



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

195L0196

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1110** - 02/02/2005

Introduced by: Representatives Tornow, Buckingham, Cutler, Koistinen, Krebs, McLaughlin, Michels, Miles, Murschel, Rounds, Thompson, and Van Norman and Senators Knudson, Earley, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the circumstances  
2 under which absentee voting is permitted.

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

4 Section 1. That § 12-19-2.1 be amended to read as follows:

5 12-19-2.1. At anytime prior to an election, a voter may apply in person to the person in  
6 charge of the election for an absentee ballot during regular office hours up to 3:00 p.m. of the  
7 day of the election. If the voter applies in person, the voter shall show the person in charge of  
8 the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit  
9 as provided in § 12-18-6.2.

10 In the event of sickness or confinement, a qualified voter may apply pursuant to the  
11 provisions of § 12-19-2 in writing for and obtain an absentee ballot by authorized messenger  
12 so designated over the signature of the voter. The person in charge of the election may deliver  
13 to the authorized messenger a ballot to be delivered to the qualified voter. An application for  
14 a ballot by authorized messenger must be received by the person in charge of the election before



- 1 3:00 p.m. the day of the election. On the day of the election, any qualified voter may use the
- 2 authorized messenger provision.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

259L0289

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1190** - 02/07/2005

Introduced by: Representatives Rhoden, Boomgarden, Brunner, Buckingham, Cutler, Davis, Deadrick, Dykstra, Faehn, Frost, Fryslie, Garnos, Hackl, Halverson, Hanks, Hargens, Haverly, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Kraus, McCoy, Michels, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rounds, Sebert, Sigdestad, Street, Tidemann, Turbiville, Valandra, Vehle, Weems, Wick, and Willadsen and Senators Koskan, Abdallah, Bartling, Bogue, Broderick, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hundstad, Lintz, McCracken, McNenny, Moore, Napoli, Peterson (Jim), Smidt, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for recognition of certain valid nonresident  
2 permits to carry a concealed pistol.

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

4 Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any valid permit to carry a concealed pistol, issued to a nonresident of South Dakota, is  
7 valid in South Dakota according to the terms of its issuance in the state of its issue, but only to  
8 the extent that the terms of issuance comply with any appropriate South Dakota statute or  
9 promulgated rule. However, if the holder of such a nonresident permit to carry a concealed  
10 pistol becomes, at any time, a legal resident of South Dakota, the provisions of this section no  
11 longer apply.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

754L0116

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1209** - 02/07/2005

Introduced by: Representatives Novstrup, Boomgarden, Bradford, Brunner, Buckingham, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Glover, Hackl, Haley, Halverson, Hargens, Heineman, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Kraus, Krebs, McCoy, McLaughlin, Miles, Nelson, O'Brien, Pederson (Gordon), Peters, Putnam, Rave, Rhoden, Rounds, Schafer, Sigdestad, Street, Thompson, Tidemann, Turbiville, Valandra, Vehle, Weems, and Willadsen and Senators Abdallah, Bartling, Bogue, Broderick, Duenwald, Duniphan, Hanson (Gary), Hundstad, Kelly, Knudson, Koskan, Lintz, McCracken, McNenny, Peterson (Jim), Sutton (Dan), and Two Bulls

1 FOR AN ACT ENTITLED, An Act to provide for limited confidentiality of certain firearms  
2 information.

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

4 Section 1. No state agency, political subdivision, official, agent, or employee of any state  
5 agency or political subdivision, or any other person may knowingly keep or cause to be kept any  
6 list, record, or registry of privately owned firearms or any list, record, or registry of the owners  
7 of those firearms, or any list, record, or registry of holders of permits to carry a concealed pistol.

8 Section 2. The provisions of section 1 of this Act do not apply to:

- 9 (1) Records of firearms that have been used in committing any crime;
- 10 (2) Permits to carry a concealed pistol records relating to any person who has been  
11 convicted of a felony;



- 1 (3) Records of the serial numbers of firearms that have been reported stolen that are  
2 retained for a period not in excess of ten days after such firearms are recovered and  
3 returned to the lawful owner. However, official documentation recording the theft of  
4 a recovered weapon may be maintained no longer than the balance of the year entered  
5 and two additional years;
- 6 (4) Firearm records that must be retained by firearm dealers under federal law, including  
7 copies of such records transmitted to law enforcement agencies;
- 8 (5) Any on duty law enforcement officer while conducting routine verification of the  
9 validity of a permit to carry a concealed pistol; and
- 10 (6) The secretary of state for the issuance of concealed pistol permits pursuant to chapter  
11 23-7 and any access reasonably necessary to verify information with regard to  
12 specific permits individually.

13 Section 3. That § 23-7-8.5 be repealed.

14 ~~—23-7-8.5. No information from a concealed pistol permit issued pursuant to § 23-7-8 may~~  
15 ~~be transferred by the local issuing authority to any agency other than the secretary of state. The~~  
16 ~~secretary of state may not allow information from any concealed pistol permit to be~~  
17 ~~electronically accessible to any other agency or person or to be transferred to any other agency~~  
18 ~~or person for the purpose of establishing or maintaining a statewide electronic database.~~

19 Section 4. The provisions of this Act do not restrict any law enforcement officer in the  
20 performance of any official duty if the law enforcement officer is in the immediate physical  
21 presence of a permit holder who has either presented a permit to the officer or declared to the  
22 officer that he or she is a permit holder.

23 Section 5. The provisions of this Act do specifically prohibit any law enforcement officer  
24 from retaining any notes, data, or pieces of information, either collectively or individually,

- 1 unless the retention of such notes, data, or pieces of information is pertinent to a specific
- 2 ongoing investigation or prosecution.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

336L0767

## HOUSE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **HB 1239** - 02/08/2005

Introduced by: Representatives Hargens and Haley and Senator Moore

1 FOR AN ACT ENTITLED, An Act to revise the method for setting the fees that may be  
2 received by a county coroner.

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

4 Section 1. That § 7-14-1 be amended to read as follows:

5 7-14-1. The coroner shall receive ~~the following~~ fees and expenses:

6 ~~(1) For a view of each body and examination of the circumstances surrounding the death,~~  
7 ~~fifty-eight dollars;~~

8 ~~(2) The coroner shall receive the same amount per mile traveled in the course of his~~  
9 ~~duties as other county officials~~ as set by the board of county commissioners.



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0367

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 58** - 02/14/2005

**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 Commerce at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to require insurers to cooperate with the Department of  
2 Social Services in the coordination of medical benefits.

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

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Within sixty days of a request from the Department of Social Services, the department and  
7 an insurer shall negotiate an acceptable format for the transmission of information from the  
8 insurer's database of policy holders, sponsors, subscribers, covered individuals in South Dakota,  
9 and coverage dates. The format shall include the data elements, medium, frequency of reporting,  
10 any costs of the insurer to be reimbursed, and procedures that will be followed when a data  
11 match is found. The Department of Social Services shall match the name, address, date of birth,  
12 and social security number if available, of the insured's policyholders, sponsors, subscribers, and  
13 covered individuals against the Medicaid eligible recipients and recipients of support  
14 enforcement services as defined in subdivision 25-7A-1(19).



1       Upon discovery of a match, the department may incorporate the following information into  
2 its recipient database:

- 3       (1)    The name, address, date of birth, social security number if available, and the unique  
4            health care identification number of the covered individual;
- 5       (2)    The name, address, date of birth, social security number if available, policy number,  
6            and group identification number of the policyholder, sponsor, or subscriber;
- 7       (3)    The name and address of the employer if it is an employer-employee benefit plan;
- 8       (4)    Types of covered services under the plan or policy;
- 9       (5)    Coverage effective date and termination of coverage date for each covered  
10            individual; and
- 11       (6)    The name and address of the claim administrator for the policy or plan.

12       The department may not use or disclose any information provided by the insurer other than  
13 as permitted or required by law. The insurer may not be held liable for the release of insurance  
14 coverage information to the department or the director by any party when done so under the  
15 authority of this Act.

16       Section 2. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18       Notwithstanding any other provision of a health benefit plan, health insurance policy, plan,  
19 contract, or certificate, an insurer shall recognize that an application for medical assistance or  
20 acceptance of medical assistance, paid by the Department of Social Services operates as a  
21 release of any information kept by the insurer and readily available, that would facilitate  
22 efficient coordination of benefits between the department and the insurer, which may include:

- 23       (1)    The name, address, date of birth, social security number if available, and unique  
24            health care identification number of the covered individual;

- 1       (2)    The name, address, date of birth, social security number if available, policy number,  
2            group identification number of the policyholder, sponsor, or subscriber;
- 3       (3)    The name and address of the employer if it is an employer-employee benefit plan;  
4            types of services covered under the plan or policy; and the name and address of the  
5            claims administrator for the policy or plan;
- 6       (4)    Previously paid benefits including the name and address of the payee; and
- 7       (5)    The name and address of claims processing or administration centers, or both.

8        Upon written request by the department, the insurer shall provide the requested information  
9        in writing within thirty calendar days of receipt of the request.

10       Section 3. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
11        follows:

12        Notwithstanding any other provision of a health benefit plan, health insurance policy, plan,  
13        contract, or certificate, that is issued, entered into, or renewed after July 1, 2005, no insurer may  
14        refuse to reimburse the Department of Social Services because of the manner, form, or date of  
15        a claim for reimbursement, if within one year after the date the claim has been paid by medicaid,  
16        for which reimbursement is sought, the department provides the insurer evidence of the insurer's  
17        liability.

18        Section 4. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
19        follows:

20        If the Department of Social Services notifies an insurer that the department has paid for  
21        services on behalf of an individual who is covered under an individual, group, or blanket health  
22        insurance policy or contract that the insurer issued, delivered, entered into, or renewed in the  
23        state, to the extent that the insurer is legally liable, it shall reimburse the department for the cost  
24        of the services, regardless of any provision in the health insurance policy or contract that

1 requires payment to the policy holder, subscriber, or another payee. If the insurer, after notice  
2 from the department, issues payment to any payee other than the department, the insurer remains  
3 liable to the department for the amount of benefits paid to the other party.

4 Section 5. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of this Act, the term, insurer, means:

- 7 (1) Any commercial insurance company, employer-employee benefit plan, health  
8 maintenance organization, professional association, public self-funded employer or  
9 pool, union, or fraternal group selling or otherwise offering individual or group  
10 health insurance coverage including self-insured and self-funded plans;
- 11 (2) Any profit or nonprofit prepaid plan offering either medical services of full or partial  
12 payment for services included in the department's medicaid plan;
- 13 (3) Any other entity offering health benefits for which a medicaid recipient may be  
14 eligible in addition to public medical assistance; or
- 15 (4) Any entity which processes claims, administers services, or otherwise manages health  
16 benefits on behalf of any of the aforementioned insurers.

17 Section 6. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 For the purposes of this Act, the term, department, means the Department of Social Services,  
20 or an entity under contract with the Department of Social Services to carry out the functions of  
21 this Act.

22 Section 7. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 The provisions of chapter 1-27 do not apply to any records the insurer is required to provide

1 to the department.

2 Section 8. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as

3 follows:

4 This Act does not apply to any coverages under a personal lines property and casualty

5 policy.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

984L0311

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 67** - 02/15/2005

Introduced by: Senator Schoenbeck and Representatives Hennies, Cutler, O'Brien, Rave, and Rounds at the request of the Criminal Code Revision Commission

1 FOR AN ACT ENTITLED, An Act to revise certain drug and alcohol offenses, driving  
2 offenses, and other felonious offenses.

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

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. No person may drive or be in actual physical control of any vehicle while:

6 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown  
7 by chemical analysis of that person's breath, blood, or other bodily substance;

8 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or  
9 substance not obtained pursuant to a valid prescription, or any combination of an  
10 alcoholic beverage, marijuana, or such controlled drug or substance;

11 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained  
12 pursuant to a valid prescription, or any other substance, to a degree which renders the  
13 person incapable of safely driving; ~~or~~

14 (4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any  
15 controlled drug or substance obtained pursuant to a valid prescription, or any other



1           substance, to a degree which renders the person incapable of safely driving; or

2       (5)   Under the influence of any substance ingested, inhaled, or otherwise taken into the  
3           body as prohibited by § 22-42-15.

4       Section 2. That § 32-23-1.1 be amended to read as follows:

5       32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation  
6       of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person  
7       to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-  
8       1 and that such violation occurred prior to or immediately following such traffic accident.

9       Section 3. That § 32-23-1.2 be amended to read as follows:

10      32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident  
11      or which is operated in violation of any of the provisions of this chapter shall, at the request of  
12      a law enforcement officer, submit to a breath test to be administered by such officer. If such test  
13      indicates that such operator has consumed alcohol, the law enforcement officer may require such  
14      operator to submit to a chemical test in the manner set forth in this chapter.

15      Section 4. That § 32-23-1.3 be repealed.

16      ~~32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle~~  
17      ~~while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall~~  
18      ~~be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the~~  
19      ~~prosecuting attorney states the reasons for reduction or dismissal in writing and on the record~~  
20      ~~and files the reasons with the clerk of courts.~~

21      Section 5. That § 32-23-2 be amended to read as follows:

22      32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty  
23      of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less  
24      than thirty days. However, the court may in its discretion issue an order upon proof of financial

1 responsibility, pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for  
2 purposes of ~~the person's employment, attendance at school,~~ or attendance at ~~court-ordered~~  
3 counseling programs ~~during the hours of the day and the days of the week as set forth in the~~  
4 ~~order~~. The court may also order the revocation of the defendant's driving privilege for a further  
5 period not to exceed one year or restrict the privilege in such manner as it sees fit for a period  
6 not to exceed one year.

7 Section 6. That § 32-23-2.1 be amended to read as follows:

8 32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a  
9 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the  
10 penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine  
11 if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation  
12 shall be paid by the defendant.

13 Section 7. That § 32-23-3 be amended to read as follows:

14 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is  
15 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally  
16 revoke the defendant's driving privilege for a period of not less than one year. However, upon  
17 the successful completion of a court-approved ~~alcohol treatment~~ chemical dependency  
18 counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court  
19 may permit the person to drive for the ~~purpose~~ purposes of employment ~~and may restrict the~~  
20 ~~privilege by the imposition of such conditions as the court sees fit. If such person is convicted~~  
21 ~~of driving without a license during that period, the person shall be sentenced to the county jail~~  
22 ~~for not less than three days, which sentence may not be suspended,~~ attendance at school, or  
23 attendance at counseling programs.

24 Section 8. That § 32-23-4 be amended to read as follows:

1       32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty  
2 of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the  
3 defendant's driving privileges for such period of time as may be determined by the court, but in  
4 no event less than one year from the date sentence is imposed or one year from the date of  
5 discharge from incarceration, whichever is later. ~~If the person is convicted of driving without~~  
6 ~~a license during that period, he shall be sentenced to the county jail for not less than ten days,~~  
7 ~~which sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains  
8 jurisdiction to modify the conditions of the license revocation for the term of such revocation.  
9 Upon the successful completion of a court-approved chemical dependency counseling program,  
10 and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person  
11 to operate a vehicle for the purposes of employment, attendance at school, or attendance at  
12 counseling programs.

13       Section 9. That § 32-23-4.3 be amended to read as follows:

14       32-23-4.3. The plea and election of method of trial by the accused shall be first taken only  
15 on the first part of the information described in § 32-23-4.2 but before a plea is made the  
16 accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second  
17 part. There shall be entered in the minutes of the court the time and place when and where the  
18 judge so informed the accused, and like entry thereof shall be made in the judgment.

19       Section 10. That § 32-23-4.4 be amended to read as follows:

20       32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2  
21 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon  
22 proceeded with, and until such time no information as to the second part of the information ~~shall~~  
23 may be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part  
24 of the information, such trial may be had to the same or another jury as the court may direct.

1 Section 11. That § 32-23-4.6 be amended to read as follows:

2 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent  
3 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,  
4 the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall  
5 unconditionally revoke the defendant's driving privileges for such period of time as may be  
6 determined by the court, but in no event less than two years from the date sentence is imposed  
7 or two years from the date of discharge from incarceration, whichever is later. If the person is  
8 convicted of driving without a license during that period, he shall be sentenced to the county jail  
9 for not less than twenty days, which sentence may not be suspended.

10 Section 12. That § 32-23-6 be amended to read as follows:

11 32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been  
12 ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall~~ is not ~~constitute~~ a defense  
13 against any charge of violating ~~said section~~ § 32-23-1.

14 Section 13. That § 32-23-7 be amended to read as follows:

15 32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle  
16 while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41,  
17 or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged  
18 as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives  
19 rise to the following presumptions:

20 (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
21 defendant's blood, it is presumed that the defendant was not under the influence of  
22 ~~intoxicating liquor~~ an alcoholic beverage;

23 (2) If there was at that time in excess of five hundredths percent but less than eight  
24 hundredths percent by weight of alcohol in the defendant's blood, such fact does not

1 give rise to any presumption that the defendant was or was not under the influence  
2 of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with  
3 other competent evidence in determining the guilt or innocence of the defendant;

4 (3) If there was at that time eight hundredths percent or more by weight of alcohol in the  
5 defendant's blood, it is presumed that the defendant was under the influence of  
6 ~~intoxicating liquor~~ an alcoholic beverage.

7 Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
8 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

9 Section 14. That § 32-23-8 be amended to read as follows:

10 32-23-8. The provisions of § 32-23-7 ~~shall~~ may not be construed as limiting the introduction  
11 of any other competent evidence bearing upon the question whether or not the defendant was  
12 under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

13 Section 15. That § 32-35-43.1 be amended to read as follows:

14 32-35-43.1. The suspension or revocation of driving privileges required for a violation of  
15 §§ 22-16-41, 32-23-1, 32-24-3, 32-35-113, and 32-35-120 shall remain in effect and the  
16 Department of Public Safety may not issue to the person any renewal of driving privileges nor  
17 may the court issue any driving permit until the person gives and thereafter maintains proof of  
18 financial responsibility for the future.

19 Section 16. That § 32-23-10 be amended to read as follows:

20 32-23-10. Any person who operates any vehicle in this state is considered to have given  
21 consent to the withdrawal of blood or other bodily substance and chemical analysis of the  
22 person's blood, breath, or other bodily substance to determine the amount of alcohol in the  
23 person's blood and to determine the presence of marijuana or any controlled drug or substance  
24 or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15

1 or any other substance that may render a person incapable of safely driving. The chemical  
2 analysis shall be administered at the direction of a law enforcement officer who, after stopping  
3 or detaining the vehicle driver, has probable cause to believe that the driver was driving or in  
4 physical control of the vehicle while in violation of § 32-23-1.

5 ~~— The person shall be requested by the officer to submit to the withdrawal of blood or other~~  
6 ~~bodily substance for chemical analysis or chemical analysis of the person's breath and shall be~~  
7 ~~advised by the officer that:~~

8 ~~— (1) — If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~  
9 ~~or chemical analysis may be required unless the person has been arrested for a third,~~  
10 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~  
11 ~~§ 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41~~  
12 ~~or vehicular battery under § 22-16-42, or has been involved in an accident resulting~~  
13 ~~in death or serious bodily injury of another person;~~

14 ~~— (2) — If the person refuses to submit to the withdrawal or chemical analysis, the person's~~  
15 ~~driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the~~  
16 ~~person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation~~  
17 ~~order being issued; and~~

18 ~~— (3) — The person has the right to have a chemical analysis performed by a technician of the~~  
19 ~~person's own choosing at the person's own expense, in addition to the test requested~~  
20 ~~by the officer.~~

21 Section 17. That § 32-23-10.1 be repealed.

22 ~~— 32-23-10.1. If a person refuses to submit to chemical analysis of the person's blood, urine,~~  
23 ~~breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for~~  
24 ~~chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for~~

1 ~~violation of § 32-23-1 or § 32-23-21, such refusal may be admissible into evidence at the trial.~~

2 Section 18. That § 32-23-10.3 be repealed.

3 ~~—32-23-10.3. For purposes of § 32-23-10, serious bodily injury is such injury as is grave and~~  
4 ~~not trivial, and gives rise to apprehension of danger to life, health, or limb.~~

5 Section 19. That § 32-23-11 be repealed.

6 ~~—32-23-11. Any person subject to license revocation for failure to submit to the withdrawal~~  
7 ~~and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall~~  
8 ~~demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the~~  
9 ~~Secretary of Public Safety finds that the law enforcement officer complied with the law and the~~  
10 ~~refusal was made by the person, the secretary shall revoke that person's license to drive and any~~  
11 ~~nonresident operating privileges for one year. The secretary shall determine if the person is~~  
12 ~~eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter~~  
13 ~~1-26 for determining that eligibility.~~

14 ~~—The Secretary of Public Safety may promulgate rules for restricted licenses as follows:~~

15 ~~—(1) Eligibility;~~

16 ~~—(2) Application;~~

17 ~~—(3) Determination;~~

18 ~~—(4) Limitations; and~~

19 ~~—(5) Grounds for revocation.~~

20 Section 20. That § 32-23-11.1 be repealed.

21 ~~—32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11~~  
22 ~~or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating § 32-~~  
23 ~~23-1 is dismissed by the state prior to the departmental hearing and the person is not convicted~~  
24 ~~of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a revocation~~

1 ~~order being issued.~~

2 Section 21. That § 32-23-13 be repealed.

3 ~~—32-23-13. If any operator of a motor vehicle in this state who has been requested to submit~~  
4 ~~to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to~~  
5 ~~submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test~~  
6 ~~shall constitute consent and authority to administer a test notwithstanding the age of the operator~~  
7 ~~of the motor vehicle.~~

8 Section 22. That § 32-23-14 be amended to read as follows:

9 32-23-14. Only a physician, laboratory technician, registered nurse, physician's assistant,  
10 phlebotomist, expanded role licensed practical nurse, medical technician, or medical  
11 technologist may withdraw blood for the purpose of determining the alcoholic content therein.  
12 This limitation does not apply to the taking of a breath or other bodily substance specimen. ~~Such~~  
13 ~~Any such~~ authorized persons, ~~acting on the presumption of consent, and person or any hospital~~  
14 employing any such persons, ~~are~~ person, is not liable and may not be held to pay damages to the  
15 party from whom the blood sample is withdrawn, if the withdrawal is administered with usual  
16 and ordinary care.

17 Section 23. That § 32-23-15 be amended to read as follows:

18 32-23-15. The person tested pursuant to ~~§§ 32-23-13 and 32-23-14 shall be permitted to~~  
19 § 32-23-10 may have a physician, laboratory technician, registered nurse, physician's assistant,  
20 or medical technologist of ~~his~~ the person's own choosing administer the chemical analysis in  
21 addition to the one administered at the direction of the law enforcement officer.

22 Section 24. That § 32-23-16 be amended to read as follows:

23 32-23-16. Upon the request of the person who was tested pursuant to ~~§§ 32-23-13 and 32-~~  
24 ~~23-14~~ § 32-23-10, or upon the request of ~~his~~ the person's attorney, the results of such analysis

1 shall be made available to ~~him~~ the person or to ~~his~~ the person's attorney.

2 Section 25. That § 32-23-18 be repealed.

3 ~~—32-23-18. The Department of Public Safety shall revoke the license of any person arrested~~  
4 ~~for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed~~  
5 ~~by a law enforcement officer pursuant to § 32-23-10.~~

6 Section 26. That § 32-23-19 be repealed.

7 ~~—32-23-19. A law enforcement officer shall serve the notice of intent to revoke, on behalf of~~  
8 ~~the Department of Public Safety and shall take possession of any driver's license issued by this~~  
9 ~~state held by the person if the arrested driver refuses to submit to a chemical analysis as directed~~  
10 ~~by the officer pursuant to § 32-23-10. A copy of the completed notice of intent to revoke form,~~  
11 ~~and any South Dakota driver's license taken into possession shall be forwarded to the~~  
12 ~~department by the officer. If a valid South Dakota driver's license is surrendered, the notice of~~  
13 ~~intent to revoke shall function as a temporary license which is valid for one hundred twenty~~  
14 ~~days. Upon receipt of a petition for a hearing, the department may extend the temporary license~~  
15 ~~thirty days following the scheduled date of the hearing.~~

16 Section 27. That § 32-23-20 be repealed.

17 ~~—32-23-20. The department shall revoke the person's license to drive and any nonresident~~  
18 ~~operating privileges pursuant to § 32-23-11.~~

19 Section 28. That § 19-13-28.1 be repealed.

20 ~~—19-13-28.1. Notwithstanding the provisions of § 19-13-28, when a person stands trial for~~  
21 ~~driving while under the influence of alcohol or drugs, as provided under § 32-23-1, and that~~  
22 ~~person has refused chemical analysis, as provided in § 32-23-10, such refusal is admissible into~~  
23 ~~evidence. Such person may not claim privilege against self-incrimination with regard to~~  
24 ~~admission of refusal to submit to chemical analysis.~~

1 Section 29. That § 32-12A-46 be amended to read as follows:

2 32-12A-46. Any person who operates any commercial motor vehicle in this state is  
3 considered to have given consent to the withdrawal of blood or other bodily substance to  
4 determine the amount of alcohol in that person's blood, or to determine the presence of any  
5 controlled drug or substance or marijuana or any substance ingested, inhaled, or otherwise taken  
6 into the body as prohibited by § 22-42-15 or any other substance that may render a person  
7 incapable of safely driving. The chemical analysis shall be administered at the direction of a law  
8 enforcement officer who after stopping or detaining the commercial motor vehicle driver has  
9 probable cause to believe that the driver was driving or in actual physical control of a  
10 commercial motor vehicle while having any alcohol or drugs in that person's system. ~~Any person~~  
11 ~~requested by a law enforcement officer under this section to submit to a chemical analysis shall~~  
12 ~~be advised by the officer that:~~

- 13 ~~— (1) — If the person refuses to submit to the chemical analysis, none shall be given; and~~  
14 ~~— (2) — If the person refuses to submit to the chemical analysis the person shall be~~  
15 ~~immediately placed out of service for a period of twenty-four hours and be~~  
16 ~~disqualified from operating a commercial motor vehicle for a period of not less than~~  
17 ~~one year; or~~  
18 ~~— (3) — If the person submits to a chemical analysis which discloses that the person was~~  
19 ~~operating the commercial motor vehicle while there was 0.04 percent or more by~~  
20 ~~weight of alcohol in that person's blood the person shall be disqualified from~~  
21 ~~operating a commercial motor vehicle for not less than one year.~~

22 Section 30. That § 32-12A-36 be amended to read as follows:

23 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period  
24 of not less than one year:

- 1 (1) If convicted of a first violation of driving or being in actual physical control of a  
2 commercial motor vehicle while under the influence of alcohol, ~~or marijuana~~, any  
3 controlled drug or substance, or any other substance that may render a person  
4 incapable of safely driving, in violation of § 32-23-1;
- 5 (2) If convicted of a first violation of driving or being in actual physical control of a  
6 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol  
7 in that person's blood as shown by chemical analysis of that person's breath, blood,  
8 or other bodily substance, in violation of § 32-12A-44;
- 9 (3) If convicted of a first violation of leaving the scene of an accident while operating a  
10 commercial motor vehicle, in violation of § 32-34-5 or 32-34-6; or
- 11 (4) If convicted of a first violation of using a commercial motor vehicle in the  
12 commission of any felony other than a felony described in § 32-12A-38; ~~or~~
- 13 ~~(5) For refusing to submit to a chemical analysis for purposes of determining the amount~~  
14 ~~of alcohol in that person's blood while driving a commercial motor vehicle in~~  
15 ~~violation of § 32-23-11, 32-12A-43, or 32-12A-46.~~

16 If any of these violations or refusal occurred while transporting hazardous material required  
17 to be placarded, the person is disqualified for a period of not less than three years.

18 Section 31. That § 32-12A-43 be amended to read as follows:

19 32-12A-43. Notwithstanding any other provision of §§ 32-12A-1 to ~~32-12A-50, inclusive,~~  
20 ~~32-12A-51, and 32-12A-52 to 32-12A-58, inclusive,~~ no person may drive, operate, or be in  
21 actual physical control of a commercial motor vehicle within this state while having any  
22 measurable or detectable amount of alcohol in that person's system. A person who drives,  
23 operates, or is in actual physical control of a commercial motor vehicle within this state while  
24 having any measurable or detectable amount of alcohol in that person's system ~~or who refuses~~

1 ~~to submit to an alcohol test under § 32-12A-46,~~ shall be placed out of service for twenty-four  
2 hours.

3 Section 32. That § 32-20A-14 be amended to read as follows:

4 32-20A-14. The operator of a snowmobile ~~shall be~~ is deemed the driver or operator of a  
5 ~~motor~~ vehicle within the meaning of chapter 32-23 and is subject to all the provisions of chapter  
6 32-23 relating to driving while under the influence ~~of intoxicating liquor, drugs, or otherwise~~  
7 ~~therein provided~~ and is punishable ~~thereunder~~ under chapter 32-23 for any violation of that  
8 chapter.

9 Section 33. That chapter 42-8 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The operator of a boat is deemed the driver or operator of a vehicle within the meaning of  
12 chapter 32-23 and is subject to all the provisions of chapter 32-23 relating to driving while under  
13 the influence and is punishable under chapter 32-23 for any violation of that chapter.

14 Section 34. That § 42-8-45 be repealed.

15 ~~42-8-45. No person may operate a boat while underway on the public waters of the state~~  
16 ~~while:~~

17 ~~(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown~~  
18 ~~by chemical analysis of that person's breath, blood, or other bodily substance;~~

19 ~~(2) Under the influence of an alcoholic beverage;~~

20 ~~(3) Under the influence of marijuana or any controlled drug or substance to a degree~~  
21 ~~which renders the person incapable of safely driving or operating such boat; or~~

22 ~~(4) Under the combined influence of an alcoholic beverage and marijuana or any~~  
23 ~~controlled drug or substance to a degree which renders the person incapable of safely~~  
24 ~~driving or operating such boat.~~

1 ~~Any violation of this section is a Class 1 misdemeanor.~~

2 Section 35. That § 42-8-45.1 be repealed.

3 ~~42-8-45.1. A law enforcement officer may, without a warrant, arrest a person for a violation~~  
4 ~~of the provisions of § 42-8-45 if he has probable cause to believe that the person to be arrested~~  
5 ~~has been involved in an accident on the public waters of the state and has violated the provisions~~  
6 ~~of § 42-8-45 and that the violation occurred prior to or immediately following the accident.~~

7 Section 36. That § 42-8-45.2 be repealed.

8 ~~42-8-45.2. Any person operating a boat while underway on the public waters of the state~~  
9 ~~which has been involved in an accident or which is operated in violation of any of the provisions~~  
10 ~~of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be~~  
11 ~~administered by the officer. If the test indicates that the person has consumed alcohol, the law~~  
12 ~~enforcement officer may require the person to submit to a chemical test in the manner set forth~~  
13 ~~in this chapter.~~

14 Section 37. That § 42-8-45.3 be repealed.

15 ~~42-8-45.3. The fact that any person charged with a violation of § 42-8-45 may use a drug~~  
16 ~~under the laws of this state does not constitute a defense against any charge of violating that~~  
17 ~~section.~~

18 Section 38. That § 42-8-45.4 be repealed.

19 ~~42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol~~  
20 ~~in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's~~  
21 ~~blood, breath, or other bodily substance gives rise to the following presumptions:~~

22 ~~(1) If there was at that time five hundredths percent or less by weight of alcohol in the~~  
23 ~~defendant's blood, it is presumed that the defendant was not under the influence of~~  
24 ~~intoxicating liquor;~~

1 ~~—(2)— If there was at that time in excess of five hundredths percent but less than eight~~  
2 ~~hundredths percent by weight of alcohol in the defendant's blood, such fact does not~~  
3 ~~give rise to any presumption that the defendant was or was not under the influence~~  
4 ~~of intoxicating liquor, but such fact may be considered with other competent~~  
5 ~~evidence in determining the guilt or innocence of the defendant;~~

6 ~~—(3)— If there was at that time eight hundredths percent or more by weight of alcohol in the~~  
7 ~~defendant's blood, it is presumed that the defendant was under the influence of~~  
8 ~~intoxicating liquor.~~

9 ~~—Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0~~  
10 ~~cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.~~

11 Section 39. That § 42-8-45.5 be repealed.

12 ~~—42-8-45.5. The provisions of § 42-8-45.4 may not be construed as limiting the introduction~~  
13 ~~of any other competent evidence bearing upon the question whether or not the defendant was~~  
14 ~~under the influence of intoxicating liquor.~~

15 Section 40. That § 42-8-45.6 be repealed.

16 ~~—42-8-45.6. Any person who operates a boat while underway on the public waters of the state~~  
17 ~~in this state is considered to have consented to the withdrawal of blood or other bodily substance~~  
18 ~~and chemical analysis of such blood, breath, or other bodily substance to determine the amount~~  
19 ~~of alcohol in such blood and to determine the presence of marijuana or any controlled drug or~~  
20 ~~substance.~~

21 ~~—The person, operating a boat underway which has been involved in a collision or an accident~~  
22 ~~resulting in bodily injury or death to any person or property damage to a boat or other property~~  
23 ~~to an apparent extent of one thousand dollars or more to any one person's property or two~~  
24 ~~thousand dollars or more in any one accident, shall submit to the withdrawal of blood or other~~

1 ~~bodily substance for chemical analysis or chemical analysis of the person's breath. The officer~~  
2 ~~shall advise the person of the right to have an additional chemical analysis performed by a~~  
3 ~~technician of his or her own choosing at his or her own expense.~~

4 ~~— Any other person, operating a boat underway which has not been involved in a collision or~~  
5 ~~an accident resulting in bodily injury or death to any person or property damage to a boat or~~  
6 ~~other property to an apparent extent of one thousand dollars or more to any one person's~~  
7 ~~property or two thousand dollars or more in any one accident, shall be requested by the officer~~  
8 ~~to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical~~  
9 ~~analysis of his or her breath. The officer shall advise the person that:~~

10 ~~— (1) — If he or she refuses to submit to the withdrawal or chemical analysis, no withdrawal~~  
11 ~~or chemical analysis may be required;~~

12 ~~— (2) — Such refusal is admissible into evidence at trial; and~~

13 ~~— (3) — That he or she has the right to have an additional chemical analysis performed by a~~  
14 ~~technician of his or her own choosing at his or her own expense.~~

15 ~~— If such person refuses to submit to chemical analysis of his or her blood, urine, breath, or~~  
16 ~~other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical~~  
17 ~~analysis as provided in this section, and that person subsequently stands trial for violation of §~~  
18 ~~42-8-45, such refusal is admissible into evidence at the trial.~~

19 Section 41. That § 42-8-45.7 be repealed.

20 ~~— 42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant,~~  
21 ~~phlebotomist, expanded role licensed practical nurse, medical technician, or medical~~  
22 ~~technologist may withdraw blood for the purpose of determining the alcoholic content therein.~~  
23 ~~This limitation does not apply to the taking of a breath or other bodily substance specimen.~~  
24 ~~Such authorized persons, acting on the consent considered to have been given by the person~~

1 ~~when operating a boat while underway, and any hospital employing such persons, are not liable~~  
2 ~~and may not be held to pay damages to the party from whom the blood sample is withdrawn,~~  
3 ~~if the withdrawal is administered with usual and ordinary care.~~

4 Section 42. That § 42-8-45.8 be repealed.

5 ~~—42-8-45.8. To be considered valid under the provisions of this chapter, the withdrawal or~~  
6 ~~chemical analysis shall be performed at the direction of a law enforcement officer having~~  
7 ~~lawfully arrested the person for violation of § 42-8-45 and the chemical test analysis of the~~  
8 ~~person's breath, if one is performed, shall have been performed according to methods approved~~  
9 ~~by the director of laboratories and by an individual possessing a valid permit issued by the~~  
10 ~~director of laboratories for this purpose. The director of laboratories may approve satisfactory~~  
11 ~~techniques or methods to ascertain the qualifications and competence of individuals to conduct~~  
12 ~~such analysis and issue permits which are subject to termination or revocation at the discretion~~  
13 ~~of the director of laboratories.~~

14 Section 43. That § 42-8-45.9 be repealed.

15 ~~—42-8-45.9. The person tested pursuant to this chapter shall be permitted to have a physician,~~  
16 ~~laboratory technician, registered nurse, physician's assistant, or medical technologist of his own~~  
17 ~~choosing administer the chemical analysis in addition to the one administered at the direction~~  
18 ~~of the law enforcement officer.~~

19 Section 44. That § 42-8-45.10 be repealed.

20 ~~—42-8-45.10. Upon the request of the person who was tested pursuant to this chapter or upon~~  
21 ~~the request of his attorney, the results of such analysis shall be made available to him or to his~~  
22 ~~attorney.~~

23 Section 45. That § 42-8-45.11 be repealed.

24 ~~—42-8-45.11. In the case of a conviction under this chapter, the costs accrued for the~~

1 ~~withdrawal and chemical analysis of blood or other bodily substance and witness fees and~~  
2 ~~expenses in connection therewith, shall be taxed by the court as costs in the action and shall, if~~  
3 ~~the county is to have a lien for fees paid to counsel for an indigent, be included in the lien filed;~~  
4 ~~otherwise it shall, with other costs as the court imposes, be entered in the judgment as provided~~  
5 ~~in chapter 23A-27.~~

6 Section 46. That § 13-32-9 be amended to read as follows:

7 13-32-9. Any person adjudicated, convicted, the subject of a youth diversion program, or  
8 the subject of a suspended imposition of sentence for possession, use, or distribution of  
9 controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting,  
10 inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is  
11 ineligible to participate in any extracurricular activity at any secondary school accredited by the  
12 Department of Education for one calendar year from the date of adjudication, conviction,  
13 placement in a youth diversion program, or suspended imposition of sentence. The one-year  
14 suspension may be reduced to sixty school days if the person participates in an assessment with  
15 a certified chemical dependency counselor and completes any recommended accredited  
16 intensive prevention or treatment program. If the assessment indicates the need for a higher level  
17 of care, the student is required to complete the prescribed program before becoming eligible to  
18 participate in extracurricular activities. Upon a subsequent adjudication, conviction, or  
19 suspended imposition of sentence for possession, use, or distribution of controlled drugs or  
20 substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise  
21 taking into the body any substances as prohibited by § 22-42-15, by a court of competent  
22 jurisdiction, that person is ineligible to participate in any extracurricular activity while that  
23 person is attending any secondary school accredited by the Department of Education. Upon such  
24 a determination in any juvenile proceeding the Unified Judicial System shall give notice of that

1 determination to the South Dakota High School Activities Association and the chief  
2 administrator of the school in which the person is enrolled.

3 As used in this section, the term, extracurricular activity, means any activity sanctioned by  
4 the South Dakota High School Activities Association. Upon placement of the person in a youth  
5 diversion program, the state's attorney who placed the person in that program shall give notice  
6 of that placement to the South Dakota High School Activities Association and chief  
7 administrator of the school in which the person is enrolled.

8 Section 47. That § 35-10-17 be amended to read as follows:

9 35-10-17. Any structure, conveyance, or place where alcoholic beverages are manufactured,  
10 sold, kept, bartered, given away, found, consumed, or used in violation of the laws of the state,  
11 relating to alcoholic beverages, and ~~all any alcoholic beverages~~ beverage and any property kept  
12 and used in maintaining the same, is hereby declared to be a common nuisance, and any person  
13 who knowingly maintains such a common nuisance is guilty of a Class 1 misdemeanor. A single  
14 instance of manufacturing, selling, keeping, bartering, giving away, finding, consuming, or  
15 using alcoholic beverages in violation of the laws of this section is a Class 2 misdemeanor.

16 Section 48. That § 35-9-1.3 be amended to read as follows:

17 35-9-1.3. No person may be convicted of illegally selling any alcoholic beverage to any  
18 underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of,  
19 and the seller relied upon, any false age-bearing identification document that was furnished to  
20 the underage person by any state agency or local law enforcement agency or any agent,  
21 employee, contractor, or associate of any state agency or local law enforcement agency for the  
22 purpose of attempting to illegally purchase any alcoholic beverage.

23 Section 49. That § 35-9-2 be amended to read as follows:

24 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to

1 purchase, attempt to purchase, ~~or~~ possess, or consume alcoholic beverages except when  
2 consumed in a religious ceremony and given to ~~said~~ that person by an authorized person, ~~or~~. It  
3 is a Class 2 misdemeanor for any person under the age of twenty-one to misrepresent his the  
4 person's age with the use of any document for the purpose of purchasing or attempting to  
5 purchase alcoholic beverages from any licensee licensed under this title.

6 Section 50. That § 35-9-2.3 be repealed.

7 ~~— 35-9-2.3. Except as provided in §§ 35-9-1 and 35-9-1.1, it is a Class 1 misdemeanor for any~~  
8 ~~person twenty-one years of age or older to purchase or otherwise acquire alcoholic beverages~~  
9 ~~from a retail establishment and to give or resell the alcoholic beverages to any person under the~~  
10 ~~age of twenty-one years.~~

11 Section 51. That § 35-9-4.1 be repealed.

12 ~~— 35-9-4.1. The South Dakota Legislature enacts chapter 261 of the 1987 Session Laws to~~  
13 ~~raise the state's minimum drinking age to twenty-one years of age solely under the duress of a~~  
14 ~~funding sanction imposed by the United States Department of Transportation under 23 U.S.C~~  
15 ~~§ 158. The Legislature strongly objects to being forced to choose between loss of highway~~  
16 ~~construction funds, which are badly needed to construct priority road projects to promote the~~  
17 ~~public health and safety of the state's inhabitants and visitors, and loss of its right to set its own~~  
18 ~~drinking age. The action taken by this Legislature shall not be construed as a concession or~~  
19 ~~waiver of its constitutional right to establish at what age an individual may lawfully purchase,~~  
20 ~~possess, and consume alcoholic beverages. Rather, it is taken to ensure that South Dakota is not~~  
21 ~~penalized while it challenges in the United States Supreme Court the federal government's~~  
22 ~~attempt to usurp the state's right to regulate the drinking age of its citizens. This legislation is~~  
23 ~~enacted with the expressed intent of providing the South Dakota attorney general the maximum~~  
24 ~~flexibility to pursue South Dakota's challenge to the federal government's intrusion into a right~~

1 reserved to the state while ensuring the full availability of federal highway funds for the 1988  
2 construction season. It is the intent of this Legislature that if at any time before or after the  
3 effective date of this legislation the provisions of 23 U.S.C § 158 are repealed, expired or  
4 declared invalid by the United States Supreme Court, the provisions of this legislation shall  
5 become null and void and any provision repealed by SL 1987, ch 261 shall be revived pursuant  
6 to § 2-14-19.

7 Section 52. That § 35-9-7 be amended to read as follows:

8 35-9-7. ~~If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a first~~  
9 ~~offense, the court shall, in addition to any other penalty allowed by law, order the suspension~~  
10 ~~of the person's driving privileges for a period not less than thirty days and not to exceed one~~  
11 ~~year. However, the court may issue an order permitting the person to operate a motor vehicle~~  
12 ~~for purposes of the person's employment or attendance at school or to court-ordered counseling~~  
13 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~  
14 ~~may also restrict the privilege in some other manner as the court may see fit for a period not to~~  
15 ~~exceed one year.~~

16 —If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a second or  
17 subsequent offense, the court shall, in addition to any other penalty allowed by law, order the  
18 suspension of the person's driving privileges for a period ~~not less than sixty days~~ and not to  
19 exceed ~~one year~~ thirty days. However, the court may issue an order, upon proof of financial  
20 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for  
21 purposes of the person's employment ~~or,~~ attendance at school, ~~or to court-ordered~~ attendance  
22 at counseling programs ~~during the hours of the day and the days of the week set forth in the~~  
23 ~~order. The court may also restrict the privilege in some other manner as the court may see fit for~~  
24 ~~a period not to exceed one year.~~

1 Section 53. That § 35-9-8 be repealed.

2 ~~—35-9-8. If the conviction or adjudication for a violation of § 35-9-1 is for a first offense, the~~  
3 ~~court shall, in addition to any other penalty allowed by law, order the revocation of the~~  
4 ~~defendant's driving privileges for a period not less than thirty days and not to exceed one year.~~  
5 ~~However, the court may issue an order permitting the person to operate a motor vehicle for~~  
6 ~~purposes of the person's employment or attendance at school or to court-ordered counseling~~  
7 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~  
8 ~~may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.~~  
9 ~~—If the conviction or adjudication for a violation of § 35-9-1 is for a second or subsequent~~  
10 ~~offense, the court shall, in addition to any other penalty allowed by law, order the revocation of~~  
11 ~~the defendant's driving privileges for a period not less than sixty days and not to exceed one~~  
12 ~~year.~~

13 Section 54. That § 32-12-52.3 be amended to read as follows:

14 32-12-52.3. Upon a first conviction or a first adjudication of delinquency for a any violation,  
15 while in a motor vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3<sub>1</sub> or 22-42A-4,  
16 the court shall revoke the driver license or driving privilege of the person driver so convicted  
17 for a period of one hundred eighty days.

18 Upon a second or subsequent conviction or a second or subsequent adjudication of  
19 delinquency for a violation, while in a motor vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9,  
20 inclusive, 22-42A-3<sub>1</sub> or 22-42A-4, the court shall revoke the driver license or driving privilege  
21 of the person driver so convicted for a period of one year or until the person's seventeenth  
22 birthday, whichever is a longer period of time. For any offense under this section, the court may  
23 issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, permitting the  
24 person to operate a motor vehicle for purposes of the person's employment, attendance at school,

1 or counseling programs. Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and  
2 26-8C, the Unified Judicial System shall notify the Department of Public Safety of any  
3 conviction or adjudication of delinquency for a violation, while in a ~~motor~~ vehicle, of §§ 22-42-  
4 5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3, or 22-42A-4. The period of revocation shall begin  
5 on the date the person's revoked driver license is received by the court or the department. At the  
6 expiration of the revocation period, a person may make application as provided by law and shall  
7 pay the license fee prescribed in § 32-12-47.1.

8 Section 55. That § 32-12-52.4 be amended to read as follows:

9 32-12-52.4. Upon a first conviction or a first adjudication as a child in need of supervision  
10 for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court shall suspend the driver license  
11 or driving privilege of ~~any the driver of a vehicle who~~, if the driver was under the age of  
12 twenty-one when the offense occurred, for a period of ~~six months~~ thirty days.

13 Upon a second conviction or a second adjudication as a child in need of supervision for a  
14 violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving  
15 privilege of the driver, if the driver was under the age of twenty-one when the offense occurred,  
16 for a period of one hundred eighty days.

17 Upon a ~~second~~ third or subsequent conviction or a ~~second~~ third or subsequent adjudication  
18 as a child in need of supervision for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court  
19 shall suspend the driver license or driving privilege of ~~any the driver of a vehicle who~~, if the  
20 driver was under the age of twenty-one when the offense occurred, for a period of one year. For  
21 any offense under this section, the court may issue an order, upon proof of financial  
22 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for  
23 purposes of the person's employment, attendance at school, or attendance at counseling  
24 programs.

1 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified  
2 Judicial System shall notify the Department of Public Safety of any conviction or adjudication  
3 for a violation, while in a ~~motor~~ vehicle, of § 35-9-2 or chapter 32-23. The period of suspension  
4 ~~shall begin~~ begins on the date the person's suspended driver license is received by the court or  
5 the Department of Public Safety. At the expiration of the period of suspension, a person may  
6 make application to have the license reinstated and pay the license fee as prescribed in § 32-12-  
7 47.1.

8 Section 56. That § 32-24-3 be amended to read as follows:

9 32-24-3. If a conviction for a violation of § 32-24-1 is for a second or subsequent offense  
10 within a period of one year, such person is guilty of a Class 1 misdemeanor, and the court shall,  
11 in pronouncing sentence, order that the defendant's driving privilege be ~~suspended~~ revoked for  
12 thirty days. However, the court may ~~in its discretion~~ issue an order, upon proof of financial  
13 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for  
14 purposes of the person's employment ~~during the hours of the day and the days of the week as~~  
15 ~~set forth in the order~~, attendance at school, or attendance at counseling programs. The court may  
16 also order the revocation of the defendant's driving privilege for a further period not to exceed  
17 one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

18 Section 57. That § 32-23-21 be amended to read as follows:

19 32-23-21. It is a Class 2 misdemeanor for any person under the age of twenty-one years to  
20 drive, operate, or be in actual physical control of any ~~motor~~ vehicle:

21 (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the  
22 person's blood as shown by chemical analysis of the person's breath, blood, or other  
23 bodily substance; or

24 (2) After having consumed marijuana or any controlled drug or substance for as long as

1 physical evidence of the consumption remains present in the person's body.

2 If a person is found guilty of or adjudicated for a violation of this section, the Unified  
3 Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication,  
4 the court shall suspend that person's driver's license or operating privilege for a period of ~~six~~  
5 ~~months~~ thirty days for a first offense, one hundred eighty days for a second offense, or one year  
6 for any ~~second~~ third or subsequent offense. However, the court may, ~~in its discretion~~ upon proof  
7 of financial responsibility pursuant to § 32-35.43.1, issue an order permitting the person to  
8 operate a ~~motor~~ vehicle ~~during the hours and days of the week set forth in the order~~ for purposes  
9 of the person's employment, attendance at school, or attendance at ~~court-ordered~~ counseling  
10 programs.

11 Section 58. That § 22-16-41 be amended to read as follows:

12 22-16-41. Any person who, while under the influence of an alcoholic beverage, any  
13 controlled drug or substance, marijuana, or a combination thereof, without design to effect  
14 death, operates or drives a ~~motor~~ vehicle of any kind in a negligent manner and thereby causes  
15 the death of another person, including an unborn child, is guilty of vehicular homicide.  
16 Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the  
17 court may also order that the driver's license of any person convicted of vehicular homicide be  
18 revoked for such period of time as may be determined by the court but in no case less than two  
19 years.

20 Section 59. That § 22-34-29 be amended to read as follows:

21 22-34-29. In addition to any other penalty imposed by law, if any person is convicted of  
22 violating, or any person under the age of eighteen is adjudicated to have violated, the provisions  
23 of § 22-34-1 or 22-34-27, and if the crime occurred while driving a ~~motor~~ vehicle or while being  
24 a passenger in a ~~motor~~ vehicle, the court shall order the driving privileges of such person

1 suspended for:

2 ~~—(1)—Thirty days, if the damage is two hundred dollars or less;~~

3 ~~—(2)—Ninety days, if the damage is over two hundred dollars but less than one thousand~~  
4 ~~dollars; and~~

5 ~~—(3)—One one hundred eighty days, if the damage is one thousand dollars or more.~~

6 For the purposes of this section, all acts of vandalism that are part of a course of conduct  
7 shall be considered one violation for the purposes of determining damage. For the purposes of  
8 this section, all acts of vandalism that are part of a course of conduct involving driving a ~~motor~~  
9 vehicle or being a passenger in a ~~motor~~ vehicle shall be deemed to have occurred while driving  
10 a ~~motor~~ vehicle or being a passenger in a ~~motor~~ vehicle.

11 Section 60. That § 32-12-15 be amended to read as follows:

12 32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted  
13 minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The  
14 Department of Public Safety upon the receipt of a record of conviction for a traffic violation or  
15 for a violation of the restrictions in § 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13,  
16 or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend ~~or revoke~~ the  
17 minor's driving privileges according to the following schedule:

18 (1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's  
19 sixteenth birthday or as otherwise required by law;

20 (2) A first Class 2 misdemeanor traffic conviction--suspension for thirty days or as  
21 otherwise required by law;

22 (3) A first conviction of a violation of the conditions of an instruction permit, a  
23 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted  
24 minor's permit--suspension for thirty days or as otherwise required by law;

1 (4) A second Class 2 misdemeanor traffic conviction--~~revocation~~ suspension until the  
2 minor's sixteenth birthday or for ninety days, whichever period is longer, or as  
3 otherwise required by law; and

4 (5) A second conviction of a violation of the conditions of an instruction permit, a  
5 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted  
6 minor's permit--~~revocation~~ suspension until the minor's sixteenth birthday or for  
7 ninety days, whichever period is longer, or as otherwise required by law.

8 No permit may be suspended for a first violation of § 32-14-9.1, 32-21-27, 32-25-5, 32-26-  
9 20, or 34A-7-7; or ~~32-26-20~~.

10 If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit,  
11 or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the  
12 minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege  
13 or privilege to apply for a driver license as provided in this section. A conviction for any traffic  
14 violation that occurs prior to the issuance of an instruction permit, motorcycle instruction  
15 permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's  
16 license or an operator's license shall be placed on the driving record and given the same  
17 consideration as any violation that occurs following the issuance of an instruction permit,  
18 motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit,  
19 motorcycle operator's license, or an operator's license.

20 Section 61.

21 Section 62. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 Any reference in this chapter to the weight of any controlled drug or substance includes the  
24 weight of any cutting or mixing agent.

1 Section 63. That § 22-42-2 be amended to read as follows:

2 22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may  
3 manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent  
4 to manufacture, distribute, or dispense, a substance listed in Schedules I or II; create or distribute  
5 a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a  
6 counterfeit substance listed in Schedules I or II. A violation of this section ~~is a Class 4 felony~~  
7 involving one pound or less of a substance listed in Schedule I or II is a Class 3 felony.  
8 However, the distribution of one pound or less of a substance listed in Schedule I or II to a  
9 minor is a Class 2 felony. A violation of this section involving more than one pound of a  
10 substance listed in Schedule I or II is a Class 2 felony. However, the distribution of more than  
11 one pound of a substance listed in Schedules I or II to a minor is a ~~Class 2~~ Class 1 felony. A first  
12 conviction under this section shall be punished by a mandatory sentence in the state penitentiary  
13 of at least one year, which sentence may not be suspended. Probation, suspended imposition of  
14 sentence, or suspended execution of sentence may not form the basis for reducing the mandatory  
15 time of incarceration required by this section. A second or subsequent conviction under this  
16 section shall be punished by a mandatory sentence in the state penitentiary of at least ten years,  
17 which sentence may not be suspended. Probation, suspended imposition of sentence, or  
18 suspended execution of sentence may not form the basis for reducing the mandatory time of  
19 incarceration required by this section. However, a first conviction for distribution to a minor  
20 under this section shall be punished by a mandatory sentence in the state penitentiary of at least  
21 five years, which sentence may not be suspended. Probation, suspended imposition of sentence,  
22 or suspended execution of sentence may not form the basis for reducing the mandatory time of  
23 incarceration required by this section. A second or subsequent conviction for distribution to a  
24 minor under this section shall be punished by a mandatory sentence in the state penitentiary of

1 ~~at least fifteen years, which sentence may not be suspended. Probation, suspended imposition~~  
2 ~~of sentence, or suspended execution of sentence, may not form the basis for reducing the~~  
3 ~~mandatory time of incarceration required by this section. A civil penalty may be imposed, in In~~  
4 ~~addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars,~~  
5 ~~may be imposed upon a conviction of a violation of this section ~~not to exceed ten thousand~~~~  
6 ~~dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is~~  
7 ~~the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a~~  
8 ~~finding of guilt by a jury or court.~~

9 Section 64. That § 22-42-2.3 be repealed.

10 ~~—22-42-2.3. The sentencing court may impose a sentence other than that which is required by~~  
11 ~~§ 22-42-2 if the court finds that mitigating circumstances exist which require a departure from~~  
12 ~~the mandatory sentence imposed by § 22-42-2. The court's finding of mitigating circumstances~~  
13 ~~allowed by this section and the factual basis relied upon by the court shall be in writing.~~

14 Section 65. That § 22-42-3 be amended to read as follows:

15 22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may  
16 manufacture, distribute, or dispense a substance listed in Schedule III; possess with intent to  
17 manufacture, distribute, or dispense, a substance listed in Schedule III; create or distribute a  
18 counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit  
19 substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the  
20 distribution of a substance listed in Schedule III to a minor is a ~~Class 3~~ Class 4 felony. ~~A first~~  
21 ~~conviction under this section shall be punished by a mandatory sentence in the state penitentiary~~  
22 ~~or county jail of at least thirty days, which sentence may not be suspended. A second or~~  
23 ~~subsequent conviction under this section shall be punished by a mandatory penitentiary or~~  
24 ~~county jail sentence of at least one year, which sentence may not be suspended. However, a first~~

1 ~~conviction for distribution to a minor under this section shall be punished by a mandatory~~  
2 ~~sentence in the state penitentiary or county jail of at least ninety days, which sentence may not~~  
3 ~~be suspended. A second or subsequent conviction for distribution to a minor under this section~~  
4 ~~shall be punished by a mandatory sentence in the state penitentiary of at least two years, which~~  
5 ~~sentence may not be suspended. A civil penalty may be imposed, in In addition to any criminal~~  
6 ~~penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a~~  
7 ~~conviction of a violation of this section not to exceed ten thousand dollars.~~

8 Section 66. That § 22-42-4 be amended to read as follows:

9 22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may  
10 manufacture, distribute, or dispense a substance listed in Schedule IV; possess with intent to  
11 manufacture, distribute, or dispense, a substance listed in Schedule IV; create or distribute a  
12 counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit  
13 substance listed in Schedule IV. A violation of this section is a ~~Class 6~~ Class 5 felony. However,  
14 the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. ~~A first~~  
15 ~~conviction under this section shall be punished by a mandatory sentence in the state penitentiary~~  
16 ~~or county jail of at least thirty days, which sentence may not be suspended. A second or~~  
17 ~~subsequent conviction under this section shall be punished by a mandatory penitentiary or~~  
18 ~~county jail sentence of at least one year, which sentence may not be suspended. A civil penalty~~  
19 ~~may be imposed, in In addition to any criminal penalty, a civil penalty, not to exceed one~~  
20 ~~hundred thousand dollars, may be imposed upon a conviction of a violation of this section not~~  
21 ~~to exceed ten thousand dollars. Notwithstanding any other provision of this section, a violation~~  
22 ~~of this section with respect to distribution of Flunitrazepam to a minor is a Class 4 felony, but~~  
23 ~~in all other cases under this section is a Class 5 felony.~~

24 Section 67. That § 22-42-5 be amended to read as follows:

1       22-42-5. No person may knowingly possess a controlled drug or substance listed in Schedule  
2 I or II unless the substance was obtained directly or pursuant to a valid prescription or order  
3 from a practitioner, while acting in the course of the practitioner's professional practice or  
4 except as otherwise authorized by chapter 34-20B. A violation of this section ~~is a Class 4 felony~~  
5 involving less than one gram is a Class 6 felony. A violation of this section involving not less  
6 than one gram and not more than one pound is a Class 4 felony. A violation of this section  
7 involving more than one pound is a Class 3 felony.

8       Section 68. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10       No person may knowingly possess a controlled drug or substance listed in Schedule III or  
11 IV unless the substance was obtained directly or pursuant to a valid prescription or order from  
12 a practitioner, while acting in the course of the practitioner's professional practice or except as  
13 otherwise authorized by chapter 34-20B. A violation of this section is a Class 6 felony.

14       Section 69. That § 22-42-6 be amended to read as follows:

15       22-42-6. No person may knowingly possess marijuana. It is a ~~Class 4~~ Class 2 misdemeanor  
16 to possess ~~two ounces~~ less than two grams of marijuana ~~or less~~. It is a ~~Class 6 felony~~ Class 1  
17 misdemeanor to possess ~~more than two ounces~~ two grams of marijuana but less than ~~one-half~~  
18 ~~pound~~ two ounces of marijuana. It is a ~~Class 5~~ Class 6 felony to possess ~~one-half pound~~ two  
19 ounces but less than one pound of marijuana. It is a ~~Class 4~~ Class 5 felony to possess one to ten  
20 pounds of marijuana. It is a ~~Class 3~~ Class 4 felony to possess more than ten pounds of  
21 marijuana. ~~A~~ In addition to any criminal penalty, a civil penalty, not to exceed one hundred  
22 thousand dollars, may be imposed, ~~in addition to any criminal penalty,~~ upon a conviction of a  
23 felony violation of this section ~~not to exceed ten thousand dollars.~~

24       Section 70. That § 22-42-7 be amended to read as follows:

1       22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce  
2 of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or  
3 possession with intent to distribute, of ~~one ounce~~ two ounces or less of marijuana is a Class 6  
4 felony. However, the distribution of two ounces or less of marijuana to a minor for  
5 consideration is a Class 5 felony. The distribution, or possession with intent to distribute, of  
6 more than ~~one ounce but less than one-half pound~~ two ounces but less than one pound of  
7 marijuana is a Class 5 felony. However, the distribution of more than two ounces but less than  
8 one pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with  
9 intent to distribute, of ~~one-half pound but less than one pound~~ one pound to ten pounds,  
10 inclusive, of marijuana is a Class 4 felony. However, the distribution of one pound to ten  
11 pounds, inclusive, of marijuana to a minor is a Class 3 felony. The distribution, or possession  
12 with intent to distribute, of ~~one pound or more~~ than ten pounds of marijuana is a Class 3 felony.  
13 However, the distribution of ~~any amount~~ more than ten pounds of marijuana to a minor is a  
14 ~~Class 4~~ Class 2 felony. ~~A first conviction of a felony under this section shall be punished by a~~  
15 ~~mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence~~  
16 ~~may not be suspended. A second or subsequent conviction of a felony under this section shall~~  
17 ~~be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor~~  
18 ~~under this section shall be punished by a mandatory sentence in county jail of not less than~~  
19 ~~fifteen days, which sentence may not be suspended. A~~ In addition to any criminal penalty, a civil  
20 penalty, not to exceed ten one hundred thousand dollars, may be imposed, in addition to any  
21 ~~criminal penalty,~~ upon a conviction of a felony violation of this section.

22       Section 71. That § 22-42-10 be amended to read as follows:

23       22-42-10. Any person who knowingly keeps or maintains a place which is resorted to by  
24 persons using controlled drugs and substances for the purpose of using such substances, or

1 which is used for the keeping or selling of such substances, is guilty of a Class 5 felony.

2 Section 72. That § 22-42-19 be amended to read as follows:

3 22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, or 22-42-4, or a  
4 felony violation of § 22-42-7 is guilty of a Class 4 felony, if such activity has taken place:

5 (1) In, on, or within ~~one thousand~~ three hundred feet of real property comprising a public  
6 or private elementary or secondary school or a playground; or

7 (2) In, on, or within ~~five~~ three hundred feet of real property comprising a public or  
8 private youth center, public swimming pool, or video arcade facility; ~~is guilty of a~~  
9 ~~Class 4 felony. The sentence imposed for a conviction under this section carries a~~  
10 ~~minimum sentence of imprisonment in the state penitentiary of five years. Any~~  
11 ~~sentence imposed under this section shall be consecutive to any other sentence~~  
12 ~~imposed for the principal felony. The court may not place on probation, suspend the~~  
13 ~~execution of the sentence, or suspend the imposition of the sentence of any person~~  
14 ~~convicted of a violation of this section. However, the sentencing court may impose~~  
15 ~~a sentence other than that specified in this section if the court finds that mitigating~~  
16 ~~circumstances exist which require a departure from the mandatory sentence provided~~  
17 ~~for in this section. The court's finding of mitigating circumstances allowed by this~~  
18 ~~section and the factual basis relied upon by the court shall be in writing.~~

19 It is not a defense to the provisions of this section that the defendant did not know the  
20 distance involved. It is not a defense to the provisions of this section that school was not in  
21 session.

22 Section 73. That § 22-42A-4 be amended to read as follows:

23 22-42A-4. No person, knowing the drug related nature of the object, may, for consideration,  
24 deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia,

1 knowing, or under circumstances where one reasonably should know, that it will be used to  
 2 plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,  
 3 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise  
 4 introduce into the human body a controlled substance or marijuana in violation of this chapter.  
 5 Any person who violates any provision of this section is guilty of a Class 6 felony.

6 Section 74. That § 32-12-31 be amended to read as follows:

7 32-12-31. The Department of Public Safety ~~shall~~ may not issue any license under this  
 8 chapter to any person who is an habitual drunkard, or is an habitual user of narcotic drugs, or  
 9 is an habitual user of any other drug to a degree which renders ~~him~~ that person incapable of  
 10 safely driving a ~~motor~~ vehicle.

11 Section 75. That § 32-12-49.1 be amended to read as follows:

12 32-12-49.1. The following is a listing of moving traffic offenses and the number of points  
 13 assessed for a conviction for each offense:

- 14 (1) Driving ~~while intoxicated~~ under the influence ten points
- 15 (2) Reckless driving eight points
- 16 (3) Eluding/attempting to elude a police officer six points
- 17 (4) Drag racing six points
- 18 (5) Failure to yield right-of-way four points
- 19 (6) Improper passing four points
- 20 (7) Driving on wrong side of roadway four points
- 21 (8) Stop sign/light violation three points
- 22 (9) Other moving offenses, including speeding two points

23 ~~—For the purpose of this section, "other moving offenses" does not include speeding offenses.~~

24 Section 76. That § 1-1-11 be repealed.

1 ~~1-1-11. No armed body of police or detectives, or armed body of persons other than United~~  
2 ~~States troops, shall be brought into this state for the suppression of violence, except upon the~~  
3 ~~application of the Legislature if in session, or the Governor, if the Legislature is not in session.~~  
4 ~~A violation of this section is a Class 6 felony.~~

5 Section 77. That § 2-4-6 be amended to read as follows:

6 2-4-6. Every person who intentionally ~~and~~, by force or fraud, prevents the Legislature of this  
7 state or either of the branches composing it, or any of the members thereof, from meeting or  
8 organizing, is guilty of a Class 4 felony.

9 Section 78. That § 2-4-8 be amended to read as follows:

10 2-4-8. Every person who intentionally ~~and~~, by force or fraud, compels or attempts to compel  
11 the Legislature of this state, or either of the branches composing it, to adjourn or disperse, is  
12 guilty of a Class 4 felony.

13 Section 79. That § 2-4-10 be amended to read as follows:

14 2-4-10. Every person who intentionally, by force or fraud, compels or attempts to compel  
15 either branch of the Legislature of this state to pass, amend, or reject any bill or resolution, or  
16 to grant or refuse any petition, or to perform or omit to perform any other official act, is guilty  
17 of a Class 4 felony.

18 Section 80. That § 2-7-21 be amended to read as follows:

19 2-7-21. Any person who fraudulently alters a bill which has been passed by the Legislature  
20 of this state, with intent to have it approved by the Governor, certified by the secretary of state,  
21 or printed or published by the printer of the statutes, in language different from that in which  
22 it was passed by the Legislature, is guilty of a Class 6 felony.

23 Section 81. That § 23A-28B-35 be amended to read as follows:

24 23A-28B-35. No person may submit a fraudulent application or claim for a victims'

1 compensation award, may intentionally make or cause to be made any false statement or  
2 representation of a material fact in a claim, or may intentionally conceal or fail to disclose  
3 information affecting the amount of or the initial or continued right to any such claim or award  
4 when reasonably requested to provide such information by the department or the commission.

5 Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor  
6 if the application or claim is in an amount of ~~five hundred~~ one thousand dollars or less. Any  
7 person who violates the provisions of this section is guilty of a Class 4 felony if the application  
8 or claim is in an amount exceeding ~~five hundred~~ one thousand dollars.

9 Any person who violates the provisions of this section forfeits any benefit received under  
10 this chapter and shall reimburse the state for any such payments received or paid to or on behalf  
11 of that person.

12 The state has a civil cause of action for relief against any person who violates this section  
13 in the amount of damages which the state has sustained as a result of such violation and, in  
14 addition, for punitive damages in an amount not more than double the amount of damages  
15 which the state has sustained, together with interest, plus the cost of such suit.

16 Section 82. That § 24-11-48 be amended to read as follows:

17 24-11-48. No employee or other person may deliver or procure to be delivered, or have in  
18 such person's possession with intent to deliver, to any person incarcerated in a jail or a juvenile  
19 detention facility, or deposit or conceal in or around any jail or in or around a juvenile detention  
20 facility, or in any mode of transport entering the grounds of any jail or juvenile detention facility  
21 and its ancillary facilities used to house inmates or juveniles, any article or thing ~~contrary~~  
22 prohibited pursuant to § 24-11-47 with intent that any inmate obtain or receive the same. A  
23 violation of this section is a Class 6 felony.

24 Section 83. The code counsel shall transfer § 25-5A-7.1 to a newly created chapter in Title

1 22 entitled "Offenses Against the Family" and shall renumber the section accordingly and adjust  
2 all appropriate cross references.

3 Section 84. That § 25-7-15 be amended to read as follows:

4 25-7-15. The parent of any child under the age of ~~six~~ ten years and any person to whom any  
5 such child has been confided for nurture or education who deserts such child in any place  
6 ~~whatever~~ with intent to wholly ~~to~~ abandon it the child, is guilty of a ~~Class 6~~ Class 4 felony.

7 Section 85. That § 25-10-13 be amended to read as follows:

8 25-10-13. If a temporary protection order or a protection order is granted pursuant to this  
9 chapter or is a foreign domestic violence protection order pursuant to § 25-10-12.1, and the  
10 respondent or person to be restrained knows of the order, violation of the order is a Class 1  
11 misdemeanor. If any violation of this section constitutes an assault pursuant to ~~§ 22-18-1.1~~ § 22-  
12 18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been  
13 convicted of, or entered a plea of guilty to, two or more violations of this section, the factual  
14 basis for which occurred after the date of the second conviction, and occurred within five years  
15 of committing the current offense, the respondent or person to be restrained is guilty of a Class  
16 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition  
17 to other civil or criminal remedies.

18 Section 86. That § 31-28-23 be amended to read as follows:

19 31-28-23. No person may, without lawful authority, attempt or actually alter, deface, injure,  
20 knock down, remove, or in any manner molest or interfere with any official highway marker,  
21 sign, guide board, traffic-control device, snowgate, or any railroad sign or signal, barrier,  
22 warning device, or sign erected in connection with highway maintenance or construction  
23 activities. A violation of this section is a Class 1 misdemeanor. Any person who violates this  
24 section is responsible for the cost of repairing or replacing such markers, signs, signals, barriers,

1 or devices.

2 Section 87. That § 32-33-18 be amended to read as follows:

3 32-33-18. Any driver of a ~~motor~~ vehicle who intentionally fails or refuses to bring a vehicle  
4 to a stop, ~~or who otherwise flees or attempts to elude a pursuing law enforcement vehicle,~~ when  
5 given visual or audible signal to bring the vehicle to a stop, is guilty of ~~eluding~~ failure to stop  
6 at the signal of a law enforcement officer. The signal given by the law enforcement officer may  
7 be by hand, voice, emergency light, or siren. The officer giving the signal shall be in uniform,  
8 prominently displaying a badge of office, and the vehicle shall be appropriately marked showing  
9 it to be an official law enforcement vehicle.

10 ~~Eluding~~ Failure to stop at the signal of a law enforcement officer is a ~~Class 1~~ Class 2  
11 misdemeanor. In addition, the court ~~shall~~ may order that the defendant's driver's license be  
12 revoked for up to one year, but may issue an order, upon proof of financial responsibility  
13 pursuant to § 32-35-43.1, allowing the defendant to operate a ~~motor~~ vehicle for purposes of the  
14 defendant's employment, attendance at school, or counseling programs. ~~Any person who is~~  
15 ~~found guilty of eluding is subject to the additional enhanced penalties if the course of eluding~~  
16 ~~results in:~~

17 ~~—(1)—Death or great bodily injury to another person, a Class 4 felony; and~~

18 ~~—(2)—Substantial bodily injury to another person or property damage in excess of five~~  
19 ~~hundred dollars to property belonging to a person other than the person eluding, a~~  
20 ~~Class 6 felony.~~

21 ~~—For any subsequent violation, the court shall order that the defendant's driver's license be~~  
22 ~~revoked for five years.~~

23 Section 88. That chapter 32-33 be amended by adding thereto a NEW SECTION to read  
24 as follows:

1 Any driver of a vehicle who, after failing or refusing to bring a vehicle to a stop pursuant  
2 to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit of the law  
3 enforcement officer is guilty of eluding. Eluding is a Class 1 misdemeanor. In addition, the court  
4 may order that the defendant's driver's license be revoked for up to one year, but may issue an  
5 order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant  
6 to operate a vehicle for purposes of the defendant's employment, attendance at school, or  
7 counseling programs.

8 Section 89. That chapter 32-33 be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 Any driver of a vehicle who flees from a law enforcement officer or attempts to elude the  
11 pursuit of a law enforcement officer is guilty of aggravated eluding if, at any time during the  
12 flight or pursuit, the driver operates the vehicle in a manner that constitutes an inherent risk of  
13 death or serious bodily injury to any person. Any of the following constitutes an inherent risk  
14 of death or serious bodily injury to any person, while fleeing from a law enforcement officer or  
15 attempting to elude the pursuit of a law enforcement officer:

- 16 (1) Death or serious bodily injury to any person; or
- 17 (2) Property damage in the aggregate of two thousand or more dollars; or
- 18 (3) Exceeding, at any time during the flight or pursuit, any posted speed limit by twenty  
19 or more miles per hour; or
- 20 (4) Exceeding, at any time during the flight or pursuit, any posted speed limit through a  
21 school zone or a construction zone by ten or more miles per hour; or
- 22 (5) Failure to surrender to authority within ten minutes of the initiation of the flight or  
23 attempted elusion; or
- 24 (6) Failure to surrender to authority prior to traveling five miles in the course of the flight

1 or attempted elusion.

2 Aggravated eluding is a Class 5 felony. In addition, the court may order that the defendant's  
3 driver's license be revoked for up to one year, but may issue an order, upon proof of financial  
4 responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a vehicle for purposes  
5 of the defendant's employment, attendance at school, or counseling programs. For any  
6 subsequent aggravated eluding violation, the court shall order that the defendant's driver's  
7 license be revoked for five years.

8 Section 90. That § 33-12-23 be amended to read as follows:

9 33-12-23. ~~Every~~ Any person who enters any fort, magazine, arsenal, armory, arsenal yard,  
10 or encampment, and seizes or takes away any arms, ammunition, military stores, or supplies  
11 belonging to the people of this state, and every person who enters any such place with intent to  
12 do so, is guilty of a ~~Class 4~~ Class 2 felony.

13 Section 91. That § 34-16-2 be amended to read as follows:

14 34-16-2. ~~Every~~ Any person who releases or spreads any disease germs intending thereby to  
15 accomplish the infection of one or more persons or domestic animals is guilty of a ~~Class 4~~ Class  
16 2 felony.

17 Section 92. That § 37-17-1 be amended to read as follows:

18 37-17-1. Any person who knowingly sells or offers for sale any agricultural implement, farm  
19 tractor, or other type of farm machinery or equipment, or radio, piano, phonograph, sewing  
20 machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe,  
21 vacuum cleaner, dictating machine, tape recorder, watch, watch movement, watch case, or any  
22 mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or  
23 equipment, which is identified by a serial number placed thereon by the manufacturer, the  
24 original serial number of which has been destroyed, removed, altered, covered, or defaced, is

1 guilty of a Class 2 misdemeanor if the value of the property is ~~two~~ four hundred dollars or less.  
2 If the value of the property is more than ~~two~~ four hundred dollars and less than one thousand  
3 dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one  
4 thousand dollars or greater, such person is guilty of a Class 4 felony.

5 Section 93. That § 40-15-39 be amended to read as follows:

6 40-15-39. Any person who purchases livestock from a livestock auction agency, as defined  
7 in this chapter, with intent to defraud is guilty of livestock fraud. The failure of such purchaser  
8 to tender payment in full within four days of the date of purchase, is prima facie evidence of  
9 intent to defraud.

10 Livestock fraud is a Class 4 felony.

11 Section 94. That § 40-38-4 be amended to read as follows:

12 40-38-4. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a ~~Class 6 felony~~  
13 Class 2 misdemeanor if there is damage of ~~at least five~~ four hundred dollars ~~and a Class 1~~  
14 ~~misdemeanor or less. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class~~  
15 1 misdemeanor if there is damage of an amount greater than four hundred dollars and less than  
16 one thousand dollars. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class  
17 4 felony if there is damage of less than five hundred dollars one thousand dollars or greater. Any  
18 person who violates subdivisions 40-38-2(2) to (5), inclusive, is guilty of a ~~Class 6~~ Class 4  
19 felony.

20 Section 95. That § 47-31B-508 be amended to read as follows:

21 47-31B-508. (a) Criminal penalties. It is a ~~class four~~ Class 4 felony for any person that  
22 willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 47-  
23 31B-504 or the notice filing requirements of § 47-31B-302 or 47-31B-405, or that willfully  
24 violates § 47-31B-505 knowing the statement made to be false or misleading in a material

1 ~~respect, upon conviction, shall be fined not more than ten thousand dollars per violation. An~~  
2 ~~individual convicted of violating a rule or order under this chapter may be fined, but may not~~  
3 ~~be imprisoned, if the individual did not have knowledge of the rule or order. A subsequent~~  
4 violation is a Class 3 felony.

5 ~~—(b) Criminal reference not required. The Attorney General or the proper prosecuting attorney~~  
6 ~~with or without a reference from the director, may institute criminal proceedings under this~~  
7 ~~chapter.~~

8 ~~—(c) No limitation on other criminal enforcement. This chapter does not limit the power of~~  
9 ~~this state to punish a person for conduct that constitutes a crime under other laws of this state.~~

10 Section 96. That § 51A-1-10 be amended to read as follows:

11 51A-1-10. It is a Class 4 felony for an officer, director, employee, or agent of a bank:

- 12 (1) With intent to deceive, to make any false or misleading statement or entry or omit  
13 any statement or entry that should be in any book, account, report, or statement of the  
14 bank; or
- 15 (2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer  
16 or employee of the division.

17 Section 97. That § 52-1-12 be amended to read as follows:

18 52-1-12. It is a Class 4 felony for an officer, director, employee or agent of an association:

- 19 (1) With intent to deceive, to make a false or misleading statement or entry or to omit  
20 any statement or entry that should be made in a book, account report or statement of  
21 the association; or
- 22 (2) To obstruct a lawful examination of the association by an officer or employee of the  
23 Division of Banking.

24 Section 98. That § 58-4A-2 be amended to read as follows:

1       58-4A-2. For purposes of this chapter, a person commits a fraudulent insurance act if the  
2 person:

3       (1) Knowingly and with intent to defraud or deceive issues or possesses fake or  
4 counterfeit insurance policies, certificates of insurance, insurance identification cards,  
5 or insurance binders;

6       (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives  
7 money for the purpose of purchasing insurance and converts the money to the  
8 person's own benefit or for a purpose not intended or authorized by an insured or  
9 prospective insured;

10       (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
11 premiums, credits, or other property of an insurer or person engaged in the business  
12 of insurance or of an insured or prospective insured;

13       (4) Knowingly and with intent to defraud or deceive makes any false entry of a material  
14 fact in or pertaining to any document or statement filed with or required by the  
15 Division of Insurance;

16       (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
17 or destroys assets or records of an insurer or other person engaged in the business of  
18 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
19 of an insurer or other person engaged in the business of insurance;

20       (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
21 prepares with knowledge or belief that it will be presented to or by an insurer, or any  
22 insurance producer of an insurer, any statement as part of a claim, in support of a  
23 claim, or in denial of a claim for payment or other benefit pursuant to an insurance  
24 policy knowing that the statement contains any false, incomplete, or misleading

1 information concerning any fact or thing material to a claim;

2 (7) Assists, abets, solicits, or conspires with another to prepare or make any statement  
3 that is intended to be presented to or by an insurer or person in connection with or in  
4 support of any claim for payment or other benefit, or denial, pursuant to an insurance  
5 policy knowing that the statement contains any false, incomplete, or misleading  
6 information concerning any fact or thing material to the claim; or

7 (8) Makes any false or fraudulent representations as to the death or disability of a policy  
8 or certificate holder in any statement or certificate for the purpose of fraudulently  
9 obtaining money or benefit from an insurer.

10 Any violation of this section for an amount of ~~five~~ four hundred dollars or less is a ~~Class 1~~  
11 Class 2 misdemeanor. Any violation of this section for an amount in excess of ~~five~~ four hundred  
12 dollars and less than one thousand dollars is a Class 1 misdemeanor. Any violation of this  
13 section for an amount of one thousand dollars and greater is a Class 4 felony. Any other  
14 violation of this section is a Class 1 misdemeanor.

15 Section 99. That § 58-33-37 be amended to read as follows:

16 58-33-37. Any person who knowingly makes any false or fraudulent statement or  
17 representation with reference to any application for insurance is guilty of a Class 1  
18 misdemeanor. Any person who knowingly presents or causes to be presented a false or  
19 fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof  
20 in support of such a claim for the payment of a loss upon a contract of insurance, or who  
21 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of  
22 loss, or other document or writing, with intent that the same may be presented or used in support  
23 of such a claim, is guilty of a ~~Class 1~~ Class 2 misdemeanor if such claim is for an amount of ~~five~~  
24 four hundred dollars or less; a Class 1 misdemeanor if such claim is for an amount greater than

1 four hundred dollars and less than one thousand dollars; and is guilty of a Class 4 felony if such  
2 claim exceeds five hundred is one thousand dollars or greater.

3 Section 100. That chapter 32-23 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 No person may ride a horse or any other animal while under the influence of an alcoholic  
6 beverage, marijuana, or any controlled drug or substance, or any combination of an alcoholic  
7 beverage, marijuana, or such controlled drug or substance. If, by so doing, the person poses a  
8 serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

9 Section 101. That chapter 32-23 be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 No person may ride a bicycle or any other nonmotorized vehicle while under the influence  
12 of an alcoholic beverage, marijuana, or any controlled drug or substance, or any combination  
13 of an alcoholic beverage, marijuana, or such controlled drug or substance. If, by so doing, the  
14 person poses a serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

15 Section 102. That chapter 32-23 be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 For purposes of this chapter, the term, vehicle, as defined in subdivision 31-14-1(37) does  
18 not include bicycles, any other nonmotorized vehicles, and ridden animals.

19 Section 103. That chapter 22-42 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 A first conviction under § 22-42-2 shall be punished by a mandatory sentence in the state  
22 penitentiary of at least one year, which sentence may not be suspended. Probation, suspended  
23 imposition of sentence, or suspended execution of sentence may not form the basis for reducing  
24 the mandatory time of incarceration required by this section. A second or subsequent conviction

1 under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least  
2 ten years, which sentence may not be suspended. Probation, suspended imposition of sentence,  
3 or suspended execution of sentence may not form the basis for reducing the mandatory time of  
4 incarceration required by this section. However, a first conviction for distribution to a minor  
5 under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least  
6 five years, which sentence may not be suspended. Probation, suspended imposition of sentence,  
7 or suspended execution of sentence may not form the basis for reducing the mandatory time of  
8 incarceration required by this section. A second or subsequent conviction for distribution to a  
9 minor shall be punished by a mandatory sentence in the state penitentiary of at least fifteen  
10 years, which sentence may not be suspended. Probation, suspended imposition of sentence, or  
11 suspended execution of sentence may not form the basis for reducing the mandatory time of  
12 incarceration required by this section. A conviction for the purposes of the mandatory sentence  
13 provisions of this chapter is the acceptance by a court of any plea, other than not guilty ,  
14 including nolo contendere, or a finding of guilt by a jury or court.

15 The sentencing court may impose a sentence other than that which is required by this section  
16 if the court finds that the defendant provided timely and effective cooperation to law  
17 enforcement. The factual basis finding timely and effective cooperation with law enforcement  
18 must be made in writing.

19 Section 104. That chapter 22-42 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 A conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence in the  
22 state penitentiary or county jail of at least thirty days, which sentence may not be suspended.  
23 Probation, suspended imposition of sentence, or suspended execution of sentence may not form  
24 the basis for reducing the mandatory time of incarceration required by this section. A second or

1 subsequent conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence  
2 in the state penitentiary or county jail of at least one year, which sentence may not be suspended.  
3 Probation, suspended imposition of sentence, or suspended execution of sentence may not form  
4 the basis for reducing the mandatory time of incarceration required by this section. However,  
5 a first conviction for distribution to a minor under § 22-42-3 or 22-42-4 shall be punished by  
6 a mandatory sentence in the state penitentiary of at least two years, which sentence may not be  
7 suspended. Probation, suspended imposition of sentence, or suspended execution of sentence  
8 may not form the basis for reducing the mandatory time of incarceration required by this section.  
9 A second or subsequent conviction for distribution to a minor shall be punished by a mandatory  
10 sentence in the state penitentiary of at least five years, which sentence may not be suspended.  
11 Probation, suspended imposition of sentence, or suspended execution of sentence may not form  
12 the basis for reducing the mandatory time of incarceration required by this section.

13 A conviction for the purposes of the mandatory sentence provisions of this chapter is the  
14 acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding  
15 of guilt by a jury or court.

16 The sentencing court may impose a sentence other than that which is required by this section  
17 if the court finds that the defendant provided timely and effective cooperation to law  
18 enforcement. The factual basis finding timely and effective cooperation with law enforcement  
19 must be made in writing.

20 Section 105. That chapter 32-23 be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 Any driving permit issued by the court for the purposes of employment, attendance at school  
23 or attendance at counseling programs shall be conditioned on the person's total abstinence from  
24 the use of alcohol. The court shall immediately revoke the permit if it comes to the court's

1 attention that the person has violated this condition.

2 Section 106. The provisions of this Act are effective on July 1, 2006.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

119L0379

SENATE EDUCATION COMMITTEE ENGROSSED NO.

**SB 102** - 02/15/2005

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

Introduced by: Senators Kloucek, Hanson (Gary), and Peterson (Jim) and Representatives Lange, Bradford, Gassman, Haley, Hargens, Kroger, McCoy, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to increase the percentage of contracted transportation costs  
2 that a school district may expend from the capital outlay fund.

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

4 Section 1. That § 13-16-6 be amended to read as follows:

5 13-16-6. The capital outlay fund of the school district is a fund provided by law to meet  
6 expenditures which result in the acquisition or lease of or additions to real property, plant, or  
7 equipment. Such an expenditure shall be for land, existing facilities, improvement of grounds,  
8 construction of facilities, additions to facilities, remodeling of facilities, or for the purchase or  
9 lease of equipment. It may also be used for installment or lease-purchase payments for the  
10 purchase of real property, plant, or equipment, which have a contracted terminal date not  
11 exceeding twenty years from the date of the installment contract or lease-purchase and for the  
12 payment of the principal of and interest on capital outlay certificates issued pursuant to § 13-16-  
13 6.2.

14 Any purchase of one thousand dollars or less may be paid out of the general fund. The total



1 accumulated unpaid principal balances of such installment contracts and lease-purchase and the  
2 outstanding principal amounts of such capital outlay certificates may not exceed three percent  
3 of the taxable valuation. The school district shall provide a sufficient levy each year under the  
4 provisions of § 13-16-7 to meet the annual installment contract, lease-purchase, and capital  
5 outlay certificate payments, including interest.

6 A school district which contracts its student transportation may expend from the capital  
7 outlay fund an amount not to exceed ~~fifteen~~ thirty percent of the contract amount.

8 The capital outlay fund may be used to purchase textbooks and instructional software.

9 The capital outlay fund may be used to purchase warranties on capital assets if the  
10 warranties do not include supplies.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

668L0497

## SENATE APPROPRIATIONS COMMITTEE ENGROSSED NO. **SB 158** - 02/15/2005

Introduced by: Senators Olson (Ed), Adelstein, Bartling, Duniphan, and Koetzle and  
Representatives Buckingham, Dykstra, Haverly, Klaudt, Michels, Murschel,  
and Roberts

1 FOR AN ACT ENTITLED, An Act to provide for the certification of distance learning  
2 providers.

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

4 Section 1. Terms in this Act mean:

5 (1) "Distance learning," the technology and educational process used to provide  
6 instruction when the student and primary instructor are not physically present at the  
7 same time or place;

8 (2) "Distance learning provider," a school or organization that provides distance learning  
9 courses.

10 Section 2. No distance learning provider may provide courses through distance learning to  
11 any student in an accredited elementary or secondary school in this state unless the distance  
12 learning provider has a certificate issued by the secretary of the Department of Education  
13 authorizing the distance learning provider to provide the courses.



1           Section 3. The South Dakota Board of Education shall promulgate rules pursuant to chapter  
2 1-26 establishing the requirements and criteria that an applying entity must meet in order to be  
3 issued a distance learning provider's certificate by the secretary of the Department of Education  
4 authorizing the entity to provide courses through distance learning.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

455L0408

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 175** - 02/15/2005

Introduced by: Senators Napoli, Abdallah, Adelstein, Apa, Bartling, Bogue, Broderick, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Kelly, Kloucek, Knudson, Koetzle, Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Smidt, Sutton (Dan), Sutton (Duane), and Two Bulls and Representatives Haverly, Boomgarden, Bradford, Brunner, Buckingham, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Haley, Halverson, Hanks, Hargens, Hennies, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Kroger, Lange, McCoy, McLaughlin, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Peters, Putnam, Rausch, Rave, Roberts, Rounds, Schafer, Sebert, Sigdestad, Street, Thompson, Tidemann, Tornow, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to provide for the removal of certain noncommercial motor  
2 vehicle license plates from a motor vehicle if the ownership of the vehicle is transferred and  
3 to make an appropriation to provide for the administration thereof.

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

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

7 If the ownership of a vehicle registered pursuant to the provisions of this chapter is  
8 transferred or assigned, the registration of the vehicle expires and the transferor shall remove  
9 the number plates from the vehicle. If the transferor fails to remove the number plates pursuant



1 to this section, the transferor is guilty of a Class 2 misdemeanor.

2 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 A transferor pursuant to section 1 of this Act who has removed number plates from a motor  
5 vehicle shall, within thirty days, either:

6 (1) Affix the number plates to any vehicle acquired by the transferor; or

7 (2) Destroy the number plates.

8 If the transferor affixes the number plates to any vehicle, the transferor shall register the  
9 vehicle within thirty days.

10 Any violation of this section is a Class 2 misdemeanor.

11 Section 3. If a person purchases a motor vehicle that the number plates have been removed  
12 pursuant to section 1 of this Act, the person may operate the motor vehicle for five days from  
13 the date of purchase without number plates if a dated notarized bill of sale is carried in the  
14 motor vehicle.

15 Section 4. That § 32-5-2.5 be amended to read as follows:

16 32-5-2.5. A person who acquires a motor vehicle required to be annually registered shall,  
17 at the time of application for a certificate of title or transfer of title, ~~renew the vehicle's~~  
18 ~~registration by purchasing license plates or validation decals which would be valid~~ register the  
19 vehicle until the appropriate month assigned to the person for renewal by § 32-5-2.2. ~~The person~~  
20 ~~who acquires a vehicle that is registered in this state shall be given credit for all full months~~  
21 ~~remaining on the vehicle's unexpired registration.~~ This section does not apply if the vehicles are  
22 exempted from the excise tax by § 32-5B-2.

23 Section 5. Sections 1 to 4, inclusive, are effective on January 1, 2007.

24 Section 6. Notwithstanding the provisions of § 32-5B-17, from July 1, 2005, to June 30,

1 2007, inclusive, two percent of the revenues received pursuant to §§ 32-5B-1 and 32-5B-20  
2 shall be credited to the state motor vehicle fund and the remainder shall be credited to the state  
3 highway fund. Any moneys deposited in the state motor vehicle fund pursuant to this section  
4 shall be used for the development of a new computer system to be used by the Division of  
5 Motor Vehicles.

6 Section 7. The provisions of section 6 of this Act are repealed on July 1, 2007.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

457L0748

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 183** - 02/16/2005

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

Introduced by: Senator Olson (Ed) and Representatives Vehle and Sebert

1 FOR AN ACT ENTITLED, An Act to require the filing of certain notices of intention to  
2 preserve possibilities of reverter and rights of entry and to provide for the termination of  
3 such rights in the absence of notification.

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

5 Section 1. Whenever any lands are, heretofore or hereafter, conveyed by any grant or devise  
6 to be held or used for any religious, educational, charitable, benevolent, or public purpose, with  
7 a condition annexed in the instrument of conveyance that in event the lands shall, at any time,  
8 cease to be held or used for the purpose set forth in such conveyance, title shall revert to the  
9 grantor or devisor or the heirs, and it appears in the judgment of the officers, trustees, or  
10 governing body of the grantee named in such conveyance that because of changed conditions  
11 or circumstances since the execution of such conveyance it is impossible or impractical to  
12 continue to hold or use the lands for the purpose mentioned in such conveyance and that the  
13 religious, educational, charitable, benevolent, or public object of the grantor or devisor, as set  
14 forth in such conveyance, may be prevented or defeated thereby, the grantee may file an action  
15 in the circuit court of the county in which the lands are situated, setting forth a correct



1 description of such lands and the terms and conditions under which the lands are to be held or  
2 used, together with a comprehensive statement of the changed conditions and circumstances  
3 which render it impossible or impractical to continue to hold or use the lands for the purpose  
4 stated in the conveyance.

5 Section 2. In any proceeding provided for in section 1 of this Act, the heirs of the grantor,  
6 reversionary interest holder, or deviser, if known, shall be named as defendants and the same  
7 proceedings had thereon as is provided by existing law in actions against known defendants. If  
8 the names or addresses of the heirs of any such grantor or deviser are unknown, then  
9 proceedings shall be had in such action as may be provided by existing law in proceedings  
10 against unknown defendants. However, no such action may be brought within a period of  
11 seventy-five years from the execution of any such conveyance.

12 Section 3. If, upon the hearing, it appears to the satisfaction of the court that the allegations  
13 in the action are true and that because of changed conditions or circumstances since the  
14 execution of such conveyance it is impossible or impractical to continue to hold or use the lands  
15 for the purposes limited in such conveyance and that the religious, educational, charitable,  
16 benevolent, or public object of the grantor, as set forth in such conveyance, may be defeated  
17 thereby, a decree may be entered authorizing the grantor to sell such lands for the highest price  
18 obtainable, and directing that the proceeds of the sale of such lands shall be reinvested in other  
19 lands suitable for the use or purpose set forth in the original conveyance, subject to any  
20 reversionary interest or other interest in the original conveyance.

21 Section 4. No sale of lands under the decree of the court pursuant to this Act defeats the  
22 estate of the grantee named in the original conveyance because of the failure to continue to hold  
23 or use the land for the purpose named in such conveyance and is sufficient to convey to the  
24 purchaser of such land a good and sufficient title in fee simple, free from all conditions or

1 limitations whatsoever, under which the land shall have been held or used.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

318L0753

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **SB 190** - 02/15/2005

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

Introduced by: Senators Bartling, Apa, Greenfield, Moore, and Napoli and Representatives Klautt, Fryslie, Garnos, Glover, Novstrup, Pederson (Gordon), Turbiville, and Willadsen

1 FOR AN ACT ENTITLED, An Act to prohibit the issuance of certain hunting and fishing  
2 licenses using the internet.

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

4 Section 1. That chapter 41-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No license available pursuant to § 41-2-33 may be offered for sale or issuance by the  
7 Department of Game, Fish and Parks via the internet. The department's internet site shall direct  
8 the potential license applicant to a listing of the licensing agents. For each licensing agent listed,  
9 the internet display shall provide the licensing agent's name, address, telephone number, and  
10 website address. The department may list on their website an e-mail, phone, fax, or any other  
11 number to assist license applicants in acquiring their licenses from license agents.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

119L0517      **SENATE EDUCATION COMMITTEE ENGROSSED NO.**  
**SB 202 - 02/15/2005**

Introduced by: Senators Bogue, Apa, Bartling, Duniphan, Gray, Greenfield, Koskan, Lintz, McNenny, Moore, Napoli, Olson (Ed), and Sutton (Dan) and Representatives Rave, Buckingham, Cutler, Dennert, Dykstra, Garnos, Hanks, Haverly, Klaudt, McLaughlin, Murschel, Novstrup, Putnam, Rhoden, and Rounds

1    FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to general education  
2        and make an appropriation.

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

4        Section 1. That § 13-13-10.1 be amended to read as follows:

5        13-13-10.1. Terms used in this chapter mean:

6        (1)    "Average daily membership," the average number of resident and nonresident  
7            kindergarten through twelfth grade pupils enrolled in all schools operated by the  
8            school district during the previous regular school year, minus average number of  
9            pupils for whom the district receives tuition, except pupils described in subdivision  
10          (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the  
11          average number of pupils for whom the district pays tuition;

12        (1A) Nonresident students who are in the care and custody of the Department of Social  
13          Services, the Unified Judicial System, the Department of Corrections, or other state  
14          agencies and are attending a public school may be included in the average daily



1 membership of the receiving district when enrolled in the receiving district. When  
2 counting a student who meets these criteria in its general enrollment average daily  
3 membership, the receiving district may begin the enrollment on the first day of  
4 attendance. The district of residence prior to the custodial transfer may not include  
5 students who meet these criteria in its general enrollment average daily membership  
6 after the student ceases to attend school in the resident district;

7 (2) "Adjusted average daily membership," calculated as follows:

8 (a) For districts with an average daily membership during the previous regular  
9 school year of two hundred or less, multiply 1.2 times the average daily  
10 membership;

11 (b) For districts with an average daily membership during the previous regular  
12 school year of less than six hundred, but greater than two hundred, raise the  
13 average daily membership to the 0.8293 power and multiply the result times  
14 2.98;

15 (c) For districts with an average daily membership during the previous regular  
16 school year of six hundred or more, multiply 1.0 times their average daily  
17 membership;

18 (2A) "Sparse school district," a school district which, during the previous school year: has  
19 a general fund balance percentage as defined in this section of twenty percent or less;  
20 levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42 or  
21 more; has an average daily membership of less than six hundred; has a geographical  
22 area of more than five hundred square miles; provides at least fifteen percent of its  
23 secondary program offerings via distance learning technology; has at least fifteen  
24 miles between its attendance center or centers and that of an adjoining district; and

- 1           has an average daily membership per square mile of 0.6 or less;
- 2       (2B) "Sparsity average daily membership," calculated as follows:
- 3           (a) For sparse school districts, divide the average daily membership by the area
- 4                 of the school district in square miles;
- 5           (b) If the result of subsection (a) of this subdivision is 0.6 or less, multiply the
- 6                 quotient obtained in subsection (a) times negative 0.014;
- 7           (c) Add 0.14 to the result of subsection (b) of this subdivision; and
- 8           (d) Multiply the result of subsection (c) of this subdivision times the average daily
- 9                 membership;
- 10       (3) "Index factor," is the annual percentage change in the consumer price index for urban
- 11         wage earners and clerical workers as computed by the Bureau of Labor Statistics of
- 12         the United States Department of Labor for the year before the year immediately
- 13         preceding the year of adjustment or three percent, whichever is less;
- 14       (4) "Per student allocation," for school fiscal year ~~2004~~ 2006 is ~~\$3,967.88~~ \$4,205.26.
- 15         Each school fiscal year thereafter, the per student allocation is the previous fiscal
- 16         year's per student allocation increased by the index factor;
- 17       (5) "Local need," the per student allocation multiplied by the sum of adjusted average
- 18         daily membership plus the sparsity average daily membership;
- 19       (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
- 20         applying the levies established pursuant to § 10-12-42;
- 21       (7) "General fund balance," the unreserved fund balance of the general fund, less general
- 22         fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
- 23         out of the general fund for the previous school fiscal year;
- 24       (8) "General fund balance percentage," is a school district's general fund balance divided

1 by the school district's total general fund expenditures for the previous school fiscal  
2 year, the quotient expressed as a percent;

3 (9) "General fund base percentage," is the general fund balance percentage as of June 30,  
4 2000. However, the general fund base percentage can never increase and can never  
5 be less than twenty percent;

6 (10) "Allowable general fund balance," the fund base percentage multiplied by the  
7 district's general fund expenditures in the previous school fiscal year;

8 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5  
9 percentage points;

10 (12) "General fund exclusions," revenue a school district has received from the imposition  
11 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
12 from gifts, contributions, grants, or donations; revenue a school district has received  
13 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the  
14 general fund set aside for a noninsurable judgment.

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

17 Notwithstanding the provisions of § 13-13-10.1, the adjusted average daily membership of  
18 a sparse school district which has a geographical area of more than one thousand square miles  
19 and has an average daily membership of more than fifty and less than one hundred thirty is one  
20 hundred fifty-six.

21 Section 3. Solely for the purposes of §§ 13-13-72 and 13-13-72.1, local need does not  
22 include the sparsity average daily membership calculations.

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

1 No school district which has an average daily membership of six hundred or more as of  
2 July 1, 2005, may qualify for average daily membership adjustments in subdivision 13-13-  
3 10.1(2(a)) or 13-13-10.1(2(b)) in subsequent years unless the district qualifies as a sparse school  
4 district.

5 Section 5. There is hereby appropriated from the general fund the sum of two million nine  
6 hundred forty-five thousand one hundred eighty-four dollars (\$2,945,184), or so much thereof  
7 as may be necessary, to the Department of Education to supplement state aid to education  
8 pursuant to the provisions of this Act for state fiscal year 2006.

9 Section 6. The secretary of the Department of Education shall approve vouchers and the  
10 state auditor shall draw warrants to pay expenditures authorized by this Act.

11 Section 7. Any amounts appropriated in this Act not lawfully expended or obligated by  
12 June 30, 2005, shall revert in accordance with § 4-8-21.

13 Section 8. That § 13-13-73 be amended to read as follows:

14 13-13-73. The secretary of the Department of Education shall compute state aid to education  
15 for each school district under the foundation program according to the following calculations:

- 16 (1) Determine each school district's average daily membership;
- 17 (2) Multiply the per student allocation by the sum of the adjusted average daily  
18 membership plus the sparsity average daily membership to arrive at the local need  
19 per district;
- 20 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a  
21 negative number;
- 22 (4) If the state aid appropriation for the general support of education is in excess of the  
23 entitlement provided for in this section, the excess shall be used to fund any shortfall  
24 of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary

1 shall report to the Governor by January seventh of each year, the amount of state aid  
2 necessary to fully fund the general aid formula in the current year. If a shortfall in the  
3 state aid appropriation for general education exists that cannot be covered by  
4 § 13-37-45, the Governor shall inform the Legislature and provide a proposal to  
5 eliminate the shortfall.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

760L0216

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 204 - 02/16/2005**

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

Introduced by: Senators Duenwald, Abdallah, Bartling, Duniphan, Gray, Greenfield, Hansen (Tom), Koetzle, Koskan, McNenny, Moore, Schoenbeck, Smidt, and Sutton (Dan) and Representatives Miles, Brunner, Frost, Fryslie, Gassman, Hackl, Hargens, Hunt, Jerke, Koistinen, Kraus, McCoy, Rausch, Rave, and Van Etten

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding living wills and health  
2 care decisions by agents.

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

4 Section 1. That § 34-12C-3 be amended to read as follows:

5 34-12C-3. In the absence of a living will, durable power of attorney for health care or the  
6 appointment of a guardian of the person, or if neither the attorney in fact nor guardian is  
7 available to consent, a health care decision for an incapacitated person may be made by the  
8 following members of the incapacitated person's family who are available to consent, in the  
9 order stated:

- 10 (1) The spouse, if not legally separated;
- 11 (2) An adult child;
- 12 (3) A parent;
- 13 (4) An adult sibling;



1 (5) A grandparent or an adult grandchild;

2 (6) An adult aunt or uncle or an adult niece or nephew.

3 However, any person may, before a judicial adjudication of incompetence or incapacity,  
4 disqualify any member of ~~his~~ the person's family from making a health care decision for ~~him~~ the  
5 person. The disqualification shall appear in a document signed by the person or may be made  
6 by a notation in ~~his~~ the person's medical record, if made at ~~his~~ the person's direction.

7 Any member of the incapacitated person's family may delegate the authority to make a  
8 health care decision to another family member in the same or succeeding class. The delegation  
9 shall be signed and may specify conditions on the authority delegated.

10 Any person authorized to make a health care decision for an incapacitated person shall ~~be~~  
11 ~~guided by~~ implement the express wishes of the incapacitated person, if known, ~~and shall~~  
12 ~~otherwise act. If the express wishes of the incapacitated person are not known, the person~~  
13 authorized to make a health care decision for the incapacitated person shall make the decision  
14 in good faith, in the incapacitated person's best interest, and may shall not arbitrarily refuse  
15 consent. ~~Whenever making any health care decision for the incapacitated person, the person~~  
16 ~~available to consent, and~~ shall consider the recommendation of the attending physician, the  
17 decision the incapacitated person would have made if the incapacitated person then had  
18 decisional capacity, ~~if known,~~ the inherent value of human life and its preservation, and the  
19 decision that would be in the best interest of the incapacitated person.

20 Section 2. That chapter 34-12C be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 No person authorized to make a health care decision for an incapacitated person may  
23 authorize the withholding or withdrawal from the incapacitated person of comfort care and  
24 artificial nutrition or hydration. However, artificial nutrition or hydration may be withheld or

1 withdrawn if:

2 (1) In reasonable medical judgment:

3 (a) The provision of artificial nutrition or hydration is not medically possible;

4 (b) The provision of artificial nutrition or hydration would hasten death; or

5 (c) The medical condition of the incapacitated person is such that provision of  
6 artificial nutrition or hydration would not contribute to sustaining life or  
7 providing comfort, hygiene, or relief of pain; or

8 (2) There is a preponderance of the evidence that prior to the loss of decisional capacity,  
9 the incapacitated person either refused artificial nutrition or hydration or expressed  
10 the desire that artificial nutrition or hydration not be given in the applicable  
11 circumstances.

12 Even in the exception listed in subdivision (2) of this section, artificial nutrition or hydration  
13 may not be withheld or withdrawn if it is needed for comfort, hygiene, or the relief of pain.

14 Reasonable medical judgment means a medical judgment that would be made applying  
15 commonly accepted medical standards to the incapacitated person's case.

16 Section 3. That chapter 34-12C be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 If a person authorized to make a health care decision for an incapacitated person directs the  
19 provision of life-sustaining treatment or artificial nutrition and hydration, any physician or  
20 health care provider who has responsibility for the treatment and care of the individual must  
21 provide the directed treatment or artificial nutrition and hydration in those circumstances so long  
22 as it is technically feasible. A physician or health care provider who objects to providing such  
23 treatment may instead transfer the individual to a physician or health care provider willing to  
24 honor the declaration, but must continue to provide the treatment or care until the transfer is

1 effectuated.

2 Section 4. That § 34-12D-3 be amended to read as follows:

3 34-12D-3. A declaration may, but need not, be in the following form:

4 LIVING WILL DECLARATION

5 This is an important legal document. This document directs the medical treatment you are  
6 to receive in the event you are unable to participate in your own medical decisions and you are  
7 in a terminal condition. This document may state what kind of treatment you want or do not  
8 want to receive.

9 This document can control whether you live or die. Prepare this document carefully. If you  
10 use this form, read it completely. You may want to seek professional help to make sure the form  
11 does what you intend and is completed without mistakes.

12 This document will remain valid and in effect until and unless you revoke it. Review this  
13 document periodically to make sure it continues to reflect your wishes. You may amend or  
14 revoke this document at any time by notifying your physician and other health-care providers.  
15 You should give copies of this document to your physician and your family. This form is  
16 entirely optional. If you choose to use this form, please note that the form provides signature  
17 lines for you, the two witnesses whom you have selected and a notary public.

18 TO MY FAMILY, PHYSICIANS, AND ALL THOSE CONCERNED WITH MY CARE:

19 I, \_\_\_\_ willfully and voluntarily make this declaration as a directive to be followed if I am  
20 in a terminal condition and become unable to participate in decisions regarding my medical care.

21 With respect to any life-sustaining treatment, I direct the following:

22 (Initial only one of the following optional directives if you agree. If you do not agree with  
23 any of the following directives, space is provided below for you to write your own directives).

24 \_ NO LIFE-SUSTAINING TREATMENT. I direct that no life-sustaining treatment be

1 provided. If life-sustaining treatment is begun, terminate it.

2  TREATMENT FOR RESTORATION. Provide life-sustaining treatment only if and for  
3 so long as you believe treatment offers a reasonable possibility of restoring to me the ability to  
4 think and act for myself.

5  TREAT UNLESS PERMANENTLY UNCONSCIOUS. If you believe that I am  
6 permanently unconscious and are satisfied that this condition is irreversible, then do not provide  
7 me with life-sustaining treatment, and if life-sustaining treatment is being provided to me,  
8 terminate it. If and so long as you believe that treatment has a reasonable possibility of restoring  
9 consciousness to me, then provide life-sustaining treatment.

10  MAXIMUM TREATMENT. Preserve my life as long as possible, ~~but do not provide~~  
11 ~~treatment that is not in accordance with accepted medical standards as then in effect.~~

12 (Artificial nutrition and hydration is food and water provided by means of a nasogastric tube  
13 or tubes inserted into the stomach, intestines, or veins. If food and water are withdrawn,  
14 withheld, or denied, starvation or dehydration may be the cause of death and not the terminal  
15 condition. If you do not wish to receive ~~this form of treatment~~ artificial nutrition and hydration,  
16 you must initial the statement below which reads: "I intend to include ~~this treatment,~~ artificial  
17 nutrition and hydration among the 'life-sustaining treatment' that may be withheld or  
18 withdrawn.")

19 With respect to artificial nutrition and hydration, I wish to make clear that

20 (Initial only one)

21  I intend to include ~~this treatment~~ artificial nutrition and hydration among the  
22 "life-sustaining treatment" that may be withheld or withdrawn.

23  I do not intend to include ~~this treatment~~ artificial nutrition and hydration among the  
24 "life-sustaining treatment" that may be withheld or withdrawn.

1 (If you do not agree with any of the printed directives and want to write your own, or if you  
2 want to write directives in addition to the printed provisions, or if you want to express some of  
3 your other thoughts, you can do so here).

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_

10 Date: \_\_\_\_\_

11 \_\_\_\_\_  
(your signature)

12 \_\_\_\_\_

13 (your address) \_\_\_\_\_  
(type or print your signature)

14 The declarant voluntarily signed this document in my presence.

15 Witness \_\_\_\_\_

16 Address \_\_\_\_\_

17 Witness \_\_\_\_\_

18 Address \_\_\_\_\_

19 On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the declarant, \_\_\_\_\_, and  
20 witnesses \_\_\_\_\_, and \_\_\_\_\_ personally appeared before the undersigned officer  
21 and signed the foregoing instrument in my presence. Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
22 \_\_\_\_\_.

23 \_\_\_\_\_ Notary Public

24 My commission expires: \_\_\_\_\_.

1 Section 5. That § 59-7-2.5 be amended to read as follows:

2 59-7-2.5. The attorney-in-fact or agent, if authorized, may make any health care decisions  
3 for the principal which the principal could make individually if ~~he~~ the principal had decisional  
4 capacity. ~~However, all such decisions shall be made in accordance with accepted medical~~  
5 ~~practice.~~ Whenever making any health care decision for the principal, the attorney-in-fact or  
6 agent shall implement the express wishes of the principal, if known. If the express wishes of the  
7 principal are not known, the attorney in fact shall make the decision in good faith, shall not  
8 arbitrarily refuse consent, and shall consider the recommendation of the attending physician, the  
9 decision that the principal would have made if the principal then had decisional capacity, if  
10 ~~known~~ the inherent value of human life and its preservation, and the decision that would be in  
11 the best interest of the principal.

12 Section 6. That § 59-7-2.7 be amended to read as follows:

13 59-7-2.7. The guardian, attorney-in-fact, or agent may not authorize the withholding or  
14 withdrawal from the principal of comfort care and artificial nutrition or hydration. However,  
15 artificial nutrition or hydration may be withheld or withdrawn if:

16 ~~— (1) — Artificial nutrition or hydration is not needed for comfort care or the relief of pain~~  
17 ~~and the attending physician reasonably believes that the principal's death will occur~~  
18 ~~within approximately one week; or~~

19 ~~— (2) — Artificial nutrition or hydration cannot be physically assimilated by the principal; or~~

20 ~~— (3) — The burden of providing artificial nutrition or hydration outweighs its benefit,~~  
21 ~~provided that the determination of burden refers to the provision of artificial nutrition~~  
22 ~~or hydration itself and not to the quality of the continued life of the principal; or~~

23 ~~— (4) — There is clear and convincing evidence that artificial nutrition or hydration was~~  
24 ~~refused by the person prior to loss of decisional capacity; or the power of attorney~~

1 ~~directs that artificial nutrition or hydration not be given or specifically authorizes the~~  
2 ~~attorney-in-fact or agent to make that decision; or prior to the loss of decisional~~  
3 ~~capacity there is clear and convincing evidence that the principal expressed the desire~~  
4 ~~that artificial nutrition or hydration not be given.~~

5 (1) In reasonable medical judgment;

6 (a) The provision of artificial nutrition or hydration is not medically possible;

7 (b) The provision of artificial nutrition or hydration would hasten death; or

8 (c) The medical condition of the principal is such that provision of artificial  
9 nutrition or hydration would not contribute to sustaining life or providing  
10 comfort, hygiene, or relief of pain;

11 (2) The principal has executed a living will or a durable power of attorney for  
12 healthcare, either of which specifically authorizes the withholding or withdrawal of  
13 artificial nutrition or hydration, to the extent that the authorization applies;

14 (3) The principal has executed a written power of attorney pursuant to § 59-7-2.1  
15 specifically authorizing the attorney-in-fact or agent to make that decision; or

16 (4) There is a preponderance of the evidence that prior to the loss of decisional capacity,  
17 the principal either refused artificial nutrition or hydration or expressed the desire  
18 that artificial nutrition or hydration not be given in the applicable circumstances.

19 Even in the exceptions listed in subdivisions (1), (2), (3), and (4) of this section, artificial  
20 nutrition or hydration may not be withheld or withdrawn if it is needed for comfort, hygiene, or  
21 the relief of pain.

22 Reasonable medical judgment means a medical judgment that would be made applying  
23 commonly accepted medical standards to the principal's case.

24 Section 7. That chapter 59-7 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If an individual with decisional capacity, or a durable power of attorney for health care or  
3 an attorney-in-fact or an agent, if authorized, directs the provision of life-sustaining treatment  
4 or artificial nutrition and hydration, any physician or health care provider who has responsibility  
5 for the treatment and care of the individual must provide the directed treatment or artificial  
6 nutrition and hydration in those circumstances so long as it is technically feasible. A physician  
7 or health care provider who objects to providing such treatment may instead transfer the  
8 individual to a physician or health care provider willing to honor the declaration, but must  
9 continue to provide the treatment or care until the transfer is effectuated.

10 Section 8. Nothing in this Act shall render ineffective or change any of the terms of any  
11 decision made, oral directive given, or document executed pursuant to chapter 34-12C, 34-12D,  
12 or 59-7 prior to the effective date of this Act.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

471L0640

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

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

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

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

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

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

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

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



1 insect, or nematode which the commission has found to be detrimental to the  
2 production of crop or livestock or to the welfare of persons residing within the state,  
3 Prairie dogs are included in the definition of a pest if all of the following conditions  
4 apply:

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

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

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

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

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

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

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

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

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

527L0621

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 218** - 02/15/2005

Introduced by: Senators Koskan, Abdallah, Adelstein, Apa, Bartling, Bogue, Dempster, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, McNenny, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Sutton (Dan), and Sutton (Duane) and Representatives Dykstra, Garnos, Gassman, Gillespie, Hackl, Haley, Hargens, Hunt, Jensen, Jerke, Klaudt, Kraus, Michels, Miles, Novstrup, Olson (Ryan), Putnam, Rave, Rhoden, Rounds, and Wick

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority  
2 and to declare an emergency.

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

4 Section 1. Terms used in this Act man as follows:

- 5 (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to  
6 this Act;
- 7 (2) "Board," the board of directors of the authority;
- 8 (3) "Facilities," electric generation and electric transmission facilities and the related  
9 supporting infrastructure, including any interest therein.

10 Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and  
11 expand the state's economy by developing in this state the energy production facilities and the  
12 energy transmission facilities necessary to produce and transport energy to markets outside of



1 the state.

2 Section 3. The authority may provide for the financing, construction, development,  
3 maintenance, and operation of new energy production facilities and energy transmission  
4 facilities. The authority may own, lease, or rent such facilities. The authority may enter into  
5 partnerships with public and private entities to develop and operate such facilities.

6 Section 4. If the authority becomes the owner or partial owner of any energy production  
7 facility or energy transmission facility, the authority shall divest itself of ownership as soon as  
8 economically practical.

9 Section 5. In order to finance projects authorized pursuant to this Act, the authority may  
10 issue and have outstanding bonds to finance facilities in an amount not to exceed one billion  
11 dollars. The authority shall have contracts sufficient to justify the issuance of bonds.

12 Section 6. There is hereby appropriated from the state general fund the sum of five hundred  
13 thousand dollars (\$500,000), or so much thereof as may be necessary, to the authority created  
14 pursuant to this Act to pursue the construction of facilities authorized by this Act.

15 Section 7. The director of the authority shall approve vouchers and the state auditor shall  
16 draw warrants to pay expenditures authorized by this Act.

17 Section 8. Any amounts appropriated in this Act not lawfully expended or obligated by  
18 June 30, 2007, shall revert in accordance with § 4-8-21.

19 Section 9. The governing and administrative powers of the authority are vested in its board  
20 of directors consisting of seven members. The Governor shall appoint the directors, with the  
21 advice and consent of the Senate. Not all members of the board may be of the same political  
22 party. The terms of the members of the board may not exceed six years. The terms of the initial  
23 board of directors shall be staggered by the drawing of lots so that not more than two of the  
24 director's terms shall end at the same time. Members of the board may serve more than one term.

1 Section 10. The Governor may remove any member of the board for cause, including  
2 incompetence, neglect of duty, or malfeasance in office.

3 Section 11. Members of the board shall receive compensation for the performance of their  
4 duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the  
5 authority. Members may be reimbursed at rates established by the Bureau of Personnel for  
6 necessary expenses, including travel and lodging expenses, incurred in connection with the  
7 performance of their duties as members.

8 Section 12. Each member of the board shall, before entering upon the duties of office, take  
9 and subscribe the constitutional oath of office.

10 Section 13. The board may appoint an executive director. The executive director may not  
11 be a member of the board. The executive director shall hold office at the discretion of the board.  
12 The executive director shall be the chief administrative and operational officer of the authority,  
13 shall direct and supervise its administrative affairs and general management, shall perform such  
14 other duties as may be prescribed from time to time by the board, and shall receive  
15 compensation fixed by the board. The executive director shall attend all meetings of the board.  
16 However, no action of the board or the authority is invalid on account of the absence of the  
17 executive director from a meeting. The board may engage the services of such other agents and  
18 employees as they deem appropriate, including attorneys, appraisers, scientists, researchers,  
19 engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and  
20 fix their compensation.

21 Section 14. The board shall meet on the call of the chair, upon the written request of four  
22 members of the board, or upon the request of the executive director.

23 Section 15. A majority of the members of the board constitute a quorum for the transaction  
24 of business. All official acts of the authority shall require the affirmative vote of at least four

1 members of the board at a meeting of the board at which the members casting those affirmative  
2 votes are present.

3 Section 16. Notwithstanding any other law to the contrary it is not a conflict of interest for  
4 a trustee, director, officer, or employee of any financial institution, investment banking firm,  
5 brokerage firm, commercial bank or trust company, architectural firm, utility company,  
6 engineering firm, mining firm, insurance company, energy company, or any other firm, person,  
7 or corporation to serve as a member of the authority, if the trustee, director, officer, or employee  
8 abstains from deliberation, action, and vote by the authority in each instance where the business  
9 affiliation of any such trustee, director, officer, or employee is involved.

10 Section 17. Each meeting of the authority for any purpose whatsoever shall be open to the  
11 public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the  
12 authority. Resolutions need not be published or posted.

13 Section 18. The executive director or other person designated by the authority shall keep a  
14 record of the proceedings thereof and shall be custodian of all books, documents, and papers  
15 filed with the authority, the minute books or journal of the authority and its official seal. The  
16 executive director or other person designated by the authority may cause copies to be made of  
17 all minutes and other records and documents of the authority and may give certificates under  
18 the official seal of the authority to the effect that such copies are true copies and all persons  
19 dealing with the authority may rely on such certificates.

20 Section 19. The authority shall establish and collect fees, schedules of fees, rentals and other  
21 charges for the use of the facilities of the authority as the board may determine, and may borrow  
22 funds for the execution of the purposes of the authority, and mortgage and pledge any lease or  
23 leases granted, assigned, or subleased by the authority.

24 Section 20. The authority may:

- 1       (1)    Have perpetual succession as a body politic and corporate exercising essential public  
2            functions;
- 3       (2)    Sue and be sued in its own name;
- 4       (3)    Have an official seal and alter the seal at will;
- 5       (4)    Maintain an office at such places within the state as the authority may designate;
- 6       (5)    Make and execute contracts and all other instruments necessary or convenient for the  
7            performance of its duties and the exercise of its powers and functions under this Act;
- 8       (6)    Employ fiscal consultants, engineers, attorneys, and such other consultants and  
9            employees as may be required and contract with agencies of the state to provide staff  
10           and support services;
- 11      (7)    Procure insurance against any loss in connection with its property and other assets,  
12           including loans and notes in such amounts and from such insurers as it may deem  
13           advisable;
- 14      (8)    Borrow money and issue bonds as provided by this Act;
- 15      (9)    Procure insurance, letters of credit, guarantees, or other credit enhancement  
16           arrangements from any public or private entities, including any department, agency,  
17           or instrumentality of the United States or the state, for payment of all or any portion  
18           of any bonds issued by the authority, including the power to pay premiums, fees, or  
19           other charges on any such insurance, letters of credit, guarantees, or credit  
20           arrangements;
- 21      (10)   Receive and accept from any source financial aid or contributions of moneys,  
22           property, labor, or other things of value to be held, used, and applied to carry out the  
23           purposes of this Act subject to the conditions upon which the grants or contributions  
24           are made, including, gifts or grants from any department, agency, or instrumentality

1 of the United States for any purpose consistent with the provisions of this Act;

2 (11) To the extent permitted under its contract with the holders of bonds of the authority,  
3 consent to any modification with respect to the rate of interest, time, and payment of  
4 any installment of principal or interest, or any other term of any contract, loan, loan  
5 note, loan note commitment, contract, lease, or agreement of any kind to which the  
6 authority is a party;

7 (12) To make loans and grants to, and enter into financing agreements with, any  
8 governmental agency or any person for the costs incurred in connection with the  
9 development, construction, acquisition, improvement, maintenance, operation, or  
10 decommissioning of a project, or for the maintenance of the physical or structural  
11 integrity of real or personal property incorporated or which may be incorporated into  
12 a project, in accordance with a written agreement between the authority and such  
13 governmental agency or person. However, no such loan or grant may exceed the total  
14 cost of such project as determined by the governmental agency or person and  
15 approved by the authority;

16 (13) Cooperate with and exchange services, personnel, and information with any  
17 governmental agency;

18 (14) Enter into agreements for management on behalf of the authority of any of its  
19 properties upon such terms and conditions as may be mutually agreeable;

20 (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority  
21 finds such action to be in furtherance of the purposes for which it was organized;

22 (16) Acquire, hold, lease, and dispose of real and personal property, and construct,  
23 develop, maintain, operate, and decommission projects for the purposes for which the  
24 authority was created;

1 (17) Indemnify any person or governmental agency for such reasonable risks as the  
2 authority deems advisable if the indemnification is a condition of a grant, gift, or  
3 donation to the authority. However, any such obligation to indemnify may only be  
4 paid from insurance or from revenues of the authority, and such obligation does not  
5 constitute a debt or obligation of the State of South Dakota;

6 (18) Do any act and execute any instrument which in the authority's judgment is necessary  
7 or convenient to the exercise of the powers granted by this Act or reasonably implied  
8 from it;

9 (19) After consultation with the Public Utilities Commission and any other relevant  
10 governmental authority, establish and charge reasonable fees, rates, tariffs, or other  
11 charges for the use of all facilities administered by the authority and for all services  
12 rendered by it;

13 (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity;  
14 and

15 (21) Acquire by condemnation within the state any properties necessary or useful for the  
16 authority's purposes. However, the authority may not condemn any existing facilities.

17 Section 21. The authority may invest any funds not needed for immediate investment in the  
18 following:

19 (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities  
20 constituting direct obligations of, or obligations the principal of and interest on which  
21 are fully guaranteed or insured by, the United States of America;

22 (2) Obligations issued by or obligations the principal of and interest on which are fully  
23 guaranteed or insured by any agency or instrumentality of the United States of  
24 America;

- 1       (3)   Certificates of deposit or time deposits constituting direct obligations of any bank  
2            which is a qualified public depository or any savings and loan association which is  
3            a savings and loan depository under the Public Deposit Insurance Act pursuant to  
4            chapter 4-6A, unless sufficient volume of such certificates is not available at  
5            competitive interest rates. In that event, the authority may purchase noncollateralized  
6            direct obligations of any bank or savings institution or holding company if such  
7            institution or holding company is rated in the highest two quality categories by a  
8            nationally recognized rating agency;
- 9       (4)   Obligations of any solvent insurance company or other corporation or business entity  
10           existing under the laws of the United States or any state thereof, if the obligation of  
11           the insurance company or other corporation or business entity is rated in the two  
12           highest classifications established by a standard rating service of insurance  
13           companies or a nationally recognized rating agency;
- 14       (5)   Short term discount obligations of the Federal National Mortgage Association;
- 15       (6)   Obligations issued by any state of the United States or any political subdivision,  
16           public instrumentality, or public authority of any state of the United States, which  
17           obligations are not callable before the date the principal thereof will be required to  
18           be paid and which obligations are fully secured as to both sufficiency and timely  
19           payment by, and payable solely from, securities described in subdivision (1) and  
20           which obligations are rated in the highest investment classification by at least two  
21           standard rating services of such obligations.

22       Any securities may be purchased at the offering or market price thereof at the time of the  
23       purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to  
24       the time when, in the judgment of the authority, the funds so invested will be required for

1 expenditure. The express judgment of the authority as to the time when any funds will be  
2 required for expenditure or be redeemable is final and conclusive. Investment in any obligation  
3 enumerated in this section may be made either directly or in the form of securities of, or other  
4 interests in, an investment company registered under the Federal Investment Act of 1940, whose  
5 shares are registered under the Federal Securities Act of 1933, and whose investments are  
6 limited to these obligations.

7 Section 22. The authority may issue revenue bonds, notes, or other evidences of  
8 indebtedness to pay the cost incurred in connection with developing, constructing, acquiring,  
9 improving, maintaining, operating, and decommissioning projects. For the purpose of  
10 evidencing the obligations of the authority to repay any money borrowed, the authority may,  
11 pursuant to resolution, from time to time issue and dispose of its interest bearing revenue bonds,  
12 notes, or other instruments and may also from time to time issue and dispose of such bonds,  
13 notes, or other instruments to refund, at maturity, at a redemption date or in advance of either,  
14 any revenue bonds, notes, or other instruments pursuant to redemption provisions or at any time  
15 before maturity. All such revenue bonds, notes, or other instruments shall be payable solely  
16 from the revenues or income to be derived with respect to projects, from the leasing or sale of  
17 the projects, or from any other funds available to the authority for such purposes. The revenue  
18 bonds, notes, or other instruments may bear such date or dates, may mature at such time or times  
19 not exceeding forty years from their respective dates, may bear interest at such rate or rates, may  
20 be in such form, may carry such registration privileges, may be executed in such manner, may  
21 be payable at such place or places, may be made subject to redemption in such manner and upon  
22 such terms, with or without premium as is stated on the face thereof, may be authenticated in  
23 such manner, and may contain such terms and covenants as may be provided by an applicable  
24 resolution.

1 Section 23. Any holder of any revenue bonds, notes, or other instruments issued by the  
2 authority may bring suits at law or proceedings in equity to compel the performance and  
3 observance by any corporation or person or by the authority or any of its agents or employees  
4 of any contract or covenant made with the holders of such revenue bonds, notes, or other  
5 instruments, to compel such corporation, person, the authority, and any of its agents or  
6 employees to perform any duties required to be performed for the benefit of the holders of any  
7 such revenue bonds, notes, or other instruments by the provision of the resolution authorizing  
8 their issuance and to enjoin such corporation, person, the authority, and any of its agents or  
9 employees from taking any action in conflict with any such contract or covenant.

10 Section 24. If the authority fails to pay the principal of or interest on any of the revenue  
11 bonds or premium, if any, as the same become due, a civil action to compel payment may be  
12 instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which  
13 such default of payment exists or by an indenture trustee acting on behalf of such holders.  
14 Delivery of a summons and a copy of the complaint to the chair of the board constitutes  
15 sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and  
16 jurisdiction over the authority and its officers named as defendants for the purpose of  
17 compelling such payment.

18 Section 25. Notwithstanding the form and tenor of any such revenue bonds, notes, or other  
19 instruments and in the absence of any express recital on the face of any such revenue bond, note,  
20 or other instruments that it is non-negotiable, all such revenue bonds, notes, and other  
21 instruments shall be negotiable instruments. Pending the preparation and execution of any such  
22 revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may  
23 be issued as provided by resolution.

24 Section 26. To secure the payment of any or all of such revenue bonds, notes, or other

1 instruments, the revenues to be received by the authority from a lease agreement or loan  
2 agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings  
3 of the authority in connection with the issuance thereof and the issuance of any additional  
4 revenue bonds, notes, or other instruments payable from such revenues, income, or other funds  
5 to be derived from projects, the authority may execute and deliver a trust agreement. A remedy  
6 for any breach or default of the terms of any such trust agreement by the authority may be by  
7 mandamus proceedings in the appropriate circuit court to compel the performance and  
8 compliance therewith, but the trust agreement may prescribe by whom or on whose behalf the  
9 action may be instituted.

10 Section 27. The revenue bonds or notes shall be secured as provided in the authorizing  
11 resolution which may, notwithstanding any other provision of this Act, include in addition to  
12 any other security a specific pledge or assignment of and lien on or security interest in any or  
13 all revenues or money of the authority from whatever source which may by law be used for debt  
14 service purposes and a specific pledge or assignment of and lien on or security interest in any  
15 funds or accounts established or provided for by resolution of the authority authorizing the  
16 issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority  
17 of revenues or other moneys received or to be received by the authority pursuant to an  
18 agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other  
19 evidences of indebtedness of the authority shall be binding from the time the pledge is made.  
20 Revenues and other moneys received or to be received by the authority pursuant to an agreement  
21 with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or  
22 other evidences of indebtedness of the authority shall be held outside of the state treasury and  
23 in the custody of the authority or a trustee or a depository appointed by the authority. Revenues  
24 or other moneys received or to be received by the authority pursuant to an agreement with a

1 governmental agency relating to a project so pledged to pay revenue bonds, notes, or other  
2 evidences of indebtedness of the authority and thereafter received by the authority or such  
3 trustee or depository shall immediately be subject to the lien of the pledge without any physical  
4 delivery thereof or further act, and the lien of any pledge shall be binding against all parties  
5 having claims of any kind of tort, contract, or otherwise against the authority or the State of  
6 South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor  
7 any other instrument by which a pledge is created need be filed or recorded except in the records  
8 of the authority.

9 Section 28. The State of South Dakota pledges to and agrees with the holders of the revenue  
10 bonds and notes of the authority issued pursuant to this Act that the state will not limit or  
11 decrease the rights and powers vested in the authority by this Act so as to impair the terms of  
12 any contract made by the authority with such holders or in any way impair the rights and  
13 remedies of such holders until such revenue bonds, notes, or other instruments, together with  
14 interest thereon, with interest on any unpaid installments of interest, and all costs and expenses  
15 in connection with any action or proceedings by or on behalf of such holders, are fully met and  
16 discharged. The authority may include these pledges and agreements of the state in any contract  
17 with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

18 Section 29. Nothing in this Act may be construed to authorize the authority to create a debt  
19 of the state within the meaning of the Constitution or statutes of South Dakota and all revenue  
20 bonds, notes, other instruments and obligations issued by the authority pursuant to the  
21 provisions of this Act are payable and shall state that they are payable solely from the funds  
22 pledged for their payment in accordance with the resolution authorizing their issuance or in any  
23 trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any  
24 event liable for the payment of the principal of or interest on any bonds, notes, instruments, or

1 obligations issued by the authority or for the performance of any pledge, mortgage, obligation,  
2 or agreement of any kind whatsoever which may be undertaken by the authority. No breach of  
3 any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon  
4 the state or any charge upon its general credit or against its taxing power.

5 Section 30. The state and all counties, municipalities, political subdivisions, public bodies,  
6 public officers, banks, bankers, trust companies, savings banks and institutions, building and  
7 loan associations, savings and loan associations, personal representatives, conservators, trustees,  
8 and other fiduciaries may legally invest any debt service funds, money, or other funds belonging  
9 to them or within their control in any bonds or notes issued pursuant to this Act.

10 Section 31. Any documentary material or data made or received by the authority for  
11 purposes under this Act, to the extent that such material or data consists of trade secrets,  
12 scientific or technical secrets, matters involving national security, or commercial or financial  
13 information regarding the operation of a business, may not be considered public records, and  
14 are exempt from disclosure. Any discussion or consideration of such information may be held  
15 by the authority in executive session.

16 Section 32. The authority may acquire title to any project with respect to which it exercises  
17 its authority.

18 Section 33. The authority may acquire by purchase, lease, gift, or otherwise any property or  
19 rights to any property from any person or any governmental agency, whether improved for the  
20 purposes of any prospective project or unimproved. The authority may also accept any donation  
21 of funds for its purposes from any of those sources.

22 Section 34. The authority may acquire, develop, construct, improve, maintain, operate, and  
23 decommission any project, either under its own direction or through collaboration with any  
24 approved applicant, or to acquire any project through purchase or otherwise, using for that

1 purpose the proceeds derived from its sale of revenue bonds, notes, or other instruments or  
2 governmental loans, grants, or other funds and to hold title to those projects in the name of the  
3 authority.

4 Section 35. The authority may enter into intergovernmental agreements with any  
5 governmental agency.

6 Section 36. The authority may share employees with governmental agencies.

7 Section 37. The provisions of § 5-2-19 do not apply to real or personal property given to the  
8 authority.

9 Section 38. The authority shall designate a qualified public depository as defined in § 4-6A-  
10 1 as a depository of its money. Those depositories shall be designated only within the state and  
11 upon condition that bonds approved as to form and surety by the authority and at least equal in  
12 amount to the maximum sum expected to be on deposit at any one time shall be first given by  
13 the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt  
14 repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in  
15 any such depository, the treasurer and the sureties on the treasurer's official bond are, to that  
16 extent, exempt from liability for the loss of any of the deposited funds by reason of the failure,  
17 bankruptcy, or any other act or default of the depository. However, the authority may accept  
18 assignments of collateral by any depository of its funds to secure the deposits to the same extent  
19 and conditioned in the same manner as assignments of collateral are permitted by law to secure  
20 deposits of the funds consistent with the provisions of chapter 4-6A.

21 Section 39. The income of the authority and all land, improvements, equipment, fixtures,  
22 or other property interests owned by the authority are exempt from all taxation in the State of  
23 South Dakota. The authority is exempt from the provisions of chapter 47-31A.

24 Section 40. The authority is attached to the Department of Tourism and State Development

1 for reporting purposes. The authority shall submit such records, information, and reports in the  
2 form and at such times as required by the secretary. However, the authority shall report at least  
3 annually.

4 Section 41. Notwithstanding any other provisions of law, all funds received by the authority  
5 shall be set forth in an informational budget as described in § 4-7-7.2.

6 Section 42. Whereas, this Act is necessary for the support of the state government and its  
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
8 full force and effect from and after its passage and approval.