

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0311

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 20** - 01/27/2006

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a new dairy
2 manufacturing plant at South Dakota State University and to make an appropriation therefor.

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

4 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
5 equipping, and maintaining of, including heating air conditioning, plumbing, water, sewer,
6 electric facilities, architectural and engineering services, asbestos abatement, and such other
7 services as may be required to construct, a new dairy manufacturing plant at South Dakota State
8 University in Brookings, in Brookings County, at an estimated cost of four million dollars.

9 Section 2. There is hereby appropriated to the Board of Regents four million dollars
10 (\$4,000,000), or so much thereof as may be necessary, from private donations and grants
11 received by South Dakota State University to construct the facility described in section 1 of this
12 Act.

13 Section 3. The Board of Regents may accept, transfer, and expend any funds obtained for
14 these purposes from federal sources, gifts, contributions, or any other source, all of which shall
15 be deemed appropriated to the project authorized by this Act.



1 Section 4. The design and construction of the facility approved by this Act shall be under
2 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
3 commissioner of the Bureau of Administration and the executive director of the Board of
4 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
5 authorized by this Act.

6 Section 5. No general fund dollars may be used for the maintenance and repair of the facility
7 authorized by this Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0314

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 21** - 01/27/2006

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a manure
2 separator for the South Dakota Agricultural Experiment Station and to make an
3 appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, and such other
8 services as may be required to construct, a manure separator for the South Dakota Agricultural
9 Experiment Station, located at Brookings, in Brookings County, at an estimated cost of one
10 hundred fourteen thousand dollars.

11 Section 2. There is hereby appropriated to the Board of Regents one hundred fourteen
12 thousand dollars (\$114,000), or so much thereof as may be necessary, from federal and grant
13 funds awarded to the South Dakota Agricultural Experiment Station to construct the facility
14 described in section 1 of this Act.

15 Section 3. The Board of Regents may accept, transfer , and expend any funds obtained for



1 these purposes from federal sources, gifts, contributions, or any other source, all of which shall
2 be deemed appropriated to the project authorized by this Act.

3 Section 4. The design and construction of the facility approved by this Act shall be under
4 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
5 commissioner of the Bureau of Administration and the executive director of the Board of
6 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
7 authorized by this Act.

8 Section 5. No general fund dollars may be used for the maintenance and repair of the facility
9 authorized by this Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0312

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 23** - 01/27/2006

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a livestock
2 feed storage room as an addition to the livestock feed facility at the South Dakota
3 Agricultural Experiment Station Southeast Research Farm and to make an appropriation
4 therefor.

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

6 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
7 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
8 electric facilities, architectural and engineering services, asbestos abatement, and such other
9 services as may be required to construct, a livestock feed storage room as an addition to the
10 livestock feed facility at the South Dakota Agricultural Experiment Station Southeast Research
11 Farm, in Union County, at an estimated cost of seventeen thousand dollars.

12 Section 2. There is hereby appropriated to the Board of Regents seventeen thousand dollars
13 (\$17,000), or so much thereof as may be necessary, from the South Dakota Agricultural
14 Experiment Station activity funds to construct the facility described in section 1 of this Act.

15 Section 3. The Board of Regents may accept, transfer, and expend any funds obtained for



1 these purposes from federal sources, gifts, contributions, or any other source, all of which shall
2 be deemed appropriated to the project authorized by this Act.

3 Section 4. The design and construction of the facilities approved by this Act shall be under
4 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
5 commissioner of the Bureau of Administration and the executive director of the Board of
6 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
7 authorized by this Act.

8 Section 5. Notwithstanding the provisions of § 13-51-2, no money from the state general
9 fund, student tuition fees, nor the educational facilities fund may be used to finance the
10 maintenance and repair of the facilities specified in this Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0361

SENATE ENGROSSED NO. **SB 28** - 01/20/2006

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise and correct certain provisions related to the
2 criminal code revision of 2005.

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

4 Section 1. That § 22-7-8.1 be amended to read as follows:

5 22-7-8.1. If a defendant has been convicted of three or more felonies in addition to the
6 principal felony and none of the prior felony convictions was for a crime of violence as defined
7 in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels
8 but in no circumstance may the enhancement exceed the sentence for a Class C felony. A
9 defendant sentenced pursuant to this section is eligible for consideration for parole pursuant to
10 ~~§ 24-15-5~~ § 24-25A-32 if the defendant receives a sentence of less than life in prison.

11 Section 2. That § 24-15A-32 be amended to read as follows:

12 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
13 life or death, or an indeterminate sentence which is not yet set to a term of years by the board,
14 shall have an initial parole date set by the department. This date shall be calculated by applying
15 the percentage indicated in the following grid to the full term of the inmate's sentence pursuant
16 to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, any of



1 the following crimes shall be considered a violent crime for purposes of setting an initial parole
 2 date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree
 3 or burglary in the second degree if committed before July 1, 2006, arson, kidnapping, felony
 4 sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse, felony sexual contact as
 5 defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing
 6 a child in an obscene act, felony assault as defined in § 22-18-26, felony simple assault as
 7 defined in § 22-18-1, commission of a felony while armed as defined in §§ 22-14-12 and 22-14-
 8 13.1, discharging a firearm at an occupied structure or motor vehicle as defined in § 22-14-20,
 9 discharging a firearm from a moving vehicle as defined in § 22-14-21, and criminal pedophilia
 10 as defined in § 22-22-30.1:

Felony Convictions				
	Felony Class	First	Second	Third
11	Nonviolent			
12	Class 6	.25	.30	.40
13	Class 5	.25	.35	.40
14	Class 4	.25	.35	.40
15	Class 3	.30	.40	.50
16	Class 2	.30	.40	.50
17	Class 1	.35	.40	.50
18	<u>Class C</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>
19	Violent			
20	Class 6	.35	.45	.55
21	Class 5	.40	.50	.60
22	Class 4	.40	.50	.65
23	Class 3	.50	.60	.70
24	Class 2	.50	.65	.75
25	Class 1	.50	.65	.75

1	<u>Class C</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
2	Class B	1.0	1.0	1.0
3	Class A	1.0	1.0	1.0

4 Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences
5 are not eligible for parole. An initial parole date through the application of this grid may be
6 applied to a life sentence only after the sentence is commuted to a term of years. A Class A or
7 B felony commuted to a number of years shall be applied to the ~~Class B~~ Class C violent column
8 of the grid

9 Section 3. That § 22-30A-35 be amended to read as follows:

10 22-30A-35. The service of a notice of dishonor in accordance with §§ 22-30A-32 and 22-
11 30A-34 is not a an element of the crime of theft by insufficient funds check or theft by no
12 account check, nor is it an element of proof thereof or a defense to any prosecution therefor.

13 If the notice required by §§ 22-30A-32 and 22-30A-34 is returned undelivered, or if it
14 appears to the state's attorney that there is reasonable cause to believe that the writer of the
15 check intends to remove himself or herself from the jurisdiction of the court, the state's attorney
16 may elect to prosecute without such notice. However, if the insufficient funds check or no
17 account check is paid by the drawer to the holder, along with the costs and expenses provided
18 for in § 57A-3-421, within the thirty days after the notice is mailed or delivered to the drawer,
19 the check may not be prosecuted.

20 Section 4. That § 22-6-5.1 be amended to read as follows:

21 22-6-5.1. A court may sentence any person convicted of a crime committed while ~~he~~ that
22 person was a prisoner as defined by § 22-11A-1, to a term of not more than twice the maximum
23 term allowed by the statute for the commission of the same crime by a person not so confined.
24 However, the provisions of this section do not apply if, for the same offense, the prisoner is

1 subject to an enhanced penalty as an habitual offender.

2 Section 5. That § 26-11-3.1 be amended to read as follows:

3 26-11-3.1. Any delinquent child sixteen years of age or older against whom Class A, Class
4 B, Class C, Class 1, or Class 2 felony charges have been filed shall be tried in circuit court as
5 an adult. However, the child may request a transfer hearing which shall be conducted pursuant
6 to § 26-11-4 to determine if it is in the best interest of the public that the child be tried in circuit
7 court as an adult. In such a transfer hearing, there is a rebuttable presumption that it is in the best
8 interest of the public that any child, sixteen years of age or older, who is charged with a Class
9 A, Class B, Class C, Class 1, or Class 2 felony, shall be tried as an adult.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0350

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 39** - 01/17/2006

Introduced by: The Committee on Commerce at the request of the Department of Public Safety

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding petroleum and motor
2 fuels testing, quality, and labeling.

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

4 Section 1. That § 37-2-5 be amended to read as follows:

5 37-2-5. Terms used throughout §§ 37-2-5 to 37-2-24, inclusive, mean:

6 (1) "Alcohol," a colorless volatile flammable liquid containing no more than 1.25 percent
7 of water used for the purpose of blending or mixing with gasoline for use in motor
8 vehicles and commonly known as alcohol, ethanol or methanol;

9 (2) "ASTM," the American Society for Testing and Materials;

10 (3) "Aviation gasoline," a volatile hydrocarbon fuel free from suspended water and
11 sediment matter and that is suitable for use as a fuel in an aviation spark ignition
12 internal combustion engine designed for use in an aircraft;

13 (3A) "Biodiesel," a fuel comprised of mono-alkyl esters of long chain fatty acids derived
14 from vegetable oils or animal fats, designated B100, and meeting the requirements
15 of the American Society of Testing and Materials D 6751 as of January 1, 2005, and



1 is registered with the United States Environmental Protection Agency as a fuel and
2 fuel additive under section 211(b) of the Clean Air Act in effect on January 1, 2006;

3 (3B) "Biodiesel blend," a special blended fuel comprised of at least two percent by volume
4 of biodiesel blended with petroleum-based diesel fuel, designated BXX. In the
5 abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the
6 blend;

7 (4) "Department," the Department of Public Safety;

8 (5) "Diesel fuel," a refined middle distillate hydrocarbon fuel free from suspended water
9 and sediment matter that is suitable for use as a fuel in a ~~diesel~~ compression-ignition
10 (diesel) internal combustion engine;

11 (5A) "Ether," methyl tertiary butyl ether;

12 (6) "Flash test" and "flash point," the flash point as determined by the method of the
13 American Society for Testing Materials, using the instrument known as the Tagliabue
14 closed cup tester;

15 (7) "Gasoline," a volatile hydrocarbon fuel free from suspended water and sediment
16 matter that is practicable and suitable used as fuel in a spark ignition internal
17 combustion engine;

18 (8) "Inspector," the secretary of the Department of Public Safety or any deputy or
19 assistant appointed by the secretary for the purpose of enforcing the provisions of this
20 chapter;

21 (9) "Kerosene," a hydrocarbon fuel intended for use in heating and illumination and
22 having an American Petroleum Institute gravity of not less than forty degrees.
23 Kerosene shall also include coal oil and burner oil;

24 (9A) "NIST," the National Institute of Standards and Technology;

1 (10) "Petroleum products," gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation
2 gasoline, burner oil, naphtha and lubricating oils.

3

4 Section 2. That § 37-2-6 be amended to read as follows:

5 37-2-6. The secretary of the Department of Public Safety may, pursuant to chapter 1-26, and
6 in general conformity with ASTM and NIST standards in effect on January 1, 2005, promulgate
7 rules:

8 (1) Establishing standards for the maximum volume percentages of ethanol, methanol,
9 ether, and cosolvents in alcohol blended fuels;

10 (2) Establishing a program for and prescribing the methods to be used for the inspection
11 and testing of alcohol blended fuels ~~and~~, petroleum products, biodiesel, and biodiesel
12 blends;

13 (3) Requiring labeling of devices dispensing alcohol blended fuels, biodiesel, and
14 biodiesel blends;

15 (4) Establishing standards setting the specifications and tolerance requirements for
16 petroleum products, biodiesel, and biodiesel blends; and

17 (5) Regulating the filtering system to be used on devices dispensing alcohol blended
18 fuels.

19 Section 3. That § 37-2-7 be amended to read as follows:

20 37-2-7. Specifications and methods for the examination and test of petroleum products shall
21 be jointly determined by the Division of Commercial Inspection and Licensing and the director
22 of ~~laboratories~~ the State Health Laboratory and shall be based upon ~~nationally recognized~~
23 standards from the American Society for Testing and Materials and the National Institute for
24 Standards and Technology as of January 1, 2005. ~~When so determined, and If adopted and~~

1 ~~published~~ as rules ~~and regulations~~ of the division in accordance with the provisions of chapter
2 1-26, ~~such~~ the specifications shall be the specifications for such petroleum products sold in this
3 state and official tests of ~~such~~ the petroleum products shall be based upon test specifications so
4 determined, adopted, and promulgated.

5 Section 4. That § 37-2-8 be amended to read as follows:

6 37-2-8. The director of ~~laboratories~~ the State Health Laboratory, or other qualified
7 laboratory, shall make ~~such~~ an analysis as may be requested by the secretary of the Department
8 of Public Safety. Distillation tests shall be made in accordance with the methods for ~~such~~ the
9 tests adopted by the American Society for Testing and Materials.

10 Section 5. That § 37-2-23 be repealed.

11 ~~— 37-2-23. Any inspector having knowledge of a violation of any of the provisions of §§ 37-2-~~
12 ~~5 to 37-2-24, inclusive, must immediately enter complaint before a court of competent~~
13 ~~jurisdiction against the person so offending, and in case of neglect to enter such complaint, such~~
14 ~~inspector shall be punished as provided in § 37-2-16.~~

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0232

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 49** - 01/31/2006

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

1 FOR AN ACT ENTITLED, An Act to modify the requirements for health discount plans.

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

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

5 For the purposes of this chapter, the term, affiliate, means a person that directly, or indirectly
6 through one or more intermediaries, controls, or is controlled by, or is under common control
7 with, the person specified. For the purposes of this section, the term, control, or controlled by,
8 or under common control with, means the possession, direct or indirect, of the power to direct
9 or cause the direction of the management and policies of a person, whether through the
10 ownership of voting securities, by contract other than a commercial contract for goods or
11 nonmanagement services, or otherwise, unless the power is the result of an official position with
12 or corporate office held by the person. Control is presumed to exist if any person, directly or
13 indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten
14 percent or more of the voting securities of any other person. This presumption may be rebutted
15 by a showing made in the manner provided by § 58-5A-29.



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

3 For the purposes of this chapter, the term, discount medical plan, means a business
4 arrangement or contract in which a person, in exchange for fees, dues, charges, or other
5 consideration, offers access for its members to providers of medical or ancillary services and
6 the right to receive discounts on medical or ancillary services provided under the discount
7 medical plan from those providers. The term includes a prescription drug discount plan.

8 The term does not include:

- 9 (1) A plan that does not charge a membership or other fee to use the discount medical
10 plan;
- 11 (2) Any product otherwise regulated under Title 58;
- 12 (3) A patient access program; or
- 13 (4) A medicare prescription drug plan.

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

16 For the purposes of this chapter, the term, discount prescription drug plan, means a business
17 arrangement or contract in which a person, in exchange for fees, dues, charges, or other
18 consideration provides access for its plan members to providers of pharmacy services and the
19 right to receive discounts on pharmacy services provided under the discount prescription drug
20 plan from those providers.

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

23 For the purposes of this section, discount medical plan organization, means an entity that,
24 in exchange for fees, dues, charges, or other consideration, provides access for discount medical

1 plan members to providers of medical or ancillary services and the right to receive medical or
2 speciality services from those providers at a discount. It is the organization that contracts with
3 providers, provider networks, or other discount medical plan organizations to offer access to
4 medical or speciality services at a discount and determines the charge to discount medical plan
5 members.

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

8 Terms used in this chapter mean:

- 9 (1) "Ancillary services," includes audiology, dental, vision, mental health, substance
10 abuse, chiropractic, and podiatry services;
- 11 (2) "Facility," an institution providing medical or ancillary services or a health care
12 setting. The term includes:
 - 13 (a) A hospital or other licensed inpatient center;
 - 14 (b) An ambulatory surgical or treatment center;
 - 15 (c) A skilled nursing center;
 - 16 (d) A residential treatment center;
 - 17 (e) A rehabilitation center; and
 - 18 (f) A diagnostic, laboratory or imaging center;
- 19 (3) "Health care professional," a physician, pharmacist, or other health care practitioner
20 who is licensed, accredited, or certified to perform specified medical or ancillary
21 services within the scope of his or her license, accreditation, certification, or other
22 appropriate authority consistent with state law;
- 23 (4) "Marketer," a person or entity that markets, promotes, sells, or distributes a discount
24 medical plan, including a private label entity that places its name on and markets or

1 distributes a discount medical plan pursuant to a marketing agreement with a
2 discount medical plan organization;

3 (5) "Medical services," any maintenance care of, or preventive care for, the human body,
4 or care, service, or treatment of an illness or dysfunction of, or injury to, the human
5 body. The term includes physician care, inpatient care, hospital surgical services,
6 emergency services, ambulance services, dental care services, vision care services,
7 mental health services, substance abuse services, chiropractic services, podiatric
8 services, laboratory services, medical equipment and supplies, pharmacy services or
9 ancillary services;

10 (6) "Medicare prescription drug plan," a plan that provides Medicare Part D prescription
11 drug benefit in accordance with the requirements of the federal Medicare Prescription
12 Drug, Improvement and Modernization Act of 2003;

13 (7) "Member," any individual who pays fees, dues, charges, or other consideration for
14 the right to receive the benefits of a discount medical plan. Member does not include
15 any individual who enrolls in a patient access program;

16 (8) "Patient access program," a voluntary program sponsored by a pharmaceutical
17 manufacturer or a consortium of pharmaceutical manufacturers, that provide free or
18 discounted health care products directly to low-income or uninsured individuals
19 either through a discount card or direct shipment;

20 (9) "Provider," any health care professional or facility that has contracted, directly or
21 indirectly, with a discount medical plan organization to provide medical or ancillary
22 services to members;

23 (10) "Provider network," an entity that negotiates directly or indirectly with a discount
24 medical plan organization on behalf of more than one provider to provide medical

1 or ancillary services to members.

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

4 This Act applies to all discount medical plan organizations doing business in South Dakota.

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

7 A discount medical plan organization that is a health carrier registered pursuant to Title 58:

8 (1) Is not required to register as a discount medical plan organization. However, any of
9 its affiliates that operate as a discount medical plan organization in this state shall
10 comply with all provisions of this Act and shall register as a discount medical plan
11 organization;

12 (2) Is required to comply with sections 24 to 42, inclusive, of this Act.

13 Section 8. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If a discount medical plan organization loses its registration, or other form of authority to
16 operate as a discount medical plan organization in another state, or is the subject of any
17 disciplinary administrative proceeding related to the organization's operating as a discount
18 medical plan organization in another state, the discount medical plan organization shall
19 immediately notify the director.

20 Section 9. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
21 follows:

22 After the receipt of an application filed pursuant to § 58-17C-104, the director shall review
23 the application and notify the applicant of any deficiencies in the application.

24 Section 10. That chapter 58-17C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Prior to registration by the director, each discount medical plan organization shall establish
3 an internet website in order to conform to the requirements of section 31 of this Act.

4 Section 11. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any registration is effective for one year, unless prior to its expiration the registration is
7 renewed in accordance with this section or suspended or revoked in accordance with section 13
8 of this Act. At least ninety days before a registration expires, the discount medical plan
9 organization shall submit a renewal application form.

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

12 The director shall renew the registration of each holder that meets the requirements of this
13 Act.

14 Section 13. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The director may suspend the authority of a discount medical plan organization to enroll
17 new members or refuse to renew or revoke a discount medical plan organization's registration
18 if the director finds that any of the following conditions exist:

- 19 (1) The discount medical plan organization is not operating in compliance with this Act;
- 20 (2) The discount medical plan organization has advertised, merchandised, or attempted
21 to merchandise its services in such a manner as to misrepresent its services or
22 capacity for service or has engaged in deceptive, misleading, or unfair practices with
23 respect to advertising or merchandising;
- 24 (3) The discount medical plan organization is not fulfilling its obligations as a discount

1 medical plan organization; or

2 (4) The continued operation of the discount medical plan organization would be
3 hazardous to its members.

4 Section 14. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If the director has cause to believe that grounds for the nonrenewal, suspension, or
7 revocation of a registration exists, the director shall notify the discount medical plan
8 organization in writing specifically stating the grounds for the refusal to renew or suspension
9 or revocation and may pursue a hearing on the matter in accordance with the provisions of the
10 chapter 1-26.

11 Section 15. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 If the registration of a discount medical plan organization is surrendered, revoked, or not
14 renewed, the discount medical plan organization shall proceed, immediately following the
15 effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration
16 of the registration, to wind up its affairs transacted under the registration. The discount medical
17 plan organization may not engage in any further advertising, solicitation, collecting of fees or
18 renewal of contracts.

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

21 The director shall, in its order suspending the authority of the discount medical plan
22 organization to enroll new members, specify the period during which the suspension is to be in
23 effect and the conditions, if any, that shall be met by the discount medical plan organization
24 prior to reinstatement of its registration to enroll members. The director may rescind or modify

1 the order of suspension prior to the expiration of the suspension period. No registration of a
2 discount medical plan organization may be reinstated unless requested by the discount medical
3 plan organization. The director may not grant the request for reinstatement if the director finds
4 that the circumstances for which the suspension occurred still exist or are likely to recur.

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

7 In lieu of suspending or revoking a discount medical plan organization's registration
8 pursuant to section 13 of this Act, if the discount medical plan organization has been found to
9 have violated any provision of this Act, the director may enter into a consent order pursuant to
10 § 58-4-28.1.

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

13 A provider who provides discounts to the provider's own patients without any cost or fee of
14 any kind to the patient is not required to obtain and maintain a registration under this Act as a
15 discount medical plan organization.

16 Section 19. That § 58-17C-108 be repealed.

17 ~~—58-17C-108. Any person subject to registration pursuant to § 58-17C-104 shall maintain a~~
18 ~~surety bond in the amount of twenty thousand dollars issued by a surety company authorized to~~
19 ~~do business in this state, or establish and maintain a surety account in the amount of twenty~~
20 ~~thousand dollars at a federally insured bank, savings and loan association, or federal savings~~
21 ~~bank located in this state. Each surety bond and surety account is subject to the following:~~

22 ~~—(1) A copy of the bond or a statement identifying the depository, trustee, and account~~
23 ~~number of the surety account, and thereafter proof of annual renewal of the bond or~~
24 ~~maintenance of the surety account, shall be filed with the director of the Division of~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Insurance;

~~(2) A surety account shall be maintained until two years after the date that the person subject to registration pursuant to § 58-17C-104 ceases operations in the state. Funds from any surety account may not be released to the person subject to registration pursuant to § 58-17C-104 without the specific consent of the attorney general;~~

~~(3) No surety on the bond of a person subject to registration pursuant to § 58-17C-104 may cancel such bond without giving written notice thereof to the secretary of state. Whenever the secretary of state receives notice of a surety's intention to cancel the bond of a person subject to registration pursuant to § 58-17C-104, the secretary of state shall notify the affected person that, unless such person files another twenty thousand dollar surety bond with the secretary of state or establishes a twenty thousand dollar surety account on or before the cancellation date of such surety bond, then such person subject to registration pursuant to § 58-17C-104 is no longer authorized to do business in this state;~~

~~(4) The bond or surety account shall be in favor of any person and the director of the Division of Insurance for the benefit of any person who is damaged by any violation of §§ 58-17C-104 to 58-17C-108, inclusive, including any violation by the supplier or by any other person which markets, promotes, advertises, or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect; and~~

~~(5) Any person claiming against the bond or surety account for a violation of §§ 58-17C-104 to 58-17C-108, inclusive, may maintain an action at law against the person subject to registration pursuant to § 58-17C-104 and against the surety or trustee of the surety account. The aggregate liability of the surety or trustee of the surety~~

1 ~~account to all persons damaged by violations of §§ 58-17C-104 to 58-17C-108,~~
2 ~~inclusive, may not exceed the amount of the surety bond or account.~~

3 Section 20. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Each registered discount medical plan organization shall maintain in force a surety bond in
6 its own name in an amount not less than twenty thousand dollars and shall be in favor of any
7 person and the director of the Division of Insurance for the benefit of any person who is
8 damaged by any violation of §§ 58-17C-104 to 58-17C-108, inclusive, including any violation
9 by the supplier or by any other person that markets, promotes, advertises, or otherwise
10 distributes a discount card on behalf of the supplier. The bond shall cover any violation
11 occurring during the time period during which the bond is in effect. The bond shall be issued
12 by an insurance company licensed to do business in this state. A copy of the bond or a statement
13 identifying the depository, trustee, and account number of the surety account, and thereafter
14 proof of annual renewal of the bond or maintenance of the surety account, shall be filed with
15 the director.

16 Section 21. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 In lieu of the bond required by section 20 of this Act, a registered discount medical plan
19 organization may deposit and maintain deposited with the director, or at the discretion of the
20 director, with any organization or trustee acceptable to the director through which a custodial
21 or controlled account is utilized, cash, securities, or any combination of these or other measures
22 that are acceptable to the director which at all times have a market value of not less than thirty-
23 five thousand dollars. All income from the deposit is an asset of the discount medical plan
24 organization.

1 Section 22. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Except for the director, the assets or securities held in this state as a deposit pursuant to
4 sections 20 and 21 of this Act are not subject to levy by a judgment creditor or other claimant
5 of the discount medical plan organization.

6 Section 23. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The director may examine or investigate the business and affairs of any discount medical
9 plan organization to protect the interests of the residents of this state based on the following
10 reasons, including complaint indices, recent complaints, information from other states, or as the
11 director deems necessary. An examination or investigation shall be performed in accordance
12 with the provisions of chapter 58-3. The discount medical plan organization that is the subject
13 of the examination or investigation shall pay the expenses incurred in conducting the
14 examination or investigation. Failure by the discount medical plan organization to pay the
15 expenses is grounds for denial of a registration to operate as a discount medical plan
16 organization or revocation of a registration to operate as a discount medical plan organization.

17 The discount medical plan organization is subject to the provisions of § 58-33-66.

18 Section 24. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If the discount medical plan organization cancels a membership for any reason other than
21 nonpayment of fees by the member, the discount medical plan organization shall make a pro rata
22 reimbursement of all periodic charges to the member.

23 Section 25. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A discount medical plan organization shall prepare written materials for its members that
2 specifies the benefits a member is to receive under the discount medical plan and that complies
3 with sections 38 to 42, inclusive, of this Act.

4 Section 26. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any provider offering medical or ancillary services to members shall provide the services
7 in accordance with a written agreement entered into directly by the provider or indirectly by a
8 provider network to which the provider belongs.

9 Section 27. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A provider agreement between a discount medical plan organization and a provider shall
12 provide the following:

- 13 (1) A list of the medical or ancillary services and products to be provided at a discount;
- 14 (2) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects
15 the provider's discounted rates; and
- 16 (3) That the provider will not charge members more than the discounted rates.

17 Section 28. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A provider agreement between a discount medical plan organization and a provider network
20 shall require that the provider network have written agreements with its providers that:

- 21 (1) Contain the provisions described in section 27 of this Act;
- 22 (2) Authorize the provider network to contract with the discount medical plan
23 organization on behalf of the provider; and
- 24 (3) Require the provider network to maintain an up-to-date list of its contracted providers

1 and to provide the list on a monthly basis to the discount medical plan organization.

2 Section 29. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
3 as follows:

4 A provider agreement between a discount medical plan organization and an entity that
5 contracts with a provider network shall require that the entity, in its contracts with the provider
6 network, require the provider network to have written agreements with its providers that comply
7 with the provisions of section 28 of this Act.

8 Section 30. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The discount medical plan organization shall maintain a copy of each active provider
11 agreement into which it has entered.

12 Section 31. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Each discount medical plan organization shall maintain on an internet website page an up-
15 to-date list of the names and addresses of the providers with which it has contracted directly or
16 through a provider network. The internet website address shall be prominently displayed on all
17 of its advertisements, marketing materials, brochures, and discount medical plan cards.

18 Section 32. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The provisions of sections 26 to 31, inclusive, of this Act, apply to those providers with
21 which the discount medical plan organization has contracted with directly or indirectly as well
22 as those providers that are members of a provider network with which the discount medical plan
23 organization has contracted directly or indirectly.

24 Section 33. That chapter 58-17C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A discount medical plan organization may market directly or contract with other marketers
3 for the distribution of its product. The discount medical plan organization shall have an executed
4 written agreement with a marketer prior to the marketer's marketing, promoting, selling, or
5 distributing the discount medical plan.

6 Section 34. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The agreement between the discount medical plan organization and the marketer shall
9 prohibit the marketer from using advertising, marketing materials, brochures, and discount
10 medical plan cards without the discount medical plan organization's approval in writing.

11 Section 35. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The discount medical plan organization shall be bound by and is responsible for the
14 activities of a marketer that are within the scope of the marketer's contract with the organization,
15 or are otherwise approved by or under the direction and control of the organization.

16 Section 36. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A discount medical plan organization shall approve in writing any advertisement, marketing
19 material, brochure, or discount card used by marketers to market, promote, sell, or distribute the
20 discount medical plan prior to their use.

21 Section 37. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Upon request, a discount medical plan organization shall submit to the director any
24 advertising, marketing material, or brochure regarding a discount medical plan.

1 Section 38. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Any advertisement of a discount medical plan organization shall be truthful and not
4 misleading in fact or in implication. An advertisement is misleading if it has a capacity or
5 tendency to mislead or deceive based on the overall impression that the advertisement is
6 reasonably expected to create within the segment of the public to which it is directed.

7 Section 39. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
8 as follows:

9 No discount medical plan organization may:

- 10 (1) Except as otherwise provided in this Act or as a disclaimer of any relationship
11 between discount medical plan benefits and insurance, or as a description of an
12 insurance product connected with a discount medical plan, use the term, insurance,
13 in any advertisement, marketing material, brochure, or discount medical plan cards;
- 14 (2) Use in any advertisement, marketing material, brochure, or discount medical plan
15 card, the terms, health plan, coverage, co-pay, co-payments, deductible, preexisting
16 conditions, guaranteed issue, premium, PPO, preferred provider organization, or
17 other term in a manner that could reasonably mislead an individual into believing that
18 the discount medical plan is health insurance;
- 19 (3) Use language in any advertisement, marketing material, brochure, or discount
20 medical plan card with respect to being licensed or registered by the Division of
21 Insurance in a manner that could reasonably mislead an individual into believing that
22 the discount medical plan is insurance or has been endorsed by the state;
- 23 (4) Make misleading, deceptive, or fraudulent representations regarding the discount or
24 range of discounts offered by the discount medical plan or the access to any range of

1 discounts offered by the discount medical plan;

2 (5) Have restrictions on access to discount medical plan providers, including, except for
3 hospital services, waiting periods and notification periods; or

4 (6) Pay providers any fees for medical or ancillary services or collect or accept money
5 from a member to pay a provider for medical or ancillary services provided under the
6 discount medical plan, unless the discount medical plan organization has an active
7 certificate of authority to act as a third party administrator in accordance with chapter
8 58-29D.

9 Section 40. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
10 as follows:

11 If the initial contact with a prospective member is by telephone, the disclosures required by
12 § 58-17C-106 shall be made orally and included in the initial written materials that describe the
13 benefits under the discount medical plan provided to the prospective or new member.

14 Section 41. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
15 as follows:

16 In addition to the general disclosures required by § 58-17C-106, each discount medical plan
17 organization shall provide to each new member a copy of the terms of the discount medical plan
18 in written materials.

19 Section 42. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The written materials required under this Act shall be clear and include information on:

22 (1) The name of the member;

23 (2) The benefits to be provided under the discount medical plan;

24 (3) Any processing fees and periodic charges associated with the discount medical plan;

- 1 (4) The mode of payment of any processing fees and periodic charges, such as monthly,
2 quarterly, or otherwise, and procedures for changing the mode of payment;
- 3 (5) Any limitations, exclusions, or exceptions regarding the receipt of discount medical
4 plan benefits;
- 5 (6) Any waiting periods for certain medical or ancillary services under the discount
6 medical plan;
- 7 (7) Procedures for obtaining discounts under the discount medical plan, such as requiring
8 members to contact the discount medical plan organization to make an appointment
9 with a provider on the member's behalf;
- 10 (8) Cancellation procedures, including information on the member's thirty-day
11 cancellation rights and refund requirements and procedures for obtaining refunds;
- 12 (9) Renewal, termination, and cancellation terms and conditions;
- 13 (10) Procedures for adding new members to a family discount medical plan, if applicable;
- 14 (11) Procedures for filing complaints under the discount medical plan organization's
15 complaint system and information that, if the member remains dissatisfied after
16 completing the organization's complaint system, the plan member may contact the
17 local insurance department in the member's state; and
- 18 (12) The name and mailing address of the registered discount medical plan organization
19 or other entity where the member can make inquiries about the plan, send
20 cancellation notices, and file complaints.

21 Section 43. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Each discount medical plan organization shall provide the director at least thirty days
24 advance notice of any change in the discount medical plan organization's name, principal

1 business address, mailing address, or internet website address.

2 Section 44. That § 58-17C-104 be amended to read as follows:

3 58-17C-104. ~~Any person, directly or indirectly, offering a plan or program providing a~~
4 ~~discount on the fees of any provider of health care goods or services; Any discount medical plan~~
5 ~~organization~~ that is not offered directly by a health carrier as provided by this chapter, shall
6 register in a format as prescribed by the director and shall file reports and conduct business
7 under the same standards as required of utilization review organizations in accordance with
8 provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health carrier may offer or provide
9 coverage through a person not registered but required to be registered pursuant to §§ 58-17C-
10 104 to 58-17C-108, inclusive. Any plan or program that is registered pursuant to § 58-17C-20
11 is not required to maintain a separate registration pursuant to §§ 58-17C-104 to 58-17C-108,
12 inclusive. ~~A~~ Any plan or program of discounted goods or services that is offered by a health
13 carrier in conjunction with a health benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or
14 a medicare supplement policy as defined in § 58-17A-1, or other insurance product that is
15 offered by an authorized insurer and that is subject to the jurisdiction of the director is not
16 required to be registered pursuant to §§ 58-17C-104 to 58-17C-108, inclusive. ~~A plan or~~
17 ~~program offered by a health care provider as defined in § 34-12C-1 is not required to register~~
18 ~~pursuant to §§ 58-17C-104 to 58-17C-108, inclusive, if the health care provider does not charge~~
19 ~~for the plan or program.~~

20 Section 45. That § 58-17C-106 be amended to read as follows:

21 58-17C-106. No person subject to registration pursuant to § 58-17C-104 may receive
22 personal information, money, or other consideration for enrollment in a plan or program until
23 the consumer has signed a contract or agreement with the person and no later than at the time
24 the contract is signed, provides, at a minimum, the following information, disclosed in a clear

1 and conspicuous manner:

2 (1) The name, true address, telephone number, and website address of the registered
3 person who is responsible for customer service;

4 (2) A detailed description of the plan or program, including the goods and services
5 covered and all exemptions and discounts that apply to each category thereof;

6 (3) All costs associated with the plan or program, including any sign-up fee and any
7 recurring costs;

8 (4) An internet website that is updated regularly or a paper copy where the consumer can
9 access the names and addresses of all current participating providers in the
10 consumer's area;

11 (5) A statement of the consumer's right to return the plan or program within thirty days
12 of its delivery to the person or agent through whom it was purchased and to have all
13 costs of the plan or program, excluding a nominal process fee refunded if, after
14 examination of the plan or program, the purchaser is not satisfied with it for any
15 reason;

16 (6) A statement of the consumer's right to terminate the plan or program at any time by
17 providing written notice or other notice, the form to be used for the termination
18 notice, and the address where the notice is to be sent if different than the address
19 provided in subdivision (1); and

20 (7) Notice that the consumer is not obligated to make any further payments under the
21 plan or program, nor is the consumer entitled to any benefits under the plan or
22 program for any period of time after the last month for which payment has been
23 made;

24 (8) That the plan is not insurance;

1 (9) That the range of discounts for medical or ancillary services provided under the plan
2 will vary depending on the type of provider and medical or ancillary service received;

3 (10) That the plan does not make payments to providers for the medical or ancillary
4 services received under the discount medical plan;

5 (11) That the plan member is obligated to pay for all medical or ancillary services, but will
6 receive discount from those providers that have contracted with the discount medical
7 plan organization.

8 The requirement that the contract or agreement be signed prior to any money or
9 consideration being obtained does not apply to a transaction in which payment by the consumer
10 is made by credit card or by means of a telephonic transaction so long as the disclosures
11 required by this section are provided to the consumer by way of postal mail, facsimile, or
12 electronic mail within ten business days of the consumer's enrollment.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

716M0294

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 57** - 01/19/2006

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

1 FOR AN ACT ENTITLED, An Act to revise the definition of deceptive acts and practices and
2 to increase the statute of limitations regarding deceptive trade practices.

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

4 Section 1. That § 37-24-6 be amended to read as follows:

5 37-24-6. It is a deceptive or unfair act or practice for any person to:

6 (1) Knowingly ~~and intentionally act,~~ use, or employ any deceptive or unfair act or
7 practice, fraud, false pretense, false promises, or misrepresentation or to conceal,
8 suppress, or omit any material fact in connection with the sale or advertisement of
9 any merchandise, regardless of whether any person has in fact been misled,
10 deceived, or damaged thereby. Such a deceptive or unfair act or practice violates this
11 section whether it occurs before, during, or after a transaction or advertisement;

12 (2) Advertise price reductions without ~~satisfying one of the following:~~

13 ~~—————(a) Including either including~~ in the advertisement the specific basis for the claim
14 of a price reduction; ~~or~~

15 ~~—————(b) Offering or offering~~ the merchandise for sale at the higher price from which



- 1 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
2 a participant pays a valuable consideration for the chance to receive compensation
3 primarily for introducing one or more additional persons into participation in the
4 planner's scheme or for the chance to receive compensation when the person
5 introduced by the participant introduces a new participant;
- 6 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any
7 unordered consumer property or service, or any bill or invoice for unordered
8 consumer property or service provided;
- 9 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
10 accommodation which is not in fact available to the public under the terms
11 advertised. It is not a violation of this subdivision to establish contract rates which
12 are different than public rates;
- 13 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging
14 accommodation which is different than the rate, price, or fee charged on the first
15 night of the guest's stay unless, at the initial registration of the guest, a written
16 notification of each price, rate, or fee to be charged during the guest's reserved
17 continuous stay is delivered to the guest and an acknowledgment of receipt of the
18 notice is signed by the guest and kept by the innkeeper for the same period of time
19 as is required by § 34-18-21;
- 20 (9) Knowingly and intentionally fail to mail to a future guest a written confirmation of
21 the date and rates of reservations made for any accommodation at a hotel, motel,
22 campsite, or other lodging accommodation when a written request for confirmation
23 is received from the future guest;
- 24 (10) Refuse to return or reverse the charge for a deposit upon any hotel, motel, campsite,

1 or other lodging accommodation which is canceled by the guest more than thirty days
2 before the date of the reservation. The innkeeper may establish a policy requiring a
3 longer time for notice of cancellation or a handling fee in the event of cancellation,
4 which may not exceed twenty-five dollars, if the policy is in writing and is delivered
5 or mailed to the guest at or near the making of the reservation;

6 (11) Knowingly advertise or cause to be listed through the internet or in a telephone
7 directory a business address that misrepresents where the business is actually located
8 or that falsely states that the business is located in the same area covered by the
9 telephone directory. This subdivision does not apply to a telephone service provider,
10 an internet service provider, or a publisher or distributor of a telephone directory,
11 unless the conduct proscribed in this subdivision is on behalf of the provider,
12 publisher, or distributor;

13 (12) Sell, market, promote, advertise, or otherwise distribute any card or other purchasing
14 mechanism or device that is not insurance that purports to offer discounts or access
15 to discounts from pharmacies for prescription drug purchases if:

16 (a) The card or other purchasing mechanism or device does not expressly state in
17 bold and prominent type, prevalently placed, that discounts are not insurance;

18 (b) The discounts are not specifically authorized by a separate contract with each
19 pharmacy listed in conjunction with the card or other purchasing mechanism
20 or device; or

21 (c) The discount or access to discounts offered, or the range of discounts or access
22 to the range of discounts, is misleading, deceptive, or fraudulent, regardless
23 of the literal wording.

24 The provisions of this subdivision do not apply to a customer discount or

1 membership card issued by a store or buying club for use in that store or buying
2 club; or

3 (13) Send or cause to be sent an unsolicited commercial electronic mail message that does
4 not include in the subject line of such message "ADV:" as the first four characters.
5 If the message contains information that consists of explicit sexual material that may
6 only be viewed, purchased, rented, leased, or held in possession by an individual
7 eighteen years of age and older, the subject line of each message shall include
8 "ADV:ADLT" as the first eight characters. An unsolicited commercial electronic
9 mail message does not include a message sent to a person with whom the initiator has
10 an existing personal or business relationship or a message sent at the request or
11 express consent of the recipient.

12 Each act in violation of this section is a Class 2 misdemeanor. Any subsequent conviction
13 ~~of an act in~~ for a violation of this statute, which occurs within two years is a Class 1
14 misdemeanor. Any subsequent conviction ~~of an act in~~ for a violation of this statute, which
15 occurs within two years of a conviction of a Class 1 misdemeanor pursuant to this statute, is a
16 Class 6 felony.

17 Section 2. That § 37-24-33 be amended to read as follows:

18 37-24-33. No action under this chapter may be brought more than ~~two~~ four years after the
19 occurrence or discovery of the conduct which is the subject of the action.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

382M0065

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 61** - 02/13/2006

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

Introduced by: Senators McCracken, Abdallah, Bartling, Broderick, Kelly, Koetzle, Schoenbeck, and Sutton (Dan) and Representatives Hanks, Brunner, Elliott, Halverson, Hennies, Jensen, Krebs, Lange, McCoy, and Miles

1 FOR AN ACT ENTITLED, An Act to establish the Motor Vehicle Insurance Data Base Task
2 Force and to provide for its composition, scope, and administration.

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

4 Section 1. The Motor Vehicle Insurance Data Base Task Force is created. The task force
5 shall study the feasibility of requiring evidence of financial responsibility at the time of vehicle
6 registration and the creation of a motor vehicle insurance data base to facilitate the process. The
7 task force shall investigate the best practices of the industry and recommend specifications for
8 the information to be transmitted by the insurance companies to the Division of Motor Vehicles
9 for inclusion in the motor vehicle insurance data base and specifications for the form and
10 manner of transmission of data for inclusion in the motor vehicle insurance data base.

11 Section 2. The task force shall consist of:

12 (1) The director of motor vehicles;

13 (2) The director of insurance;

14 (3) The following members selected by the director of the Division of Insurance:



- 1 (a) One representative of a domestic automobile insurance company;
- 2 (b) One representative of an admitted foreign automobile insurance company; and
- 3 (c) One representative of insurance producers licensed in this state;
- 4 (4) Four members to be selected by the director of the Division of Motor Vehicles; and
- 5 (5) One representative appointed by the speaker of the House of Representatives and one
- 6 senator appointed by the president pro tempore of the Senate.

7 The task force shall be staffed by the Division of Motor Vehicles.

8 Section 3. The task force shall complete a written report of its recommendations and submit

9 the report to the Legislature no later than October 1, 2006.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

119M0387

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 65** - 02/03/2006

Introduced by: Senators McCracken, Adelstein, Duniphan, Lintz, Napoli, and Sutton (Dan)
and Representatives Haverly, Brunner, Buckingham, Faehn, Hennies, Klaudt,
McCoy, Peters, and Thompson

1 FOR AN ACT ENTITLED, An Act to appropriate money for roof repairs at Western Dakota
2 Technical Institute and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the state general fund the sum of two hundred
5 eighty-six thousand dollars (\$286,000), or so much thereof as may be necessary, to the
6 Department of Education for expenses of roof repairs at Western Dakota Technical Institute.

7 Section 2. The secretary of the Department of Education shall approve vouchers and the
8 state auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
10 June 30, 2007, shall revert in accordance with § 4-8-21.

11 Section 4. 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

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

418M0191 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**
SB 89 - 01/26/2006

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

Introduced by: Senators McCracken, Gray, and Sutton (Dan) and Representatives McLaughlin, Boomgarden, Bradford, Krebs, Rounds, and Thompson

1 FOR AN ACT ENTITLED, An Act to require the Division of Insurance to study the offering
2 of assisted living facility benefits to certain persons with long-term care insurance.

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

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

6 The Division of Insurance shall conduct a study of long-term care insurance in this state to
7 determine the extent to which long-term care policies have been issued which do not contain
8 assisted living facility benefits. The study shall include information as to the cost of adding
9 assisted living facility benefits to long-term care policies and the potential premium impact it
10 may have on other insureds. A report shall be made to the Legislature no later than December 1,
11 2006.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

772M0264

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 148 - 02/10/2006

Introduced by: Senators Abdallah, Dempster, Duniphan, Earley, Gant, Gray, Hansen (Tom), Kelly, Koskan, McCracken, Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane) and Representatives Cutler, Bradford, Brunner, Davis, Deadrick, Dennert, Dykstra, Faehn, Frost, Garnos, Gassman, Glenski, Hackl, Halverson, Hanks, Hargens, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Kroger, McCoy, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Pederson (Gordon), Rave, Rhoden, Rounds, Schafer, Street, Tornow, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the sex offender
2 registry and the supervision of sex offenders.

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

4 Section 1. That § 22-24B-1 be amended to read as follows:

5 22-24B-1. For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of
6 the following crimes regardless of the date of the commission of the offense or the date of
7 conviction:

8 (1) Rape as set forth in § 22-22-1;

9 (2) ~~Sexual~~ Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
10 committed by an adult ~~and the adult is convicted of a felony;~~

11 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 ~~if~~



- 1 committed by an adult;
- 2 (4) Incest as set forth in ~~§ 22-22-19.1~~ if committed by an adult;
- 3 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
4 24A-3;
- 5 (6) Sale of child pornography as set forth in § 22-24A-1;
- 6 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 7 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 8 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 9 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 10 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent
11 exposure as set forth in § 22-24-1.2;
- 12 (12) Solicitation of a minor as set forth in § 22-24A-5;
- 13 (13) Felony ~~aggravated~~ indecent exposure as set forth in § 22-24-1.3;
- 14 (14) Bestiality as set forth in § 22-22-42;
- 15 (15) An attempt to commit any of the crimes listed in this section;
- 16 (16) Any crime committed in a place other than this state which would constitute a sex
17 crime under this section if committed in this state;
- 18 (17) Any federal crime or court martial offense that would constitute a sex crime under
19 federal law;
- 20 (18) Any crime committed in another state if that state also requires that anyone convicted
21 of that crime register as a sex offender in that state; or
- 22 (19) If the victim is a minor:
- 23 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-
24 7.6;

1 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or

2 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29.

3 Section 2. That § 22-24B-2 be amended to read as follows:

4 22-24B-2. Any person who has been convicted for commission of a sex crime, as defined
5 in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea
6 of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been
7 discharged pursuant to 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older shall
8 register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in ~~§ 22-~~
9 ~~22-20(9), 22-22-7.2, or 22-24B-1~~ § 22-22-7.2, 22-24B-1(1), or 22-24B-1(9), or of an out-of-
10 state or federal offense that is comparable to the elements of these three sex crimes or any crime
11 committed in another state if the state also requires a juvenile adjudicated of that crime to
12 register as a sex offender in that state. The sex offender shall register within ~~ten~~ five days of
13 coming into any county to reside, temporarily domicile, attend school, attend postsecondary
14 education classes, or work. Registration shall be with the chief of police of the municipality in
15 which the sex offender resides, domiciles, attends school, attends classes, or works, or, if no
16 chief of police exists, then with the sheriff of the county. A violation of this section is a ~~Class~~
17 ~~1 misdemeanor. However, any subsequent violation is a~~ Class 6 felony. Any person whose
18 sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of
19 such formal discharge or release from probation by certified mail to the Division of Criminal
20 Investigation and to local law enforcement where the person is then registered under this
21 section. Upon receipt of such notice, the person shall be removed from the sex offender registry
22 open to public inspection and shall be relieved of further registration requirements under this
23 section.

24 Section 3. That § 22-24B-5 be amended to read as follows:

1 22-24B-5. The Division of Criminal Investigation shall mail a nonforwardable verification
2 form at least once annually to the last reported address of each person registered under § 22-
3 24B-2. The person shall return the verification form to the Division of Criminal Investigation
4 within ten days after receipt of any such form. The verification form shall be signed by the
5 person required to register and shall state that the person still resides at the address last reported
6 to the Division of Criminal Investigation. If the person fails to return the verification form to
7 the Division of Criminal Investigation within ten days after receipt of the form, the person is in
8 violation of this section. Nonreceipt of a registration verification does not constitute a defense
9 to failure to comply with this section. A violation of this section is a ~~Class 1 misdemeanor. Any~~
10 ~~subsequent violation~~ is a Class 6 felony.

11 Section 4. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The chief of police in the municipality in which the sex offender resides, or if no chief of
14 police exists, the sheriff of the county, shall annually confirm that the address listed on the sex
15 offender registry matches the residence of each registered sex offender. Such confirmation shall
16 be submitted to the Division of Criminal Investigation.

17 Section 5. That § 22-24B-6 be amended to read as follows:

18 22-24B-6. Any person who is registered as required by § 22-24B-2 and who is employed,
19 carries on a vocation, or attends postsecondary classes at an institution of higher education,
20 institution of higher learning, or technical institute in this state shall, within ~~ten~~ five days of any
21 commencement and within ~~ten~~ five days of termination of such enrollment or employment or
22 change in employer, report to the chief of police or county sheriff where the institution is located
23 and complete a registration update form. A violation of this section is a ~~Class 1 misdemeanor.~~
24 ~~Any subsequent violation~~ is a Class 6 felony.

1 Section 6. That § 22-24B-7 be amended to read as follows:

2 22-24B-7. Any person who is subject to the provisions of § 22-24B-2 shall annually
3 reregister every six months in the same manner as may be provided by law for initial
4 registration. Such person shall reregister during the calendar month during which the registrant
5 was born. ~~However, if such person has previously registered pursuant to the provisions of § 22-~~
6 ~~24B-2 within ninety days immediately prior to the date of such person's birth, no subsequent~~
7 ~~reregistration is required pursuant to this section during the current annual reregistration cycle~~
8 and six months following the person's birth month.

9 A violation of this section is a ~~Class 1 misdemeanor. However, any subsequent violation is~~
10 ~~a~~ Class 6 felony.

11 Section 7. That § 22-24B-8 be amended to read as follows:

12 22-24B-8. The registration shall include the following information which, unless otherwise
13 indicated, shall be provided by the offender:

- 14 (1) Name and all aliases used;
- 15 (2) Complete description, photographs, ~~and~~ fingerprints and palm prints collected and
16 provided by the registering agency;
- 17 (3) Residence, length of time at that residence including the date the residence was
18 established, and length of time expected to remain at that residence;
- 19 (4) The type of sex crime convicted of; ~~and~~
- 20 (5) The date of commission and the date of conviction of any sex crime committed;
- 21 (6) Social Security number on a separate confidential form;
- 22 (7) Driver license number and state of issuance;
- 23 (8) Whether or not the registrant is receiving or has received any sex offender treatment;
- 24 (9) Employer name, address, and phone number or school name, address, and phone

1 number;

2 (10) Length of employment or length of attendance at school; ~~and~~

3 (11) Occupation or vocation;

4 (12) Vehicle license plate number of any vehicle owned by the offender;

5 (13) Information identifying any internet accounts of the offender as well as any user
6 names, screen names, and aliases that the offender uses on the internet;

7 (14) A listing of all felony convictions, in any jurisdiction, for crimes committed as an
8 adult and sex offense convictions and adjudications subject to sex offender registry
9 provided by the offender and confirmed by the registering agency;

10 (15) A description of the offense, provided by the prosecuting attorney;

11 (16) Acknowledgment whether the offender is currently an inmate, parolee, juvenile in
12 department of corrections placement or under aftercare supervision, county or city
13 jail inmate or detainee in a juvenile detention center, provided by the offender and
14 confirmed by the administering body of the correctional facility;

15 (17) Acknowledgment whether the offender is subject to community safety zone
16 restrictions, provided by the registering agency; and

17 (18) The name, address and phone number of two local contacts, who have regular
18 interaction with the offender and the name, address and phone number of the
19 offender's next of kin.

20 In addition, at the time of the offender's registration, the registering agency will collect a
21 DNA sample and submit the sample to the South Dakota State Forensic Laboratory in
22 accordance with procedures established by the South Dakota State Forensic Laboratory. The
23 collection of DNA at the time of the registration is not required if the registering agency can
24 confirm that DNA collection and submission to the South Dakota State Forensic Laboratory has

1 already occurred.

2 Any failure by the offender to accurately provide the information required by this section
3 is a ~~Class 1 misdemeanor~~ Class 6 felony.

4 Section 8. That § 22-24B-10 be amended to read as follows:

5 22-24B-10. Within three days of registering a person pursuant to §§ 22-24B-1 to 22-24B-14,
6 inclusive, the registering law enforcement agency shall forward the information to the Division
7 of Criminal Investigation. The Division of Criminal Investigation shall maintain a file of all the
8 registrations and shall make them available to state, county, and municipal law enforcement
9 agencies on a twenty-four hour basis. An offender's registration compliance status and
10 registration information, other than the registrant's social security number, victim name, DNA
11 sample, and the names, addresses, and phone numbers for local contacts and next of kin are
12 public information. The provisions of §§ 23-5-11 and 23-6-14 do not apply to providing files
13 pursuant to §§ 22-24B-1 to 22-24B-14, inclusive. ~~The Division of Criminal Investigation file~~
14 ~~is not open to inspection by the public or any other person other than a law enforcement officer~~
15 ~~except as specifically provided in § 22-24B-11.~~

16 Section 9. That § 22-24B-12 be amended to read as follows:

17 22-24B-12. Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14,
18 inclusive, who moves to a different residence address shall inform the law enforcement agency
19 with whom the person last registered of the new address, in writing, within ~~ten~~ five days. The
20 law enforcement agency shall, within three days of receipt, forward the information to the
21 Division of Criminal Investigation and to the law enforcement agency having jurisdiction of the
22 new residence. A failure to register pursuant to this section is a ~~Class 1 misdemeanor~~. ~~Any~~
23 ~~second or subsequent failure to register pursuant to this section is a Class 6 felony.~~

24 Section 10. That chapter 22-24B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any person who has been convicted of, or entered a plea of guilty to, one or more violations
3 of §§ 22-24B-2, 22-24B-5, 22-24B-6, 22-24B-7, 22-24B-8 or 22-24B-12 is guilty of a Class 5
4 felony for any second or subsequent conviction of §§ 22-24B-2, 22-24B-5, 22-24B-6, 22-24B-7,
5 22-24B-8 or 22-24B-12.

6 Section 11. That chapter 23-5A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Any person who is required to register as a sex offender pursuant to §§ 22-24B-1 to 22-24B-
9 14, inclusive, shall provide a DNA sample as required in chapter 23-5A.

10 Section 12. That § 23A-27-12.1 be amended to read as follows:

11 23A-27-12.1. Upon receipt of an order that a defendant has been placed on probation to the
12 court service department, the chief court services officer shall immediately assign the defendant
13 to a court services officer for probation supervision.

14 All such probationers shall cooperate fully with the court services officer and comply with
15 all directives thereby issued in their regard. If the sentencing judge has provided special
16 conditions, including limited areas of residence or community access, required participation in
17 treatment, enhanced reporting requirements, and use of electronic monitoring or global
18 positioning units, for either a probationer or one released on a suspended sentence, then such
19 person shall comply with such special conditions, and the court services officer is hereby
20 charged with the responsibility for effecting compliance with such conditions.

21 Whenever the sentencing judge assesses probation costs as a condition of probation, the
22 costs shall be paid to the clerk of the court who shall forward such costs on a monthly basis to
23 the county treasurer for deposit in the county general fund.

24 Section 13. That § 24-15A-24 be amended to read as follows:

1 24-15A-24. The board and the department may place reasonable restrictions upon a parolee
2 which are designed to continue the parolee's rehabilitation, including limited areas of residence
3 or community access, required participation in treatment, enhanced reporting requirements, and
4 use of electronic monitoring or global positioning units. The board and the department shall
5 require the implementation of a restitution plan and payment of supervision fees, if reasonably
6 possible. The prior obligations of child support and restitution payments take precedence over
7 collection of supervision fees. All restrictions shall be in writing and shall be agreed to and
8 signed by the parolee.

9 Section 14. No law enforcement agency, employee of any law enforcement agency,
10 employee or official of any state and county agency and person contracting or appointed to
11 perform services under this Act is civilly or criminally liable for good faith conduct under this
12 Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

772M0263

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 149 - 02/10/2006

Introduced by: Senators Abdallah, Dempster, Duniphan, Earley, Gant, Gray, Hansen (Tom), Kelly, Knudson, Koskan, Lintz, McCracken, Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane) and Representatives Cutler, Bradford, Brunner, Davis, Deadrick, Dennert, Dykstra, Faehn, Frost, Garnos, Glenski, Hackl, Hanks, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Kroger, McCoy, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Pederson (Gordon), Rhoden, Rounds, Schafer, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to create community safety zones, to prohibit certain
2 persons from residing or loitering in community safety zones, to provide penalties for
3 violations thereof, and to declare an emergency.

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

5 Section 1. Terms used in this Act mean:

6 (1) "Community safety zone," the area that lies within five hundred feet from the
7 facilities and grounds of any school, public park, public playground, or public pool,
8 including the facilities and grounds itself;

9 (2) "Loiter," to remain for a period of time and under circumstances that a reasonable
10 person would determine is for the primary purpose of observing or contacting
11 minors;

12 (3) "School," any public, private, denominational, or parochial school offering preschool,



1 kindergarten, or any grade from one through twelve;

2 (4) "Residence," the address an offender lists for purposes of the sex offender registry
3 as provided for in subdivision § 22-24B-8(3).

4 Section 2. No person who is required to register as a sex offender pursuant to chapter 22-
5 24B may establish a residence or reside within a community safety zone unless:

6 (1) The person is incarcerated in a jail or prison or other correctional placement which
7 is located within a community safety zone;

8 (2) The person is placed in a health care facility licensed pursuant to chapter 34-12, or
9 certified under Title XVIII or XIX of the Social Security Act as amended to
10 December 31, 2001, or receiving services from a community service provider
11 accredited or certified by the Department of Human Services, which is located within
12 a community safety zone;

13 (3) The person was under age eighteen at the time of the offense and the offender was
14 not tried and convicted of the offense as an adult;

15 (4) The person established the residence prior to the effective date of this Act;

16 (5) The school, public park, public pool, or public playground was built or established
17 subsequent to the person's establishing residence at the location; or

18 (6) The circuit court has entered an order pursuant to section 7 of this Act exempting the
19 offender from the provisions of this Act.

20 A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.

21 Section 3. No person who is required to register as a sex offender as defined in chapter 22-
22 24B may loiter within a community safety zone unless the person was under age eighteen at the
23 time of the offense and the offender was not tried and convicted of the offense as an adult or the
24 circuit court has entered an order pursuant to section 7 of this Act exempting the offender from

1 the provisions of this Act.

2 A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.

3 Section 4. No city, county, municipality, or township may, by local ordinance, restrict or
4 mitigate residence or community access for convicted sex offenders inconsistent with the
5 provisions of this Act.

6 Section 5. An offender subject to community safety zone restrictions pursuant to this Act
7 who is eligible to seek exemption from these restrictions as provided for in section 6 of this Act
8 may petition the circuit court in the county where the person resides for an order to terminate
9 the person's obligation to comply with the community safety zone restrictions. The offender
10 shall serve the petition and all supporting documentation on the state's attorney in the county
11 where the offender currently resides, the office of the prosecutor in the jurisdiction where the
12 offense occurred, and the Office of the Attorney General. The state's attorney in the county
13 where the offender currently resides shall respond to each petition to request exemption from
14 the community safety zone restrictions.

15 No person petitioning the court under this section for an order terminating the persons's
16 obligation to comply with community safety zone restrictions is entitled to court appointed
17 counsel, publicly funded experts, or publicly funded witnesses.

18 The petition and documentation to support the request for exemption from the community
19 safety zone restrictions shall include:

- 20 (1) All information required for registration of convicted sex offenders in § 22-24B-8;
- 21 (2) A detailed description of the sex crime that was the basis for the offender to be
22 subject to community safety zone restrictions;
- 23 (3) A certified copy of judgment of conviction or other sentencing document; and
- 24 (4) The offender's criminal record.

1 The court may request that the petitioner provide additional information if the information
2 provided is incomplete or if the court desires more information relative to the request for
3 exemption.

4 Section 6. To be eligible for exemption from the community safety zone restrictions, the
5 petitioner shall show, by clear and convincing evidence, the following:

6 (1) That at least ten years have elapsed since the date the petitioner was convicted of the
7 offense that subjected the petitioner to community safety zone restrictions pursuant
8 to this Act. For purposes of this subdivision, any period of time during which the
9 petitioner was incarcerated or during which the petitioner was confined in a mental
10 health facility or during which the petitioner was on probation or parole supervision
11 does not count toward the ten-year calculation, regardless of whether such
12 incarceration, confinement or community supervision was for the sex offense
13 requiring registration or for some other offense;

14 (2) That the petitioner is not a recidivist sex offender. A recidivist sex offender is a
15 person who has been convicted or adjudicated for more than one sex crime listed in
16 subdivisions 22-24B-1(1) to (19), inclusive, regardless of when those convictions or
17 adjudications occurred. For purposes of this subdivision and subdivision (1) of this
18 section, a conviction or adjudication includes a verdict or plea of guilty; a verdict or
19 plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of
20 sentence granted under § 23A-27-13, regardless of whether it has been discharged;
21 a deferred prosecution agreement entered by a prosecutor; and a determination made
22 in another state, federal jurisdiction, or courts martial that is comparable to any of
23 these events;

24 (3) That the petitioner has completely and truthfully complied with the registration and

1 reregistration requirements imposed under chapter 22-24B;

2 (4) That the petitioner has actually resided in South Dakota at least ten consecutive years
3 immediately prior to the filing of the petition. Residence as used in this subdivision
4 does not mean the registration address of an incarcerated sex offender; and

5 (5) The circumstances of the crime subjecting the offender to community safety zone
6 restrictions did not involve a child under age thirteen.

7 Section 7. If the court finds that all of the criteria provided for in section 6 of this Act have
8 been met and that the petitioner is not likely to offend again, then the court may, in its
9 discretion, enter an order terminating the petitioner's obligation to comply with the community
10 safety zone restrictions of this state. However, if the court finds that the offender has provided
11 false or misleading information in support of the petition, or failed to serve the petition and
12 supporting documentation upon the parties provided for in section 5 of this Act, then the petition
13 shall be denied. If the petition is denied, the petitioner may not file a subsequent petition for at
14 least two years from the date the previous petition was denied. The court shall forward any order
15 terminating the petitioner's obligation to comply with community safety zone restrictions to the
16 Division of Criminal Investigation.

17 Section 8. That § 22-22-38 be amended to read as follows:

18 22-22-38. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
19 who is discharged or paroled or temporarily released from an institution of the Department of
20 Corrections or the Department of Human Services or from any jail or other facility in this state
21 where the person was confined because of a conviction of an offense as described in § 22-22-30
22 shall, prior to discharge, parole, furlough, work release, or similar program outside the facility,
23 or release, be informed of the duty to register under §§ 22-22-30 to 22-22-39, inclusive, and
24 informed of community safety zone restrictions, by the institution in which the person was

1 confined. The institution shall require the person to read and sign any forms as may be required
2 by the Division of Criminal Investigation stating that the duty to register, community safety zone
3 restrictions, and the procedure for registration ~~has~~ have been explained. The institution shall
4 obtain the address where the person plans to reside upon discharge, parole, furlough, work
5 release, or similar program outside the facility, or release and shall report the address to the
6 Division of Criminal Investigation. The institution shall give one copy of the form to the person
7 and shall send one copy to the Division of Criminal Investigation and one copy to the law
8 enforcement agency having jurisdiction where the person plans to reside upon discharge, parole,
9 furlough, work release, or similar program outside the facility, or release, and one copy to the
10 office of the state's attorney in the county in which the person was convicted.

11 Section 9. That § 22-22-39 be amended to read as follows:

12 22-22-39. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
13 who is released on probation because of the commission or attempt to commit one of the
14 offenses as described in § 22-22-30 shall, prior to release be informed of the duty to register
15 under §§ 22-22-30 to 22-22-39, inclusive, and informed of community safety zone restrictions,
16 by the court in which the person was convicted. The court shall require the person to read and
17 sign any forms as may be required by the Division of Criminal Investigation stating that the duty
18 to register, community safety zone restrictions, and the procedure for registration ~~has~~ have been
19 explained. The court shall obtain the address where the person plans to reside upon release and
20 shall report the address to the Division of Criminal Investigation. The court shall give one copy
21 of the form to the person and shall send one copy to the Division of Criminal Investigation and
22 one copy to the law enforcement agency having jurisdiction where the person plans to reside
23 upon release.

24 Section 10. Whereas, this Act is necessary for the immediate preservation of the public

- 1 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
- 2 force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

589M0401 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 151 - 02/10/2006

Introduced by: Senators Schoenbeck, Abdallah, Apa, Bogue, Duenwald, Duniphan, Greenfield, Hansen (Tom), Hanson (Gary), Koskan, McCracken, and Moore and Representatives Michels, Cutler, Davis, Dennert, Faehn, Fryslie, Garnos, Hackl, Halverson, Hanks, Haverly, Hennies, Jerke, Koistinen, Nelson, Pederson (Gordon), Peters, Putnam, Rausch, Rave, and Tidemann

1 FOR AN ACT ENTITLED, An Act to define the local government contribution for the
2 construction of an armory.

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

4 Section 1. That § 33-11-6 be amended to read as follows:

5 33-11-6. The Department of Military and Veterans Affairs shall also have the power to
6 receive from counties, school districts, municipalities, or other sources, donations of land or
7 contributions of money, buildings, or other property, to aid in providing or erecting armories and
8 other facilities throughout the state for the use of the national guard and which shall be held as
9 other property for the use of the state.

10 Section 2. That § 33-11-7 be amended to read as follows:

11 33-11-7. Counties, school districts, or municipalities are hereby authorized to make
12 contributions of land, money, buildings, or other property for the purposes of this chapter; ~~and,~~
13 Also, each first or second class municipality of the state is hereby authorized and empowered



1 to levy a tax upon all property therein subject to taxation to raise the necessary money for such
2 armory building or other facility and site; provided that no money raised by such tax shall be
3 donated or tax levied until the same is authorized by a vote of a majority of the electors in such
4 municipality at an election called for that purpose. Any contribution of money from a county,
5 school district, or municipality for the construction of an armory shall be matched with a sum
6 appropriated from the state treasury that is not greater than fifty percent of the total local effort
7 required by the Department of Military and Veterans Affairs or the United States Department
8 of Defense.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

958M0428

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 152** - 01/25/2006

Introduced by: Senators Schoenbeck, Abdallah, Apa, Bogue, Duenwald, Duniphan, Greenfield, Hansen (Tom), Hanson (Gary), Koskan, McCracken, and Moore and Representatives Hackl, Cutler, Davis, Dennert, Faehn, Fryslie, Garnos, Halverson, Hennies, Jerke, Klaudt, Koistinen, Michels, Nelson, Pederson (Gordon), Putnam, Rausch, Rave, and Tidemann

1 FOR AN ACT ENTITLED, An Act to appropriate money for the design and construction of
2 National Guard armories and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of one million seven
5 hundred eighty-nine thousand dollars (\$1,789,000), or so much thereof as may be necessary, and
6 twenty-one million one hundred twenty thousand dollars (\$21,120,000), or so much thereof as
7 may be necessary, of federal funds authority available to the Department of Military and
8 Veterans Affairs for the design and construction of an armory in Watertown.

9 Section 2. The amounts appropriated in section 1 of this Act are for the following purposes:

10 (1) Armory design, one hundred seventy-eight thousand nine hundred dollars (\$178,900)
11 from the general fund and one million nine hundred twenty thousand dollars
12 (\$1,920,000) from federal funds available to the Department of Military and Veterans
13 Affairs;



1 (2) Armory construction, one million six hundred ten thousand one hundred dollars
2 (\$1,610,100) from the general fund and nineteen million two hundred thousand
3 dollars (\$19,200,000) from federal funds available to the Department of Military and
4 Veterans Affairs.

5 Section 3. There is hereby appropriated from the general fund the sum of five hundred fifty
6 thousand dollars (\$550,000), or so much thereof as may be necessary, and three million three
7 hundred thousand dollars (\$3,300,000), or so much thereof as may be necessary, of federal funds
8 authority available to the Department of Military and Veterans Affairs for the design and
9 construction of an armory in Mobridge.

10 Section 4. The amounts appropriated in section 3 of this Act are for the following purposes:

11 (1) Armory design, fifty-five thousand dollars (\$55,000) from the general fund and three
12 hundred thousand dollars (\$300,000) from federal funds available to the Department
13 of Military and Veterans Affairs;

14 (2) Armory construction, four hundred ninety-five thousand dollars (\$495,000) from the
15 general fund and three million dollars (\$3,000,000) from federal funds available to
16 the Department of Military and Veterans Affairs.

17 Section 5. In addition to the amounts appropriated in sections 1 and 3 of this Act, the
18 Department of Military and Veterans Affairs may accept and expend for the purpose of this Act
19 any funds obtained from gifts, contributions, or any other source if the acceptance and
20 expenditure is approved in accordance with § 4-8B-10.

21 Section 6. The design and construction of this project shall be under the general charge and
22 supervision of the Department of Military and Veterans Affairs. The money appropriated in
23 sections 1 and 3 of this Act shall be paid on warrants drawn by the state auditor on vouchers
24 approved by the adjutant general of the Department of Military and Veterans Affairs or the state

1 engineer.

2 Section 7. Any amounts appropriated in this Act not lawfully expended or obligated shall
3 revert in accordance with § 4-8-21.

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

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0677 SENATE COMMERCE COMMITTEE ENGROSSED NO.
SB 200 - 02/02/2006

Introduced by: The Committee on Commerce at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to authorize the risk pool board to allow additional
2 enrollees into the risk pool under certain circumstances.

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

4 Section 1. That § 58-17-121 be amended to read as follows:

5 58-17-121. The board has the general powers and authority enumerated by §§ 58-17-68, 58-
6 17-70, 58-17-85, and 58-17-113 to 58-17-142, inclusive, and, in addition to the responsibilities
7 in § 58-17-119, may:

- 8 (1) Enter into any contract as necessary or proper to carry out §§ 58-17-68, 58-17-70, 58-
9 17-85, and 58-17-113 to 58-17-142, inclusive;
- 10 (2) Take any legal action necessary or proper for recovery of any assessments for, on
11 behalf of, or against participating carriers;
- 12 (3) Take any legal action necessary to avoid the payment of improper claims against the
13 risk pool or the coverage provided by or through the risk pool;
- 14 (4) Use medical review to determine that care is clinically appropriate and cost effective
15 for the risk pool;



- 1 (5) Establish appropriate rates, scales of rates, rate classifications, and rating
2 adjustments, none of which may be unreasonable in relation to the coverage provided
3 and the reasonable operational expenses of the risk pool;
- 4 (6) Issue risk pool plans on an indemnity, network, or provision of service basis and may
5 design, utilize, contract, or otherwise arrange for the delivery of cost effective health
6 care services, including establishing or contracting with preferred provider
7 organizations, health maintenance organizations, and other limited network provider
8 arrangements in providing the coverage required by §§ 58-17-68, 58-17-70, 58-17-
9 85, and 58-17-113 to 58-17-142, inclusive;
- 10 (7) Create appropriate legal, actuarial, and other committees necessary to provide
11 technical assistance in the operation of the risk pool, plan and other contract design,
12 and any other functions within the authority of the risk pool;
- 13 (8) Provide, by including a provision in its plans, for subrogation rights by the risk pool
14 for situations in which the risk pool pays expenses on behalf of an individual who is
15 injured or suffers a disease under circumstances creating a liability upon another
16 person to pay damages to the extent of the expenses paid by the risk pool, but only
17 to the extent the damages exceed the plan deductible and coinsurance amounts paid
18 by the enrollee; and
- 19 (9) Allow an applicant who is not otherwise eligible for coverage pursuant to § 58-17-85
20 to enroll in the risk pool if all of the following are met:
- 21 (a) The applicant is covered by an individual health benefit plan that is no longer
22 being marketed in this state and has a premium rate that exceeds two hundred
23 percent of the applicable rate, based upon that person's rating characteristics,
24 charged to risk pool enrollees;

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0646

SENATE APPROPRIATIONS COMMITTEE ENGROSSED NO. **SB 203** - 02/03/2006

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to the statewide
2 sex offender registry and to declare an emergency.

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

4 Section 1. There is hereby appropriated ten thousand dollars (\$10,000), or so much thereof
5 as may be necessary, from other funds to the Office of the Attorney General for costs related to
6 the statewide sex offender registry. The Office of the Attorney General may accept and expend
7 funds obtained from gifts and contributions. Such funds may be expended for computer
8 programming, for the collection of information and in the entry of information required for a
9 statewide sex offender registry.

10 Section 2. The attorney general shall approve vouchers and the state auditor shall draw
11 warrants to pay expenditures authorized by section 1 of this Act.

12 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,
13 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
14 effect from and after its passage and approval.

