

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

597M0049

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1075 - 02/08/2006

Introduced by: Representatives Buckingham, Boomgarden, Brunner, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Gassman, Gillespie, Glover, Hackl, Halverson, Hanks, Hargens, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Kroger, Lange, McCoy, McLaughlin, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Peters, Putnam, Rausch, Rave, Rhoden, Roberts, Rounds, Schafer, Sebert, Sigdestad, Street, Tidemann, Turbiville, Van Etten, Vehle, Weems, Wick, and Willadsen and Senators McCracken, Bogue, Duniphan, Gray, Hansen (Tom), Koetzle, Kooistra, Lintz, McNenny, Moore, Napoli, Olson (Ed), Schoenbeck, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the disposition of
2 confiscated weapons and firearms.

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

4 Section 1. That § 23A-37-13 be amended to read as follows:

5 23A-37-13. Any controlled weapon or firearm used in violation of chapter 22-14 shall be
6 disposed of as follows:

7 (1) If it is stolen, it shall be returned to the lawful owner upon proof of ownership; or

8 (2) If it is illegal, it shall be destroyed pursuant to law; or

9 (3) If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the
10 direction of the attorney general, to the South Dakota Forensic Laboratory for



1 scientific examination purposes, for lawful use or disposal.

2 In the case of a disposition pursuant to subdivision (3), the arresting agency or forensic
3 laboratory may use, trade-in, ~~or~~ destroy, or sell, as provided in § 5-23-32, 5-24-9.2 or 6-13-6,
4 the controlled weapon or firearm.

5 Section 2. That chapter 23A-37 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Any moneys derived by the South Dakota Forensic Laboratory from the sale of weapons or
8 firearms pursuant to section 1 of this Act shall be deposited in the law enforcement officers
9 training fund.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

165M0379 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB 1082 -
02/07/2006

Introduced by: Representatives Deadrick, Brunner, Dykstra, Halverson, Hargens, Jensen, Nelson, Rhoden, Sigdestad, and Tidemann and Senators Bogue, Dempster, Duenwald, Hansen (Tom), Hanson (Gary), Koskan, McNenny, Peterson (Jim), Schoenbeck, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for uniform jurisdiction in the regulation of
2 certain seed, commercial fertilizer, commercial feed, animal remedies, and pesticide.

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

4 Section 1. The provisions of South Dakota law and rules preempt any local legislation
5 adopted by any political subdivision of the state that is related to the production, use,
6 advertising, sale, distribution, storage, transportation, formulation, packaging, labeling,
7 certification, registration, application, planting, or disposal of seed as defined in § 38-12A-1,
8 commercial fertilizer as defined in § 38-19-1, commercial feed as defined in § 39-14-39, animal
9 remedies as defined in § 39-18-1, and pesticide as defined in § 38-20A-1. No political
10 subdivision may adopt or continue in effect any such local legislation regardless of whether a
11 statute or a rule adopted by the state specifically preempts the local legislation. Local legislation
12 in violation of this section is void and unenforceable. For purposes of this section, the term,
13 local legislation, means any ordinance, motion, resolution, amendment, regulation, or rule



1 adopted by a political subdivision of the state.

2 Nothing in this section preempts or otherwise limits the authority of any county or
3 municipality to adopt and enforce zoning regulations, fire codes, building codes, or waste
4 disposal restrictions.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

553M0558

SENATE ENGROSSED NO. **HB 1111** - 02/14/2006

Introduced by: Representatives Krebs, Elliott, Miles, Peters, and Rounds and Senators
McCracken, Gant, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to require certain third party administrators to provide
2 reports of claims experience upon request.

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

4 Section 1. That chapter 58-29D be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any administrator for an employer self-funded health benefit plan shall provide, at the
7 written request of the employer, annual reports of the claims experience of that employer for the
8 immediate past policy period and for any time frame that is not more than three years prior to
9 the policy period in which the request was made. No administrator is required to provide any
10 claims information that pertains to a prior administrator's experience with that employer. The
11 claims report shall be of sufficient detail so as to provide the employer with the data necessary
12 to assess the employer's future health benefit coverage needs and shall be provided to the
13 employer within thirty days of receipt of the written request of the employer.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

357M0254

SENATE ENGROSSED NO. **HB 1112** - 02/14/2006

Introduced by: Representatives Deadrick, Boomgarden, Buckingham, Davis, Dykstra, Frost, Garnos, Glover, Hackl, Hills, Howie, Hunt, Jensen, Jerke, Nelson, Novstrup, Rhoden, Rounds, Sigdestad, Turbiville, Van Etten, and Willadsen and Senators Lintz, Bartling, Greenfield, McNenny, Moore, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to exempt certain real property owned by local industrial
2 development corporations from property taxation.

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

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

6 One hundred thousand dollars of the full and true value of the total amount of real property
7 or portion thereof owned by a local industrial development corporation defined pursuant to § 5-
8 14-23 is exempt from property taxation. The full and true value of the real property that is in
9 excess of one hundred thousand dollars shall be taxed as other property of the same class is
10 taxed. If any municipality has more than one local industrial development corporation owning
11 real property within its incorporated boundaries, the total value of exempt property provided by
12 this section shall be equally divided between each local industrial development corporation.

13 Section 2. That § 10-4-15 be amended to read as follows:

14 10-4-15. Any person, organization, corporation, or association claiming a property tax



1 exemption status for any property under section 1 of this Act or §§ 10-4-9 to 10-4-14, inclusive,
2 or as may otherwise be provided by law, shall apply for such exemption to the county director
3 of equalization on forms prescribed by the secretary of revenue and regulation prior to
4 November first of the tax year.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

336M0588

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1113 - 02/09/2006

Introduced by: Representatives Deadrick and Rhoden and Senators Earley and Bogue

1 FOR AN ACT ENTITLED, An Act to exempt claims related to wildland fire operations outside

2 the state from certain workers' compensation provisions and to declare an emergency.

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

4 Section 1. That § 62-1-5.2 be amended to read as follows:

5 62-1-5.2. Any firefighter who is a member of any county, municipal, special purpose district,

6 township, or private nonprofit corporation operating as a fire department that has on file a

7 cooperative fire suppression agreement with the South Dakota Department of Agriculture, and

8 has been approved by the governing body for assignment to the state, is eligible for workers'

9 compensation benefits from the state if injured during a period of time commencing from the

10 time dispatched by the secretary of agriculture ~~or the secretary's designee~~ until the time the

11 firefighter returns to the location from which the firefighter was originally dispatched by the

12 secretary of agriculture ~~or the secretary's designee~~. In the event of injury or death, the firefighter

13 shall, for the purpose of computing compensation, be considered to be earning a wage that

14 would entitle that person to the maximum compensation for death or injury allowable under this

15 title; but in no event may payments to any firefighter exceed the maximum limitations for



1 benefits as set out in this title.

2 For purposes of determining compensation any remuneration received by a member who
3 voluntarily serves the department may not be considered.

4 No firefighter under this section may be deemed a state employee for any purpose other than
5 eligibility to receive workers' compensation from the state under this section.

6 No workers' compensation benefits may be provided by the state if the claim arises while
7 dispatched to a wildland fire outside the state, unless the fire is a threat to resources within
8 South Dakota.

9 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
10 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
11 effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

760M0659

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1186 - 02/10/2006

Introduced by: Representatives Murschel, Elliott, Hunt, Jensen, Michels, and Rave and
Senators Gray, Abdallah, Dempster, Gant, Kooistra, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide a procedure for implementing the standard
2 visitation guidelines.

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

4 Section 1. That chapter 25-4A be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any parent subject to a court order relating to visitation, custody, or child support may
7 request the court to enter an order implementing the standard visitation guidelines. The request
8 shall be in writing, but no particular formality is required by the moving party. Upon receipt of
9 the written request, the court shall serve a copy of the standard guidelines upon both parties by
10 first class mail. If either party objects to the imposition of the standard guidelines within ten
11 days of service, the court shall conduct an expedited hearing as soon as practical. Based upon
12 the evidence presented at the hearing, the court may order the parties to abide by the standard
13 visitation guidelines or may order any other relief as it deems appropriate.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0219

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 44 - 02/14/2006

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

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding waiting periods for
2 the filing of insurance rates and to revise the definition and filing requirements for casualty
3 insurance.

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

5 Section 1. That § 58-24-19 be amended to read as follows:

6 58-24-19. If ~~within the waiting period or any extension thereof as provided in § 58-24-16,~~
7 the director finds that a filing does not meet the requirements of this chapter, ~~he~~ the director
8 shall send to the insurer or rating organization which made ~~such~~ the filing, written notice of
9 disapproval of ~~such~~ the filing specifying therein in what respects ~~he~~ the director finds ~~such~~ the
10 filing fails to meet the requirements of this chapter and stating that ~~such~~ the filing ~~shall~~ may not
11 become effective.

12 Section 2. That § 58-24-16 be repealed.

13 ~~—58-24-16. Subject to the exception specified in § 58-24-17, each filing shall be on file for~~
14 ~~a waiting period of thirty days before it becomes effective, which period may be extended by~~
15 ~~the director for an additional period not to exceed thirty days if he gives written notice within~~



1 ~~such waiting period to the insurer or rating organization which made the filing that he needs~~
2 ~~such additional time for the consideration of such filing. Upon written application by such~~
3 ~~insurer or rating organization, the director may authorize a filing which he has reviewed to~~
4 ~~become effective before the expiration of the waiting period or any extension thereof. A filing~~
5 ~~shall be deemed to meet the requirements of this chapter unless disapproved by the director~~
6 ~~within the waiting period or any extension thereof.~~

7 Section 3. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Casualty insurance written pursuant to § 58-9-27 is subject to the rating requirements of
10 chapter 58-24.

11 Section 4. That § 58-9-27 be amended to read as follows:

12 58-9-27. "Casualty insurance" includes insurance against any other kind of loss, damage, or
13 liability properly a subject of insurance and not within any other kind of insurance as defined
14 in this chapter, if such insurance is not disapproved by the director of insurance as being
15 contrary to law or public policy. Casualty insurance also includes liability insurance that insures
16 the issuing of written certificates or statements of title or similar instruments stating the
17 condition and status of title to real estate and the holder of record title to real estate, subject to
18 any exemptions or qualifications set forth in any such instrument, provided that there is a policy
19 of indemnification for the person for whom the instrument is made. Nothing in this Act may be
20 construed to affect the regulation of abstracters of title engaging in business in this state
21 pursuant to chapter 36-13.

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~~

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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

400M0261

HOUSE TAXATION COMMITTEE ENGROSSED NO.

SB 50 - 02/14/2006

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

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

1 FOR AN ACT ENTITLED, An Act to make certain persons responsible for making tax returns
2 and payment of tax debts.

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

4 Section 1. That § 10-33A-17 be amended to read as follows:

5 10-33A-17. Any person who:

- 6 (1) Makes any false or fraudulent return in attempting to defeat or evade the
7 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 8 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within
9 sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 10 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
11 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 12 (4) Fails to file a return required by this chapter within sixty days from the date the return
13 is due is guilty of a Class 1 misdemeanor;
- 14 (5) Engages in business as a telecommunications company under this chapter without



1 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
2 misdemeanor;

3 (6) Engages in business as a telecommunications company under this chapter after the
4 company's telecommunications gross receipts tax license has been revoked or
5 canceled by the secretary is guilty of a Class 6 felony;

6 (7) Willfully violates any rule of the secretary for the administration and enforcement of
7 the provisions of this chapter is guilty of a Class 1 misdemeanor;

8 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times
9 in any twelve-month period is guilty of a Class 6 felony; or

10 (9) Engages in business as a telecommunications company under this chapter without
11 obtaining a telecommunications gross receipts tax license after having been notified
12 in writing by the secretary that the telecommunications company is subject to the
13 provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation
14 of this subdivision if the telecommunications company providing any
15 telecommunications service files an application for a telecommunications gross
16 receipts tax license and meets all lawful prerequisites for obtaining such license
17 within three days from receipt of written notice from the secretary.

18 ~~For purposes of this section, the term, telecommunications company, includes corporate~~
19 ~~officers having control, supervision of, or charged with the responsibility for making tax returns~~
20 ~~or payments pursuant to this chapter. For purposes of this section, the term, person, includes an~~
21 officer, member, member-manager, partner, general partner, or limited partner of an entity
22 organized pursuant to Title 47 or 48 who has control or supervision of, or is charged with the
23 responsibility for, making tax returns or payments pursuant to this chapter.

24 Section 2. That § 10-33A-18 be repealed.

1 ~~10-33A-18. If a corporation subject to the gross receipts tax under this chapter fails for any~~
2 ~~reason to file the required returns or to pay the tax due, any of its officers having control, or~~
3 ~~supervision of, or charged with the responsibility for making such returns and payments are~~
4 ~~personally liable for such failure. The dissolution of a corporation does not discharge an officer's~~
5 ~~liability for a prior failure of the corporation to make a return or remit the tax due. The sum due~~
6 ~~for such a liability may be assessed and collected as provided by law.~~

7 ~~If any responsible corporate officer elects not to be personally liable for the failure to file~~
8 ~~the required returns or to pay the tax due, the corporation shall provide the department with a~~
9 ~~surety bond or certificate of deposit as security for payment of any tax that may become due.~~
10 ~~The bond or certificate of deposit provided for in this section shall be in an amount equal to the~~
11 ~~estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This~~
12 ~~section does not apply to elected or appointed officials of a municipality if they are bonded~~
13 ~~pursuant to §§ 9-14-6 and 9-14-6.1.~~

14 Section 3. That § 10-45-48.1 be amended to read as follows:

15 10-45-48.1. Any person who:

- 16 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
17 by this chapter is guilty of a Class 6 felony;
- 18 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
19 becomes due is guilty of a Class 1 misdemeanor;
- 20 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
21 records to the secretary of revenue and regulation or his agents for the purpose of
22 examination is guilty of a Class 1 misdemeanor;
- 23 (4) Fails to file a return required by this chapter within sixty days from the date the return
24 is due is guilty of a Class 1 misdemeanor;

- 1 (5) Engages in business as a retailer under this chapter without obtaining a sales tax
2 license is guilty of a Class 1 misdemeanor;
- 3 (6) Engages in business as a retailer under this chapter after his sales tax license has been
4 revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 5 (7) Willfully violates any rule of the secretary of revenue and regulation for the
6 administration and enforcement of the provisions of this chapter is guilty of a Class
7 1 misdemeanor;
- 8 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
9 twelve-month period is guilty of a Class 6 felony;
- 10 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
11 license after having been notified in writing by the secretary of revenue and
12 regulation that the person is a retailer subject to the provisions of the sales and use
13 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
14 person engaging in business as a retailer files an application for a sales tax license
15 and meets all lawful prerequisites for obtaining such license within three days from
16 receipt of written notice from the secretary.

17 ~~For purposes of this section, the term, person, includes corporate officers having control,~~
18 ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~
19 ~~to § 10-45-55. For purposes of this section, the term, person, includes an officer, member,~~
20 ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~
21 ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~
22 ~~making tax returns or payments pursuant to this chapter.~~

23 Section 4. That § 10-45-55 be repealed.

24 ~~10-45-55. If a corporation subject to tax under this chapter fails for any reason to file the~~

1 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~
2 ~~charged with the responsibility for making such returns and payments shall be personally liable~~
3 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~
4 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~
5 ~~liability may be assessed and collected as provided by law.~~

6 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~
7 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~
8 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~
9 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~
10 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~
11 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~
12 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

13 Section 5. That § 10-46-47.1 be repealed.

14 ~~— 10-46-47.1. If a corporation subject to tax under this chapter fails for any reason to file the~~
15 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~
16 ~~charged with the responsibility for making such returns and payments shall be personally liable~~
17 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~
18 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~
19 ~~liability may be assessed and collected as provided by law.~~

20 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~
21 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~
22 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~
23 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~
24 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~

1 tax rate. This section does not apply to elected or appointed officials if they are bonded pursuant
2 to ~~§§ 9-14-6 and 9-14-6.1~~.

3 Section 6. That § 10-46A-13 be repealed.

4 ~~— 10-46A-13. If a corporation subject to tax under this chapter fails for any reason to file the~~
5 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~
6 ~~charged with the responsibility for making such returns and payments shall be personally liable~~
7 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~
8 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~
9 ~~liability may be assessed and collected as provided by law.~~

10 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~
11 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~
12 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~
13 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~
14 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~
15 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~
16 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

17 Section 7. That § 10-46A-13.1 be amended to read as follows:

18 10-46A-13.1. Any person who:

- 19 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
20 by this chapter is guilty of a Class 6 felony;
- 21 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
22 becomes due is guilty of a Class 1 misdemeanor;
- 23 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
24 records to the secretary of revenue and regulation or his agents for the purpose of

- 1 examination is guilty of a Class 1 misdemeanor;
- 2 (4) Fails to file a return required by this chapter within sixty days from the date the return
3 is due is guilty of a Class 1 misdemeanor;
- 4 (5) Engages in business under this chapter without obtaining a contractor's excise tax
5 license is guilty of a Class 1 misdemeanor;
- 6 (6) Engages in business under this chapter after his contractor's excise tax license has
7 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 8 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times
9 in any twelve-month period is guilty of a Class 6 felony;
- 10 (8) Engages in business under this chapter without obtaining a contractor's excise tax
11 license after having been notified in writing by the secretary of revenue and
12 regulation that the person is a contractor subject to the provisions of the contractors'
13 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
14 if the person engaging in business files an application for a contractor's excise tax
15 license and meets all lawful prerequisites for obtaining such license within three days
16 from receipt of written notice from the secretary.

17 ~~For purposes of this section, the term, person, includes corporate officers having control,~~
18 ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~
19 ~~to § 10-46A-13. For purposes of this section, the term, person, includes an officer, member,~~
20 ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~
21 ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~
22 ~~making tax returns or payments pursuant to this chapter.~~

23 Section 8. That § 10-46B-11 be repealed.

24 ~~10-46B-11. If a corporation subject to tax under this chapter fails for any reason to file the~~

1 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~
2 ~~charged with the responsibility for making such returns and payments shall be personally liable~~
3 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~
4 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~
5 ~~liability may be assessed and collected as provided by law.~~

6 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~
7 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~
8 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~
9 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~
10 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~
11 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~
12 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

13 Section 9. That § 10-46B-11.1 be amended to read as follows:

14 10-46B-11.1. Any person who:

- 15 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
16 by this chapter is guilty of a Class 6 felony;
- 17 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
18 becomes due is guilty of a Class 1 misdemeanor;
- 19 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
20 records to the secretary of revenue and regulation or his agents for the purpose of
21 examination is guilty of a Class 1 misdemeanor;
- 22 (4) Fails to file a return required by this chapter within sixty days from the date the return
23 is due is guilty of a Class 1 misdemeanor;
- 24 (5) Engages in business under this chapter without obtaining a contractor's excise tax

- 1 license is guilty of a Class 1 misdemeanor;
- 2 (6) Engages in business under this chapter after his contractor's excise tax license has
- 3 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 4 (7) Violates either subdivision (2) or subdivision (4) two or more times in any
- 5 twelve-month period is guilty of a Class 6 felony;
- 6 (8) Engages in business under this chapter without obtaining a contractor's excise tax
- 7 license after having been notified in writing by the secretary of revenue and
- 8 regulation that the person is a contractor subject to the provisions of the contractors'
- 9 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
- 10 if the person engaging in business files an application for a contractor's excise tax
- 11 license and meets all lawful prerequisites for obtaining such license within three days
- 12 from receipt of written notice from the secretary.

13 ~~For purposes of this section, the term, person, includes corporate officers having control,~~
 14 ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~
 15 ~~to § 10-46B-11. For purposes of this section, the term, person, includes an officer, member,~~
 16 ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~
 17 ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~
 18 ~~making tax returns or payments pursuant to this chapter.~~

19 Section 10. That § 10-47B-41 be repealed.

20 ~~10-47B-41. A corporation subject to the taxes imposed by this chapter and its corporate~~
 21 ~~officers are jointly and severally liable for the filing of reports or returns and the payment of tax,~~
 22 ~~penalty, and interest due. The dissolution of a corporation does not discharge an officer's~~
 23 ~~liability for a prior failure of the corporation to make a return or remit the tax due. An officer~~
 24 ~~subject to personal liability is not discharged from that liability upon vacating the office. An~~

1 ~~officer may be discharged from future liability upon notifying the secretary in writing. The sum~~
2 ~~due for such a liability may be assessed and collected as provided by law.~~

3 Section 11. That chapter 10-59 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If an entity organized pursuant to Title 47 or 48 fails for any reason to file the required
6 returns or to pay the tax due, any person having control, or supervision of, or charged with the
7 responsibility for making such returns and payments shall be personally liable for such failure.
8 The dissolution of an entity organized pursuant to Title 47 or 48 does not discharge a person's
9 liability for a prior failure of the entity to make a return or remit the tax due. The sum due for
10 the liability may be assessed and collected as provided by law.

11 If a person who has control or supervision of, or is charged with the responsibility for
12 making returns and payments of an entity organized pursuant to Title 47 or 48 elects not to be
13 personally liable for the failure to file the required returns or to pay the tax due, the entity shall
14 provide the department with a surety bond or certificate of deposit as security for payment of
15 any tax that may become due. The bond or certificate of deposit provided for in this section shall
16 be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales
17 or excise tax rate. This section does not apply to an elected or appointed official of a
18 municipality if the official is bonded pursuant to §§ 9-14-6 and 9-14-6.1.

19 For purposes of this section, the term, person, includes an officer, member, member-
20 manager, partner, general partner, or limited partner of an entity organized pursuant to Title 47
21 or 48 who has control or supervision of, or is charged with the responsibility for, making tax
22 returns or payments pursuant to this chapter.

23 Section 12. That § 10-59-1 be amended to read as follows:

24 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes

1 or fees imposed by, and to any civil or criminal investigation authorized by, chapters 10-33A,
2 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-47B, 10-52,
3 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51,
4 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

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

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

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

Introduced by: Senators McCracken, 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

831M0464

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 138 - 02/08/2006

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

Introduced by: Senators Adelstein, Broderick, and Duniphan and Representatives Hennies, Howie, McLaughlin, and Van Etten

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the appointment of
2 an agent to receive any legal process.

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

4 Section 1. That § 15-7-6 be amended to read as follows:

5 15-7-6. The use and operation by a resident of this state or ~~his~~ the resident's agent, or by a
6 nonresident or ~~his~~ the nonresident's agent of a motor vehicle within the State of South Dakota,
7 shall be deemed an irrevocable appointment by ~~such~~ the resident or ~~his~~ the resident's agent when
8 ~~he~~ the resident has been absent from this state continuously for ~~six months~~ ninety days or more
9 following a motor vehicle accident, or by ~~such~~ the nonresident or ~~his~~ the nonresident's agent at
10 any time, of the secretary of state of South Dakota to be his or her true and lawful attorney upon
11 whom may be served all legal process in any action or proceeding against ~~him~~ the resident or
12 nonresident or his or her personal representative growing out of such use and operation of a
13 motor vehicle within this state, resulting in damages or loss to person or property, whether the
14 damage or loss occurs on a highway or on abutting public or private property. ~~Such~~ The



1 appointment is binding upon the nonresident's personal representative. ~~Such~~ The use or
2 operation of a motor vehicle by ~~such~~ the resident or nonresident is a signification of ~~his~~ the
3 resident's or nonresident's agreement that any such process in any action against ~~him~~ the resident
4 or nonresident or his or her personal representative which is so served, shall be of the same legal
5 force and validity as if served upon ~~him~~ the resident or nonresident personally or on ~~his~~ the
6 resident's or nonresident's personal representative.

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

543M0472

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 165** - 02/03/2006

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

Introduced by: Senators Koskan, Abdallah, Adelstein, Bartling, Bogue, Dempster, Earley, Gant, Greenfield, Hanson (Gary), Kelly, Knudson, McCracken, Moore, Napoli, Olson (Ed), Schoenbeck, and Sutton (Duane) and Representatives Dykstra, Brunner, Davis, Dennert, Frost, Garnos, Gassman, Hackl, Hanks, Hargens, Haverly, Hennies, Jensen, Jerke, Klautt, Koistinen, Michels, Novstrup, Putnam, Rhoden, Roberts, Turbiville, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to appropriate money to the South Dakota Energy
2 Infrastructure Authority and 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 forty-seven thousand dollars (\$247,000), or so much thereof as may be necessary, to the
6 Department of Tourism and State Development to be used for the operations of the South
7 Dakota Energy Infrastructure Authority.

8 Section 2. The executive director of the South Dakota Energy Infrastructure Authority shall
9 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by
10 this Act.

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



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

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

292M0432 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**
SB 166 - 01/31/2006

Introduced by: Senators Knudson and Bogue and Representatives O'Brien and Cutler

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Athlete Agents Act.

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

3 Section 1. This Act may be cited as the Uniform Athlete Agents Act.

4 Section 2. In this Act:

5 (1) "Agency contract," an agreement in which a student-athlete authorizes a person to
6 negotiate or solicit on behalf of the student-athlete a professional-sports-services
7 contract or an endorsement contract;

8 (2) "Athlete agent," an individual who enters into an agency contract with a student-
9 athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an
10 agency contract. The term includes an individual who represents to the public that the
11 individual is an athlete agent. The term does not include a spouse, parent, sibling,
12 grandparent, or guardian of the student-athlete or an individual acting solely on
13 behalf of a professional sports team or professional sports organization;

14 (3) "Athletic director," an individual responsible for administering the overall athletic
15 program of an educational institution or, if an educational institution has separately



1 administered athletic programs for male students and female students, the athletic
2 program for males or the athletic program for females, as appropriate;

3 (4) "Contact," a communication, direct or indirect, between an athlete agent and a
4 student-athlete, to recruit or solicit the student-athlete to enter into an agency
5 contract;

6 (5) "Endorsement contract," an agreement under which a student-athlete is employed or
7 receives consideration to use on behalf of the other party any value that the student-
8 athlete may have because of publicity, reputation, following, or fame obtained
9 because of athletic ability or performance;

10 (6) "Intercollegiate sport," a sport played at the collegiate level for which eligibility
11 requirements for participation by a student-athlete are established by a national
12 association for the promotion or regulation of collegiate athletics;

13 (7) "Person," an individual, corporation, business trust, estate, trust, partnership, limited
14 liability company, association, joint venture, government; governmental subdivision,
15 agency, or instrumentality; public corporation, or any other legal or commercial
16 entity;

17 (8) "Professional-sports-services contract" an agreement under which an individual is
18 employed, or agrees to render services, as a player on a professional sports team, with
19 a professional sports organization, or as a professional athlete;

20 (9) "Record," information that is inscribed on a tangible medium or that is stored in an
21 electronic or other medium and is retrievable in perceivable form;

22 (10) "Registration," registration as an athlete agent pursuant to this Act;

23 (11) "State," a state of the United States, the District of Columbia, Puerto Rico, the United
24 States Virgin Islands, or any territory or insular possession subject to the jurisdiction

1 of the United States;

2 (12) "Student-athlete," an individual who engages in, is eligible to engage in, or may be
3 eligible in the future to engage in, any intercollegiate sport. If an individual is
4 permanently ineligible to participate in a particular intercollegiate sport, the
5 individual is not a student-athlete for purposes of that sport.

6 Section 3. (a) By acting as an athlete agent in this state, a nonresident individual appoints
7 the secretary of state as the individual's agent for service of process in any civil action in this
8 state related to the individual's acting as an athlete agent in this state.

9 (b) The secretary of the Department of Revenue and Regulation may issue subpoenas for any
10 material that is relevant to the administration of this Act.

11 Section 4. (a) Except as otherwise provided in subsection (b), an individual may not act as
12 an athlete agent in this state without holding a certificate of registration under section 6 or 8 of
13 this Act.

14 (b) Before being issued a certificate of registration, an individual may act as an athlete agent
15 in this state for all purposes except signing an agency contract, if:

16 (1) A student-athlete or another person acting on behalf of the student-athlete initiates
17 communication with the individual; and

18 (2) Within seven days after an initial act as an athlete agent, the individual submits an
19 application for registration as an athlete agent in this state.

20 (c) An agency contract resulting from conduct in violation of this section is void and the
21 athlete agent shall return any consideration received under the contract.

22 Section 5. (a) An applicant for registration shall submit an application for registration to the
23 secretary of state in a form prescribed by the secretary of state. An application filed under this
24 section is a public record. The application must be in the name of an individual and, except as

1 otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under
2 penalty of perjury and state or contain:

3 (1) The name of the applicant and the address of the applicant's principal place of
4 business;

5 (2) The name of the applicant's business or employer, if applicable;

6 (3) Any business or occupation engaged in by the applicant for the five years next
7 preceding the date of submission of the application;

8 (4) A description of the applicant's:

9 (A) Formal training as an athlete agent;

10 (B) Practical experience as an athlete agent; and

11 (C) Educational background relating to the applicant's activities as an athlete
12 agent;

13 (5) The names and addresses of three individuals not related to the applicant who are
14 willing to serve as references;

15 (6) The name, sport, and last known team for each individual for whom the applicant
16 acted as an athlete agent during the five years next preceding the date of submission
17 of the application;

18 (7) The names and addresses of all persons who are:

19 (A) With respect to the athlete agent's business if it is not a corporation, the
20 partners, members, officers, managers, associates, or profit-sharers of the
21 business; and

22 (B) With respect to a corporation employing the athlete agent, the officers,
23 directors, and any shareholder of the corporation having an interest of five
24 percent or greater;

1 (8) Whether the applicant or any person named pursuant to paragraph (7) has been
2 convicted of a crime that, if committed in this state, would be a crime involving
3 moral turpitude or a felony, and identify the crime;

4 (9) Whether there has been any administrative or judicial determination that the applicant
5 or any person named pursuant to paragraph (7) has made a false, misleading,
6 deceptive, or fraudulent representation;

7 (10) Any instance in which the conduct of the applicant or any person named pursuant to
8 paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of
9 ineligibility to participate in an interscholastic or intercollegiate athletic event on a
10 student-athlete or educational institution;

11 (11) Any sanction, suspension, or disciplinary action taken against the applicant or any
12 person named pursuant to paragraph (7) arising out of occupational or professional
13 conduct; and

14 (12) Whether there has been any denial of an application for, suspension or revocation of,
15 or refusal to renew, the registration or licensure of the applicant or any person named
16 pursuant to paragraph (7) as an athlete agent in any state.

17 (b) An individual who has submitted an application for, and holds a certificate of,
18 registration or licensure as an athlete agent in another state, may submit a copy of the
19 application and certificate in lieu of submitting an application in the form prescribed pursuant
20 to subsection (a). The secretary of state shall accept the application and the certificate from the
21 other state as an application for registration in this state if the application to the other state:

22 (1) Was submitted in the other state within six months next preceding the submission of
23 the application in this state and the applicant certifies that the information contained
24 in the application is current;

1 (2) Contains information substantially similar to or more comprehensive than that
2 required in an application submitted in this state; and

3 (3) Was signed by the applicant under penalty of perjury.

4 Section 6. (a) Except as otherwise provided in subsection (b), the secretary of the
5 Department of Revenue and Regulation shall issue a certificate of registration to an individual
6 who complies with section 5(a) of this Act or whose application has been accepted under section
7 5(b) of this Act. The secretary of the Department of Revenue and Regulation shall submit a copy
8 of each certificate of registration issued to the Office of the Secretary of State.

9 (b) The secretary of the Department of Revenue and Regulation may refuse to issue a
10 certificate of registration if the secretary determines that the applicant has engaged in conduct
11 that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making
12 the determination, the secretary may consider whether the applicant has:

13 (1) Been convicted of a crime that, if committed in this state, would be a crime
14 involving moral turpitude or a felony;

15 (2) Made a materially false, misleading, deceptive, or fraudulent representation in the
16 application or as an athlete agent;

17 (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary
18 capacity;

19 (4) Engaged in conduct prohibited by section 14 of this Act;

20 (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or
21 been refused renewal of registration or licensure as an athlete agent in any state;

22 (6) Engaged in conduct the consequence of which was that a sanction, suspension, or
23 declaration of ineligibility to participate in an interscholastic or intercollegiate
24 athletic event was imposed on a student-athlete or educational institution; or

1 (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility,
2 honesty, or integrity.

3 (c) In making a determination under subsection (b), the secretary of the Department of
4 Revenue and Regulation shall consider:

5 (1) How recently the conduct occurred;

6 (2) The nature of the conduct and the context in which it occurred; and

7 (3) Any other relevant conduct of the applicant.

8 (d) An athlete agent may apply to renew a registration by submitting an application for
9 renewal in a form prescribed by the secretary of state. An application filed under this section is
10 a public record. The application for renewal must be signed by the applicant under penalty of
11 perjury and must contain current information on all matters required in an original registration.

12 (e) An individual who has submitted an application for renewal of registration or licensure
13 in another state, in lieu of submitting an application for renewal in the form prescribed pursuant
14 to subsection (d), may file a copy of the application for renewal and a valid certificate of
15 registration or licensure from the other state. The secretary of state shall accept the application
16 for renewal from the other state as an application for renewal in this state if the application to
17 the other state:

18 (1) Was submitted in the other state within six months next preceding the filing in this
19 state and the applicant certifies the information contained in the application for
20 renewal is current;

21 (2) Contains information substantially similar to or more comprehensive than that
22 required in an application for renewal submitted in this state; and

23 (3) Was signed by the applicant under penalty of perjury.

24 (f) A certificate of registration or a renewal of a registration is valid for two years.

1 Section 7. (a) The secretary of the Department of Revenue and Regulation may suspend,
2 revoke, or refuse to renew a registration for conduct that would have justified denial of
3 registration under section 6(b) of this Act.

4 (b) The secretary of the Department of Revenue and Regulation may deny, suspend, revoke,
5 or refuse to renew a certificate of registration or licensure only after proper notice and an
6 opportunity for a hearing. The secretary shall provide notice of such hearing and any action
7 taken in response to the hearing to the Office of the Secretary of State. The Administrative
8 Procedures Act applies to this Act.

9 Section 8. The secretary of the Department of Revenue and Regulation may issue a
10 temporary certificate of registration while an application for registration or renewal of
11 registration is pending.

12 Section 9. An application for registration or renewal of registration must be accompanied
13 by a fee in the following amount:

- 14 (1) One hundred dollars for an initial application for registration;
- 15 (2) Fifty dollars for an application for registration based upon a certificate of registration
16 or licensure issued by another state;
- 17 (3) Twenty-five dollars for an application for renewal of registration; or
- 18 (4) Twenty-five dollars for an application for renewal of registration based upon an
19 application for renewal of registration or licensure submitted in another state.

20 All moneys received pursuant to this section shall be deposited in the state general fund.

21 Section 10. (a) An agency contract must be in a record, signed or otherwise authenticated
22 by the parties.

23 (b) An agency contract must state or contain:

- 24 (1) The amount and method of calculating the consideration to be paid by the student-

1 athlete for services to be provided by the athlete agent under the contract and any
2 other consideration the athlete agent has received or will receive from any other
3 source for entering into the contract or for providing the services;

4 (2) The name of any person not listed in the application for registration or renewal of
5 registration who will be compensated because the student-athlete signed the agency
6 contract;

7 (3) A description of any expenses that the student-athlete agrees to reimburse;

8 (4) A description of the services to be provided to the student-athlete;

9 (5) The duration of the contract; and

10 (6) The date of execution.

11 (c) An agency contract must contain, in close proximity to the signature of the student-
12 athlete, a conspicuous notice in boldface type in capital letters stating:

13 **WARNING TO STUDENT-ATHLETE**

14 **IF YOU SIGN THIS CONTRACT:**

15 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-
16 ATHLETE IN YOUR SPORT;**

17 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER
18 ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE
19 AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

20 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING
21 IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR
22 ELIGIBILITY.**

23 (d) An agency contract that does not conform to this section is voidable by the student-
24 athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay

1 any consideration under the contract or to return any consideration received from the athlete
2 agent to induce the student-athlete to enter into the contract.

3 (e) The athlete agent shall give a record of the signed or otherwise authenticated agency
4 contract to the student-athlete at the time of execution.

5 Section 11. (a) Within seventy-two hours after entering into an agency contract or before the
6 next scheduled athletic event in which the student-athlete may participate, whichever occurs
7 first, the athlete agent shall give notice in a record of the existence of the contract to the athletic
8 director of the educational institution at which the student-athlete is enrolled or the athlete agent
9 has reasonable grounds to believe the student-athlete intends to enroll.

10 (b) Within seventy-two hours after entering into an agency contract or before the next
11 athletic event in which the student-athlete may participate, whichever occurs first, the student-
12 athlete shall inform the athletic director of the educational institution at which the student-
13 athlete is enrolled that he or she has entered into an agency contract.

14 Section 12. (a) A student-athlete may cancel an agency contract by giving notice of the
15 cancellation to the athlete agent in a record within fourteen days after the contract is signed.

16 (b) A student-athlete may not waive the right to cancel an agency contract.

17 (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay
18 any consideration under the contract or to return any consideration received from the athlete
19 agent to induce the student-athlete to enter into the contract.

20 Section 13. (a) An athlete agent shall retain the following records for a period of five years:

- 21 (1) The name and address of each individual represented by the athlete agent;
- 22 (2) Any agency contract entered into by the athlete agent; and
- 23 (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a
24 student-athlete to enter into an agency contract.

1 (b) Records required by subsection (a) to be retained are open to inspection by the secretary
2 of the Department of Revenue and Regulation during normal business hours.

3 Section 14. (a) An athlete agent, with the intent to induce a student-athlete to enter into an
4 agency contract, may not:

- 5 (1) Give any materially false or misleading information or make a materially false
6 promise or representation;
- 7 (2) Furnish anything of value to a student-athlete before the student-athlete enters into
8 the agency contract; or
- 9 (3) Furnish anything of value to any individual other than the student-athlete or another
10 registered athlete agent.

11 (b) An athlete agent may not intentionally:

- 12 (1) Initiate contact with a student-athlete unless registered under this Act;
- 13 (2) Refuse or fail to retain or permit inspection of the records required to be retained by
14 section 13 of this Act;
- 15 (3) Fail to register when required by section 4 of this Act;
- 16 (4) Provide materially false or misleading information in an application for registration
17 or renewal of registration;
- 18 (5) Predate or postdate an agency contract; or
- 19 (6) Fail to notify a student-athlete before the student-athlete signs or otherwise
20 authenticates an agency contract for a particular sport that the signing or
21 authentication may make the student-athlete ineligible to participate as a student-
22 athlete in that sport.

23 Section 15. An athlete agent who violates section 14 of this Act is guilty of a Class 6 felony.

24 Section 16. (a) An educational institution has a right of action against an athlete agent or a

1 former student-athlete for damages caused by a violation of this Act. In an action under this
2 section, the court may award to the prevailing party costs and reasonable attorney's fees.

3 (b) Damages of an educational institution under subsection (a) include losses and expenses
4 incurred because, as a result of the conduct of an athlete agent or former student-athlete, the
5 educational institution was injured by a violation of this Act or was penalized, disqualified, or
6 suspended from participation in athletics by a national association for the promotion and
7 regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary
8 action taken to mitigate sanctions likely to be imposed by such an organization.

9 (c) A right of action under this section does not accrue until the educational institution
10 discovers or by the exercise of reasonable diligence would have discovered the violation by the
11 athlete agent or former student-athlete.

12 (d) Any liability of the athlete agent or the former student-athlete under this section is
13 several and not joint.

14 (e) This Act does not restrict rights, remedies, or defenses of any person under law or equity.

15 Section 17. The secretary of the Department of Revenue and Regulation may assess a civil
16 penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this
17 Act. All moneys received pursuant to this section shall be deposited in the state general fund.

18 Section 18. In applying and construing this Uniform Act, consideration must be given to the
19 need to promote uniformity of the law with respect to its subject matter among states that enact
20 it.

21 Section 19. The provisions of this Act governing the legal effect, validity, or enforceability
22 of electronic records or signatures, and of contracts formed or performed with the use of such
23 records or signatures conform to the requirements of section 102 of the Electronic Signatures
24 in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and

1 supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.
2 Section 20. If any provision of this Act or its application to any person or circumstance is
3 held invalid, the invalidity does not affect other provisions or applications of this Act which can
4 be given effect without the invalid provision or application, and to this end the provisions of this
5 Act are severable.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

444M0384

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 184** - 02/01/2006

Introduced by: Senator Kooistra and Representative Gillespie

1 FOR AN ACT ENTITLED, An Act to provide for the notification of certain members of the
2 armed forces concerning screening for exposure to depleted uranium.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Depleted uranium," uranium containing less uranium-235 than the naturally
6 occurring distribution of uranium isotopes;

7 (2) "Eligible member," a member who served in Bosnia or Kosovo or in the Persian Gulf
8 War, as defined in 38 USC 101, as amended to January 1, 2006, or in an area
9 designated as a combat zone by the President of the United States during Operation
10 Enduring Freedom or Operation Iraqi Freedom;

11 (3) "Member of the armed forces" or "member," a member of the armed forces of the
12 United States, including the South Dakota National Guard, who is a resident of this
13 state;

14 (4) "Veteran," a veteran as defined in § 33-17-1 who served as an eligible member.

15 Section 2. After September 30, 2006, any eligible member or veteran who returns or has



1 returned to this state after service in an area designated as a combat zone by the President of the
2 United States and who has been assigned a risk level I or II for depleted uranium exposure by
3 the member's or veteran's branch or service, or any other member or veteran who has reason to
4 believe that the member or veteran was exposed to depleted uranium during such service, shall
5 be informed upon request of the member's or veteran's right to a medical evaluation for exposure
6 to depleted uranium to be conducted at the nearest United States Department of Veterans Affairs
7 medical facility. The Department of Military and Veterans Affairs shall promulgate rules
8 pursuant to chapter 1-26 to provide for the notification of members and veterans required
9 pursuant to this Act.

10 Section 3. Before January 1, 2007, the adjutant general of the South Dakota National Guard
11 shall submit a report to the Legislature on the scope and adequacy of training received by
12 members of the armed forces on detecting whether their service as eligible members is likely
13 to entail, or to have entailed, exposure to depleted uranium. The report shall include an
14 assessment of the feasibility and cost of adding predeployment training concerning potential
15 exposure to depleted uranium and other toxic chemical substances and the precautions
16 recommended under combat and noncombat conditions while in a combat zone.

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;

