

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0318

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1049 - 01/26/2005

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

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the permitting and
2 the regulation of shooting preserves and to declare an emergency.

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

4 Section 1. That § 41-10-1 be amended to read as follows:

5 41-10-1. ~~In~~ Terms used in this chapter, ~~unless the context otherwise requires~~ mean:

6 (1) "Commission," ~~shall mean the South Dakota~~ the Game, Fish and Parks Commission,
7 acting directly or through its duly authorized officers or agents;

8 (2) "Department," the Department of Game, Fish and Parks, acting directly or through
9 its duly authorized officers or agents;

10 (3) "Person," ~~shall include~~ includes individuals, copartnerships, associations, and
11 corporations;

12 (3)(4) "Shooting ~~preserves~~ preserve," ~~shall be an~~ any acreage either privately owned
13 or leased on which hatchery raised game is released for the purpose of hunting,
14 for a fee, over an extended season.



1 Section 2. That § 41-10-2 be amended to read as follows:

2 41-10-2. The ~~Game, Fish and Parks Commission~~ department may issue and renew shooting
3 preserve operating permits for privately owned and operated shooting preserves.

4 Section 3. That § 41-10-3 be amended to read as follows:

5 41-10-3. Any person owning, holding, or controlling, by lease or otherwise, any contiguous
6 tract of land of not more than ~~one~~ two thousand ~~two~~ five hundred ~~eighty~~ sixty acres, who desires
7 to establish a shooting preserve under the regulations provided in this chapter, ~~shall~~ may make
8 application to the ~~Game, Fish and Parks Commission~~ department for a shooting preserve
9 operating permit. ~~Said~~ The application shall be made by the applicant, ~~his agent, or his~~ or the
10 applicant's agent or attorney, and shall be accompanied by a fee which is determined as provided
11 by § 41-10-4.

12 Section 4. That § 41-10-4.5 be amended to read as follows:

13 41-10-4.5. Upon receipt of a written application for a new shooting preserve operating
14 permit, the ~~commission shall schedule a public hearing on the application~~ department shall
15 notify the public of the application by publishing notice of the time and manner in which
16 interested persons may present data, opinions, or arguments in writing to the department on the
17 application and the manner in which interested persons may request status as an interested party
18 and request receipt of written notice of the decision of the department. The department shall
19 publish the notice of the time, place, and purpose of the hearing once at least twenty days ~~before~~
20 the hearing prior to the time designated by the department in the published notice in at least
21 three newspapers of general circulation in areas of the state likely to be affected by the proposed
22 permit. ~~After the hearing, the commission may issue the permit in accordance with the~~
23 requirements of § 41-10-7. No more than ten days after the time designated by the department
24 in the published notice, the department shall provide and mail by certified mail, return receipt

1 requested, written notice of its decision made in accordance with the requirements of § 41-10-7
2 to the applicant and to any person who submitted within the prescribed time and manner data,
3 opinions, or arguments in writing to the department in opposition to issuance of the new
4 operating permit and who requested the status as an interested party in accordance with this
5 section and the published notice. The date that written notice of the decision is mailed to the
6 applicant and to an interested person who requested the status of an interested party constitutes
7 the respective date notice of application denial or approval has been provided as referenced in
8 sections 9 and 10 of this Act.

9 Section 5. That § 41-10-6 be amended to read as follows:

10 41-10-6. Upon receipt of the application for a shooting preserve operating permit, the ~~Game,~~
11 ~~Fish and Parks Commission~~ department shall inspect the area described in ~~such~~ the application,
12 the premises, and the facilities. The ~~commission~~ department also shall evaluate the ability of the
13 applicant to operate an area of this character.

14 Section 6. That § 41-10-7 be amended to read as follows:

15 41-10-7. If the ~~Game, Fish and Parks Commission~~ department ~~finds that~~ is satisfied that all
16 of the following criteria have been established by the applicant:

- 17 (1) The applicant for a shooting preserve operating permit proposes to comply with all
18 of the provisions of this chapter;
- 19 (2) The applicant is financially able to provide the necessary facilities and services to
20 operate a shooting preserve;
- 21 (3) The preserve shall be open to the general public without restrictions as to race, color,
22 or creed;
- 23 (4) The operation will not work a fraud upon persons who are permitted to hunt thereon;
- 24 (5) The operation is not designed to circumvent game laws and regulations;

1 (6) The issuance of the permit will be in the public interest;

2 (7) The applicant is a resident of the state;

3 (8) The applicant does not operate or own any interest in more than ~~two~~ one shooting
4 ~~preserves~~ preserve comprised of a contiguous tract of land of more than one thousand
5 two hundred eighty acres nor more than two shooting preserves each of which are
6 comprised of a contiguous tract of land of one thousand two hundred eighty acres or
7 less; and

8 (9) The preserve for which an operating permit is requested is at least one mile from any
9 game production area or other publicly owned shooting area, or if located within one
10 mile of such areas, the preserve would not take unfair advantage of wildlife habitat
11 developments or wildlife population existing on those areas, or would not otherwise
12 be detrimental to the public interest;

13 the ~~commission~~ department shall approve the application and issue a shooting preserve
14 operating permit for the operation of a shooting preserve on the property described in the
15 application with the rights and subject to the limitations prescribed in this chapter and the
16 ~~commission rules promulgated thereunder~~ pursuant to this chapter. However, the provisions of
17 subdivisions (7) and (9) of this section do not apply to any shooting preserve licensed pursuant
18 to this chapter, prior to July 1, 1986.

19 Section 7. That § 41-10-14 be amended to read as follows:

20 41-10-14. Within the limits set by the ~~Game, Fish and Parks Commission~~ commission, in
21 rules promulgated pursuant to chapter 1-26, the shooting preserve operator may establish ~~his~~
22 ~~own~~ shooting hours and limitations and restrictions on the age, sex, ~~and~~ number, and type of
23 each game species that may be taken by each person, ~~and he~~. The operator may establish ~~his~~
24 ~~own shooting hours, bag limits, and~~ the fees to be charged to ~~his~~ the operator's guests.

1 Section 8. That § 41-10-16 be amended to read as follows:

2 41-10-16. Any person licensed to hunt a species as required by this chapter may harvest and
3 legally possess pen raised or wild game shot on a shooting preserve if ~~such~~ the game is tagged
4 as directed by the ~~Game, Fish and Parks Commission~~ commission in rules promulgated
5 pursuant to chapter 1-26. The provisions of this section relating to issuance of tags and
6 remittance of tag fees, shall be administered by the ~~Department of Game, Fish and Parks~~
7 department pursuant to commission rules adopted pursuant to § 41-2-18. The cost of each ~~such~~
8 tag to the shooting preserve operator shall be established by the commission in rules
9 promulgated pursuant to chapter 1-26.

10 Section 9. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If an applicant is denied a shooting preserve operating permit by the department, the
13 applicant may make a written request to the department for a contested case hearing before the
14 commission pursuant to chapter 1-26. The written request shall be mailed to the department by
15 certified mail, return receipt requested, on or before ten days have elapsed from the date that the
16 notice of application denial has been provided and mailed to the applicant by certified mail,
17 return receipt requested.

18 Section 10. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If an applicant is granted a new shooting preserve operating permit by the department, any
21 interested person who has requested the status of an interested party and who has presented data,
22 opinion, or arguments in writing to the department pursuant to the requirements in § 41-10-4.5
23 may make a written request to the department for a contested case hearing before the
24 commission pursuant to chapter 1-26. The written request shall be mailed to the department and

1 the applicant by certified mail, return receipt requested, on or before ten days have elapsed from
2 the date that the notice of application approval has been provided to the interested party.

3 Section 11. That ARSD 41:09:01:01 be amended to read as follows:

4 41:09:01:01. Operation plan to be submitted with application. A person submitting an
5 application for a shooting preserve permit shall submit with the application a detailed plan of
6 operation for the proposed private shooting preserve for approval of the ~~commission~~
7 department.

8 Section 12. That ARSD 41:09:01:06 be amended to read as follows:

9 41:09:01:06. Applications - New and renewal -- Appeal process for renewal applications.
10 Applications for new shooting preserves and renewal applications for existing shooting
11 preserves must be received in the Pierre office of the department no earlier than January 1 and
12 no later than March 1 of the year the shooting preserve operation is to begin. ~~The commission~~
13 ~~shall review all new applications at a regular meeting.~~

14 ~~—The director of the Division of Wildlife shall consider all renewal applications. If the~~
15 ~~director denies a renewal application, the department shall send a notice of denial to the~~
16 ~~applicant by certified mail, return receipt requested.~~

17 ~~—The applicant may appeal the denial of the renewal application by the director by giving~~
18 ~~notice of appeal and requesting review by the commission. The notice of appeal and request for~~
19 ~~review must be mailed to the department by certified mail, return receipt requested, within 30~~
20 ~~days after the date of the notice of application denial. If the notice of appeal and request for~~
21 ~~review are made within the 30-day time limit, the commission shall review the renewal~~
22 ~~application at a regular meeting.~~

23 Section 13. That ARSD 41:09:01:06.01 be repealed.

24 ~~—41:09:01:06.01. Notice of public hearing. Upon receipt of a written application for licensing~~

1 ~~of a shooting preserve located within one mile of a publicly owned shooting area, the~~
2 ~~department shall schedule a public hearing on the application. The department shall publish the~~
3 ~~notice of the time and place of hearing once at least 20 days before the hearing in at least three~~
4 ~~newspapers of general circulation in different parts of the state likely to be affected by the~~
5 ~~application.~~

6 Section 14. 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.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

553L0351

HOUSE ENGROSSED NO. **HB 1095** - 02/07/2005

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

Introduced by: Representatives Dykstra, Cutler, Davis, Elliott, Hackl, Kraus, Miles, Murschel, Rave, and Tornow and Senators Duenwald, Adelstein, and Dempster

1 FOR AN ACT ENTITLED, An Act to provide for a drug screening program for certain facilities
2 providing patient or resident care or supervision.

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

4 Section 1. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The commissioner of the Bureau of Personnel shall establish and implement a drug
7 screening program for applicants who seek positions at the Human Services Center or the South
8 Dakota Developmental Center whose primary duty includes patient or resident care or
9 supervision. The commissioner may establish and implement a drug screening program for
10 employees holding positions at the Human Services Center or the South Dakota Developmental
11 Center whose primary duty includes patient or resident care or supervision, based upon
12 reasonable suspicion of illegal drug use by any such employee.

13 Section 2. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as
14 follows:



1 Any printed public announcement or advertisement soliciting applications for employment
2 at the South Dakota Human Services Center or South Dakota Developmental Center for a
3 position in which the primary duty includes patient or resident care or supervision, shall include
4 a statement of the requirements of the drug screening program established pursuant to this Act.

5 Section 3. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Individual test results and medical information collected pursuant to this Act are
8 confidential. This information may be revealed only as authorized by the commissioner of the
9 Bureau of Personnel. An applicant or employee may have access to the information or test
10 results upon written request to the commissioner.

11 Section 4. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Except as provided in section 3 of this Act, any person responsible for recording, reporting,
14 or maintaining medical information required pursuant to the provisions of this Act, who
15 knowingly or intentionally discloses or fails to protect medical information declared to be
16 confidential under section 3 of this Act, or who compels another person to disclose such medical
17 information, is guilty of a Class 2 misdemeanor.

18 Section 5. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The commissioner of the Bureau of Personnel may promulgate rules, pursuant to chapter 1-
21 26, necessary to carry out the provisions of this Act with regard to:

- 22 (1) Listing of positions whose primary duty includes patient or resident care or
23 supervision;
- 24 (2) Substances to be screened;

- 1 (3) Drug screening procedures for applicants for positions at the South Dakota Human
2 Services Center or the South Dakota Developmental Center whose primary duty
3 includes patient or resident care or supervision;
- 4 (4) Drug screening procedures for employees at the South Dakota Human Services
5 Center or the South Dakota Developmental Center whose primary duty includes
6 patient or resident care or supervision;
- 7 (5) Procedures for collecting, analyzing, and evaluating test samples;
- 8 (6) Confidentiality of testing procedures;
- 9 (7) Referral for education or treatment;
- 10 (8) Consequences that may result from valid positive test results or from failure to
11 submit to a test.

12 Section 6. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any adjustment training center shall have a drug screening policy for applicants seeking
15 employment whose primary duty includes patient or resident care or supervision. Any
16 adjustment training center shall have a drug screening policy for employees whose primary duty
17 includes patient or resident care or supervision, based upon reasonable suspicion of illegal drug
18 use by such employee.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

547L0705

HOUSE ENGROSSED NO. **HB 1154** - 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: Representatives Hanks, Brunner, Elliott, Hennies, Kraus, and McLaughlin
and Senators McCracken and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to limit municipal annexation near regional airport
2 authorities.

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

4 Section 1. That § 9-4-12 be amended to read as follows:

5 9-4-12. No other municipality may annex any territory within one and one-quarter miles of
6 any parcel of land operated as a municipal airport by an airport board organized pursuant to
7 chapter 50-6 or an airport authority organized pursuant to chapter 50-6A. However, if the
8 governing body of the airport-operating municipality consents, by resolution, to such a proposed
9 annexation by another municipality, the provisions of this section do not apply to the extent of
10 the waiver provided in the consent resolution of the airport-operating municipality.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

817L0546

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1166** - 02/09/2005

Introduced by: Representatives Hunt, Boomgarden, Brunner, Buckingham, Deadrick, Dykstra, Elliott, Gassman, Gillespie, Glenski, Hackl, Hanks, Hargens, Haverly, Heineman, Hennies, Howie, Hunhoff, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Apa, Broderick, Duenwald, Earley, Gant, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koetzle, Kooistra, Koskan, Lintz, McNenny, Moore, Napoli, Olson (Ed), Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings pertaining to the
2 health and rights of women, to revise the physician disclosure requirements to be made to
3 a woman contemplating submitting to an abortion, and to provide for certain causes of
4 action for professional negligence if an abortion is performed without informed consent.

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

6 Section 1. The Legislature finds that all abortions, whether surgically or chemically induced,
7 terminate the life of a whole, separate, unique, living human being.

8 Section 2. The Legislature finds that there is an existing relationship between a pregnant
9 woman and her unborn child during the entire period of gestation.

10 Section 3. The Legislature finds that procedures terminating the life of an unborn child
11 impose risks to the life and health of the pregnant woman. The Legislature further finds that a



1 woman seeking to terminate the life of her unborn child may be subject to pressures which can
2 cause an emotional crisis, undue reliance on the advice of others, clouded judgment, and a
3 willingness to violate conscience to avoid those pressures. The Legislature therefore finds that
4 great care should be taken to provide a woman seeking to terminate the life of her unborn child
5 and her own constitutionally protected interest in her relationship with her child with complete
6 and accurate information and adequate time to understand and consider that information in order
7 to make a fully informed and voluntary consent to the termination of either or both.

8 Section 4. The Legislature finds that pregnant women contemplating the termination of their
9 right to their relationship with their unborn children, including women contemplating such
10 termination by an abortion procedure, are faced with making a profound decision most often
11 under stress and pressures from circumstances and from other persons, and that there exists a
12 need for special protection of the rights of such pregnant women, and that the State of South
13 Dakota has a compelling interest in providing such protection.

14 Section 5. The Legislature finds that, through the common law, the courts of the State of
15 South Dakota have imposed a standard of practice in the health care profession that, except in
16 exceptional circumstances, requires physicians and other health care practitioners to provide
17 patients with such facts about the nature of any proposed course of treatment, the risks of the
18 proposed course of treatment, the alternatives to the proposed course, including any risks that
19 would be applicable to any alternatives, as a reasonable patient would consider significant to the
20 decision of whether to undergo the proposed course of treatment.

21 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The South Dakota common law cause of action for medical malpractice informed consent
24 claims based upon the reasonable patient standard is reaffirmed and is hereby expressly declared

1 to apply to all abortion procedures. The duty of a physician to disclose all facts about the nature
2 of the procedure, the risks of the procedure, and the alternatives to the procedure that a
3 reasonable patient would consider significant to her decision of whether to undergo or forego
4 the procedure applies to all abortions. Nothing in this Act may be construed to render any of the
5 requirements otherwise imposed by common law inapplicable to abortion procedures or
6 diminish the nature or the extent of those requirements. The disclosure requirements expressly
7 set forth in this Act are an express clarification of, and are in addition to, those common law
8 disclosure requirements.

9 Section 7. That § 34-23A-10.1 be amended to read as follows:

10 34-23A-10.1. ~~No abortion may be performed except with the voluntary and informed~~
11 ~~consent of the female upon whom the abortion is to be performed. Except in the case of a~~
12 ~~medical emergency, consent to an abortion is voluntary and informed only if:~~

13 ~~(1) The female is told the following by the physician who is to perform the abortion or~~
14 ~~by the referring physician, at least twenty-four hours before the abortion:~~

15 ~~(a) The name of the physician who will perform the abortion;~~

16 ~~(b) The particular medical risks associated with the particular abortion procedure~~
17 ~~to be employed including, when medically accurate, the risks of infection,~~
18 ~~hemorrhage, danger to subsequent pregnancies, and infertility;~~

19 ~~(c) The probable gestational age of the unborn child at the time the abortion is to~~
20 ~~be performed; and~~

21 ~~(d) The medical risks associated with carrying her child to term;~~

22 ~~(2) The female is informed, by telephone or in person, by the physician who is to~~
23 ~~perform the abortion, by the referring physician, or by an agent of either, at least~~
24 ~~twenty-four hours before the abortion:~~

1 ~~———— (a) That medical assistance benefits may be available for prenatal care, childbirth,~~
2 ~~and neonatal care;~~

3 ~~———— (b) That the father is liable to assist in the support of her child, even in instances~~
4 ~~in which the father has offered to pay for the abortion; and~~

5 ~~———— (c) That she has the right to review the printed materials described in § 34-23A-~~
6 ~~10.3 and the website described in § 34-23A-10.4. The physician or the~~
7 ~~physician's agent shall orally inform the female that the materials have been~~
8 ~~provided by the State of South Dakota at no charge to the female. If the female~~
9 ~~chooses to view the materials, they shall either be given to her at least~~
10 ~~twenty-four hours before the abortion or mailed to her at least seventy-two~~
11 ~~hours before the abortion by certified mail, restricted delivery to addressee,~~
12 ~~which means the postal employee can only deliver the mail to the addressee;~~

13 ~~—— (3) The female certifies in writing, prior to the abortion, that the information described~~
14 ~~in subdivisions (1) and (2) of this section has been furnished her, and that she has~~
15 ~~been informed of her opportunity to review the information described in § 34-23A-~~
16 ~~10.3; and~~

17 ~~—— (4) Prior to the performance of the abortion, the physician who is to perform the abortion~~
18 ~~or the physician's agent receives a copy of the written certification prescribed by~~
19 ~~subdivision (3).~~

20 ~~—— The physician may provide the information prescribed in subdivision (1) by telephone~~
21 ~~without conducting a physical examination or tests of the patient, in which case the information~~
22 ~~required to be supplied may be based on facts supplied the physician by the female and whatever~~
23 ~~other relevant information is reasonably available to the physician.~~

24 No abortion may be performed unless the physician first obtains a voluntary and informed

1 written consent of the pregnant woman upon whom the physician intends to perform the
2 abortion, unless the physician determines that obtaining an informed consent is impossible due
3 to a medical emergency and further determines that delaying in performing the procedure until
4 an informed consent can be obtained from the pregnant woman or her next of kin in accordance
5 with chapter 34-12C is impossible due to the medical emergency, which determinations shall
6 then be documented in the medical records of the patient. A consent to an abortion is not
7 voluntary and informed, unless, in addition to any other information that must be disclosed
8 under the common law doctrine, the physician provides that pregnant woman with the following
9 information:

10 (1) A statement in writing providing the following information:

11 (a) The name of the physician who will perform the abortion;

12 (b) That the abortion will terminate the life of a whole, separate, unique, living
13 human being;

14 (c) That the pregnant woman has an existing relationship with that unborn human
15 being and that the relationship enjoys protection under the United States
16 Constitution and under the laws of South Dakota;

17 (d) That by having an abortion, her existing relationship and her existing
18 constitutional rights with regards to that relationship will be terminated;

19 (e) A description of all known medical risks of the procedure and statistically
20 significant risk factors to which the pregnant woman would be subjected,
21 including:

22 (i) Depression and related psychological distress;

23 (ii) Increased risk of suicide ideation and suicide;

24 (iii) A statement setting forth an accurate rate of deaths due to abortions,

1 including all deaths in which the abortion procedure was a substantial
2 contributing factor;

3 (iv) All other known medical risks to the physical health of the woman,
4 including the risk of infection, hemorrhage, danger to subsequent
5 pregnancies, and infertility;

6 (f) The probable gestational age of the unborn child at the time the abortion is to
7 be performed, and a scientifically accurate statement describing the
8 development of the unborn child at that age; and

9 (g) The statistically significant medical risks associated with carrying her child to
10 term compared to undergoing an induced abortion.

11 The disclosures set forth above shall be provided to the pregnant woman in writing
12 and in person no later than two hours before the procedure is to be performed. The
13 physician shall ensure that the pregnant woman signs each page of the written
14 disclosure with the certification that she has read and understands all of the
15 disclosures, prior to the patient signing a consent for the procedure. If the pregnant
16 woman asks for a clarification or explanation of any particular disclosure, or asks any
17 other question about a matter of significance to her, the explanation or answer shall
18 be made in writing and be given to the pregnant woman before signing a consent for
19 the procedure and shall be made part of the permanent medical record of the patient;

20 (2) A statement by telephone or in person, by the physician who is to perform the
21 abortion, or by the referring physician, or by an agent of both, at least twenty-four
22 hours before the abortion, providing the following information:

23 (a) That medical assistance benefits may be available for prenatal care, childbirth,
24 and neonatal care;

1 has read the materials which are required to be disclosed, and that the physician believes she
2 understands the information imparted.

3 Section 8. That § 34-23A-1 be amended to read as follows:

4 34-23A-1. Terms as used in this chapter mean:

5 (1) "Abortion," the use of any means to intentionally terminate the pregnancy of a ~~female~~
6 woman known to be pregnant with knowledge that the termination with those means
7 will, with reasonable likelihood, cause the death of the fetus;

8 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child, of
9 human parents;

10 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
11 pellucida of a female human ovum;

12 (4) "Human being," an individual living member of the species of Homo sapiens,
13 including the unborn human being during the entire embryonic and fetal ages from
14 fertilization to full gestation;

15 (5) "Medical emergency," any condition which, on the basis of the physician's good faith
16 clinical judgment, so complicates the medical condition of a pregnant ~~female~~ woman
17 as to necessitate the immediate abortion of her pregnancy to avert her death or for
18 which a delay will create serious risk of substantial and irreversible impairment of
19 a major bodily function;

20 ~~(4)(6)~~ "Parent," one parent of the pregnant minor or the guardian or conservator of the
21 pregnant ~~female~~ woman;

22 ~~(5)(7)~~ "Physician," a person licensed under the provisions of chapter 36-4 or a physician
23 practicing medicine or osteopathy in the employ of the government of the United
24 States or of this state;

1 ~~(6)~~(8) "Probable gestational age of the unborn child," what, in the judgment of the
2 physician, will with reasonable probability be the gestational age of the unborn child
3 at the time the abortion is planned to be performed.

4 Section 9. That § 34-23A-10.3 be amended to read as follows:

5 34-23A-10.3. The health department shall publish, in culturally sensitive languages, within
6 sixty one hundred eighty days after July 1, ~~1993~~ 2005, the following printed materials in such
7 a way as to ensure that the information is easily comprehensible:

8 (1) Materials designed to inform the pregnant woman of all the disclosures enumerated
9 in section 7 of this Act;

10 (2) Materials designed to inform the ~~female~~ pregnant woman of public and private
11 agencies and services available to assist a ~~female~~ pregnant woman through
12 pregnancy, upon childbirth and while the child is dependent, including adoption
13 agencies, which shall include a list of the agencies available and a description of the
14 services they offer; and

15 ~~(2)~~(3) Materials designed to inform the ~~female~~ pregnant woman of the probable anatomical
16 and physiological characteristics of the unborn child at two-week gestational
17 increments from the time when a ~~female~~ pregnant woman can be known to be
18 pregnant to full term, including any relevant information on the possibility of the
19 unborn child's survival and pictures or drawings representing the development of
20 unborn children at two-week gestational increments. Such pictures or drawings shall
21 contain the dimensions of the fetus and shall be realistic and appropriate for the stage
22 of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed
23 to convey only accurate scientific information about the unborn child at the various
24 gestational ages.

1 The materials shall be printed in a typeface large enough to be clearly legible and shall be
2 available at no cost from the ~~health department~~ Department of Health upon request and in
3 appropriate number to any person, facility or hospital.

4 Section 10. If any court of law enjoins, suspends, or delays the implementation of the
5 provisions of section 7 of this Act, the provisions of § 34-23A-10.1, as of June 30, 2005, are
6 effective during such injunction, suspension, or delayed implementation.

7 Section 11. If any court of law finds any provisions of section 7 of this Act to be
8 unconstitutional, the other provisions of section 7 are severable. If any court of law finds the
9 provisions of section 7 of this Act to be entirely or substantially unconstitutional, the provisions
10 of § 34-23A-10, as of June 30, 2005, are immediately reeffective.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

761L0679

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1194 - 02/07/2005

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

Introduced by: Representatives O'Brien, Garnos, and Rounds and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to require notification to certain retail licensees of
2 prohibited alcohol sales to persons below the age of twenty-one prior to any subsequent
3 violation.

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

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

7 Any enforcement entity that conducts compliance checks using underaged informants to
8 determine if a licensee will sell an alcoholic beverage to a person under the age of twenty-one
9 must inform the licensee in writing of the results of any such compliance check within forty-
10 eight hours after the compliance check takes place.

11 Section 2. That § 35-2-10.1 be amended to read as follows:

12 35-2-10.1. No retail license may be revoked or suspended because of a violation of any
13 statute, ordinance, rule, or regulation prohibiting the sale or service of any alcoholic beverage
14 to a person under the age of twenty-one years if the violation was committed by an employee
15 or agent of the licensee and the licensee has not had more than two violations of any statute,



1 ordinance, rule, or regulation prohibiting the sale or service of an alcoholic beverage to a person
2 under the age of twenty-one years on the premises where the violation occurred in the previous
3 twenty-four months.

4 If the licensee meets the requirements of the conditions provided by this section, the
5 secretary shall impose a civil penalty of five hundred dollars for a first violation and one
6 thousand dollars for a second violation. However, if the employee or agent has not been certified
7 by a nationally recognized training program approved by the Department of Revenue that
8 provides instruction on techniques to prevent persons under the age of twenty-one years from
9 purchasing or consuming alcoholic beverages, the secretary shall impose a civil penalty of one
10 thousand dollars for a first violation and two thousand dollars for a second violation.

11 A violation of any statute, ordinance, rule, or regulation prohibiting the sale or service of any
12 alcoholic beverage to a person under the age of twenty-one years occurring within forty-eight
13 hours of commencement of a compliance check as provided in section 1 of this Act shall be
14 considered to be a first violation for purposes of this section. However, except for purposes of
15 corroboration, at no time may more than one underaged informant be used in any compliance
16 check in any forty-eight hour period.

17 A licensee may request an administrative hearing pursuant to chapter 1-26 to contest the
18 imposition of a civil penalty.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

445L0787

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1249** - 02/11/2005

Introduced by: Representatives Dykstra, Brunner, Buckingham, Davis, Deadrick, Frost, Fryslie, Garnos, Hackl, Howie, Hunhoff, Hunt, Jensen, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Miles, Nelson, Olson (Ryan), Pederson (Gordon), Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Van Etten, Weems, and Wick and Senators Hansen (Tom), Abdallah, Apa, Bartling, Duenwald, Earley, Gant, Gray, Greenfield, Hanson (Gary), Kooistra, Koskan, Lintz, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to prohibit the performance of abortions, except to save the
2 life of the mother, and to provide a penalty therefor and to provide for a delayed effective
3 date.

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

5 Section 1. That § 34-23A-2 be repealed.

6 ~~— 34-23A-2. An abortion may be performed in this state only if it is performed in compliance~~
7 ~~with § 34-23A-3, 34-23A-4, or 34-23A-5.~~

8 Section 2. That § 34-23A-3 be repealed.

9 ~~— 34-23A-3. An abortion may be performed by a physician during the first twelve weeks of~~
10 ~~pregnancy. The abortion decision and its effectuation must be left to the medical judgment of~~
11 ~~the pregnant woman's attending physician during the first twelve weeks of pregnancy.~~

12 Section 3. That § 34-23A-4 be repealed.



1 ~~34-23A-4. An abortion may be performed following the twelfth week of pregnancy and~~
2 ~~through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under~~
3 ~~the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any~~
4 ~~department, agency, or political subdivision of either or in the case of hospital facilities not~~
5 ~~being available, in the licensed physician's medical clinic or office of practice subject to the~~
6 ~~requirements of § 34-23A-6.~~

7 Section 4. That § 34-23A-5 be repealed.

8 ~~34-23A-5. An abortion may be performed following the twenty-fourth week of pregnancy~~
9 ~~by a physician only in a hospital authorized under § 34-23A-4 and only if there is appropriate~~
10 ~~and reasonable medical judgment that performance of an abortion is necessary to preserve the~~
11 ~~life or health of the mother.~~

12 Section 5. That § 22-17-5 be repealed.

13 ~~22-17-5. Any person who performs, procures or advises an abortion other than authorized~~
14 ~~by chapter 34-23A is guilty of a Class 6 felony.~~

15 Section 6. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any person who administers to any pregnant female or who prescribes or procures for any
18 pregnant female any medicine, drug, or substance or uses or employs any instrument or other
19 means with intent thereby to procure an abortion, unless there is appropriate and reasonable
20 medical judgment that performance of an abortion is necessary to preserve the life of the
21 pregnant female, is guilty of a Class 6 felony.

22 Section 7. This Act is effective on the date that the states are recognized by the United States
23 Supreme Court to have the authority to regulate or prohibit abortion at all stages of pregnancy.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0525

HOUSE ENGROSSED NO. **SB 96** - 02/22/2005

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

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

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

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

6 Any third class municipality holding a license pursuant to Title 35 may serve or provide for
7 the service of food at any establishment operating under such license. Any first or second class
8 municipality holding a license pursuant to Title 35 which is serving or providing for the service
9 of food at an establishment operating under such license as of July 1, 2004, may continue to
10 serve or provide for the service of food at such establishment.

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



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0690

HOUSE ENGROSSED NO. **SB 171** - 02/22/2005

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

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

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

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

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

10 or

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

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



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

930L0641

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 179** - 02/18/2005

Introduced by: Senators Hansen (Tom), Duniphan, Greenfield, Olson (Ed), and Two Bulls
and Representatives McCoy, Frost, Hackl, Halverson, and Jensen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the practice of
2 occupational therapy.

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

4 Section 1. That § 36-31-1 be amended to read as follows:

5 36-31-1. Terms used in this chapter mean:

6 (1) "Association," the South Dakota Occupational Therapy Association;

7 (2) "Board of examiners," the South Dakota State Board of Medical and Osteopathic
8 Examiners;

9 (3) "Occupational therapists," any person licensed to practice occupational therapy as
10 defined in this chapter and whose license is in good standing;

11 (4) "Occupational therapy," the evaluation, planning and implementation of a program
12 of purposeful activities to develop or maintain adaptive skills necessary to achieve
13 the maximal physical and mental functioning of the individual in his or her daily
14 pursuits. The practice of "occupational therapy" includes, ~~but is not limited to,~~
15 consultation, evaluation, and treatment of individuals whose abilities to cope with the



1 tasks of living are threatened or impaired by developmental deficits, the aging
2 process, learning disabilities, poverty and cultural differences, physical injury or
3 disease, psychological and social disabilities, or anticipated dysfunction.
4 Occupational therapy services include such treatment techniques as task-oriented
5 activities to prevent or correct physical or emotional deficits or to minimize the
6 disabling effect of these deficits in the life of the individual; such evaluation
7 techniques as assessment of sensory integration and motor abilities, assessment of
8 development of self-care and feeding, activities and capacity for independence,
9 assessment of the physical capacity for prevocational and work tasks, assessment of
10 play and leisure performance, and appraisal of living areas for the handicapped;
11 physical agent modalities limited to the upper extremities to enhance physical
12 functional performance, if certified in accordance with § 36-31-6; and specific
13 occupational therapy techniques such as activities of daily living skills, designing,
14 fabricating, or applying selected orthotic devices or selecting adaptive equipment,
15 sensory integration and motor activities, the use of specifically designed manual and
16 creative activities, specific exercises to enhance functional performance, and
17 treatment techniques for physical capabilities for work activities. Such techniques are
18 applied in the treatment of individual patients or clients, in groups, or through social
19 systems;

20 (5) "Occupational therapy aide," any person who assists in the practice of occupational
21 therapy under the direct supervision of an occupational therapist or occupational
22 therapy assistant;

23 (6) "Occupational therapy assistant," any person licensed to assist in the practice of
24 occupational therapy, under the supervision of or with the consultation of a licensed

1 occupational therapist and whose license is in good standing;

2 (7) "Occupational therapy committee," the committee provided for in this chapter;

3 (8) "Physical agent modalities," modalities that produce a biophysiological response
4 through the use of light, water, temperature, sound, or electricity, or mechanical
5 devices. Physical agent modalities include:

6 (a) Superficial thermal agents such as hydrotherapy/whirlpool, cryotherapy (cold
7 packs/ice), fluidotherapy, hot packs, paraffin, water, infrared, and other
8 commercially available superficial heating and cooling technologies;

9 (b) Deep thermal agents such as therapeutic ultrasound, phonophoresis, and other
10 commercially available technologies;

11 (c) Electrotherapeutic agents such as biofeedback, neuromuscular electrical
12 stimulation, functional electrical stimulation, transcutaneous electrical nerve
13 stimulation, electrical stimulation for tissue repair, high-voltage galvanic
14 stimulation, and iontophoresis and other commercially available technologies;

15 (d) Mechanical devices such as vasopneumatic devices and CPM (continuous
16 passive motion).

17 Section 2. That § 36-31-6 be amended to read as follows:

18 36-31-6. Any applicant applying for a license as an occupational therapist or as an
19 occupational therapy assistant shall file a written application provided by the board, showing
20 to the satisfaction of the board that he meets the following requirements:

21 (1) Residence: Applicant need not be a resident of this state;

22 (2) Character: Applicant shall be of good moral character;

23 (3) Education: Applicant shall present evidence satisfactory to the board of having
24 successfully completed the academic requirements of an educational program in

1 occupational therapy recognized by the board:

2 (a) The occupational therapy educational program shall be accredited by the
3 committee on allied health education and accreditation/American Medical
4 Association in collaboration with the American Occupational Therapy
5 Association;

6 (b) The occupational therapy assistant educational program shall be approved by
7 the American Occupational Therapy Association.

8 (4) Experience: Applicant shall submit to the board evidence of having successfully
9 completed a period of supervised fieldwork experience arranged by the recognized
10 educational institution where he met the academic requirements or by the nationally
11 recognized professional association:

12 (a) For an occupational therapist, a minimum of six months of supervised
13 fieldwork experience is required;

14 (b) For an occupational therapy assistant, a minimum of two months of supervised
15 fieldwork experience is required.

16 (5) Examination: An applicant for licensure as an occupational therapist or as an
17 occupational therapy assistant shall pass an examination approved by the board upon
18 recommendation by the occupational therapy committee;

19 (6) Certification: In order to apply physical agent modalities as defined in § 36-3-1, an
20 occupational therapist or occupational therapist assistant shall be qualified pursuant
21 to this subdivision, as follows:

22 (a) Has successfully completed twenty-five hours of American Occupational
23 Therapy Association or American Physical Therapy Association approved
24 education covering physical agent modalities and completed a supervised

1 mentorship to include five case studies on each class of modality to be
2 incorporated into patient care;

3 (b) Is certified as a hand therapist by the Hand Therapy Certification commission
4 or other equivalent entity recognized by the board; or

5 (c) Has completed education during a basic occupational therapy educational
6 program that included demonstration of competencies on each class of the
7 physical agent modalities.

8 A supervising therapist or mentor may be a physical therapist, a certified hand
9 therapist, or an occupational therapist who has completed a supervised mentorship
10 and has five years of clinical experience utilizing each class of physical agent
11 modalities; or an occupational therapist who has graduated from an occupational
12 therapy program whose curriculum includes physical agent modality education.