota Certified beef program shall be in accordance with the terms and conditions
15 of a valid license issued by the secretary. A violation of this section is a Class 6 felony.



1 Section 5. Any data or financial information made or received by the secretary of agriculture
2 pursuant to this Act is not public record and is exempt from the provisions of § 1-27-1.
3 However, the secretary may provide information gathered pursuant to this Act to any
4 government agency if the information is needed for a government sponsored animal
5 identification tracking program or for any public health or safety reason.

6 Section 6. The secretary of agriculture may by rule promulgated pursuant to chapter 1-26,
7 prescribe the following:

- 8 (1) Qualifications or conditions for using any intellectual property right, mark, or label
9 of the South Dakota Certified beef program;
- 10 (2) Reasonable fees for licenses and services of the program, such fees to be reasonably
11 commensurate with the cost of developing, administering, and marketing the
12 program;
- 13 (3) License application procedures, the terms and conditions of any license, and any
14 official form the secretary deems necessary and appropriate;
- 15 (4) Methods and means of conducting inspections, keeping records, and otherwise
16 insuring program compliance by participants in the program; and
- 17 (5) Provisions to maintain the confidentiality of business information provided to the
18 secretary by participants in the program.

19 Section 7. In addition to any other remedy provided by law, the secretary may proceed by
20 suit in any court of competent jurisdiction to enforce the terms and provisions of this Act and
21 of any license issued pursuant to this Act. The secretary may as a part of any such suit seek
22 injunctive relief.

23 Section 8. In addition to any other remedy provided by law, the secretary may revoke a
24 license for cause pursuant to chapter 1-26.

1 Section 9. The secretary of agriculture and the secretary of tourism and state development
2 shall consult and cooperate, and shall exchange such services, personnel, and information as are
3 necessary and appropriate in order to develop, administer, and market the South Dakota
4 Certified beef program.

5 Section 10. There is hereby created within the state treasury the South Dakota Certified beef
6 fund, into which all license fees, inspection fees, and other fees or revenues paid to the state
7 from the operation of the South Dakota Certified beef program shall be deposited. All moneys
8 in the fund created by this section are continuously appropriated for the purpose of developing,
9 administering, and marketing the South Dakota Certified beef program.

10 Section 11. Whereas, this Act is necessary for the support of the state government and its
11 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
12 full force and effect from and after its passage and approval.