Senate
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Bills Included				
HB 1013	HB 1015	HB 1059	HB 1081	SB 70
SB 89				

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0231

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. HB 1013 - 01/24/2007

Introduced by: The Committee on State Affairs at the request of the Bureau of Administration

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the standards for fire-resistant state buildings.

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

Section 1. That § 5-14-11 be amended to read as follows:

5-14-11. ~~It is a Class 6 felony for any board or person to design, construct, or use any~~ No state building may be designed or constructed for the permanent housing of human beings that is not fire resistant. This section does not apply to the use of buildings constructed or renovated prior to July 1, ~~1993~~ 2007, or to one-family or two-family dwellings used for employees' housing at institutions under the control of the executive branch or the Board of Regents.

A fire resistant building within the meaning of this section is a building with appropriate fire detection devices as approved by the Department of Public Safety and constructed in compliance with the provisions of the ~~Uniform~~ International Building Code utilizing fire resistive construction throughout and equipped with an automatic fire-extinguishing system. The ~~bureau of administration~~ Bureau of Administration shall promulgate rules pursuant to chapter 1-26 to establish the edition of the ~~Uniform~~ International Building Code which would be

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applicable to this section. Nothing in this section prevents the application of more restrictive conditions by individual agencies. The ~~bureau of administration~~ Bureau of Administration shall identify those buildings which are subject to this section and make all determinations of compliance with these requirements.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0337

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. HB 1015 - 01/17/2007

Introduced by: The Committee on Judiciary at the request of the Bureau of Administration

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the required identification of authorized emergency vehicles.

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

Section 1. That § 32-31-3 be amended to read as follows:

32-31-3. The exemptions granted in subdivisions 32-31-2(2) and (3) to an authorized emergency vehicle apply only if the vehicle is making use of audible ~~and~~ or visual signals meeting the requirements of law. However, the exemption granted in subdivision 32-31-2(1) to an authorized emergency vehicle applies only if the vehicle is making use of visual signals meeting the requirements of law.

Section 2. That § 32-31-4 be amended to read as follows:

32-31-4. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to any authorized emergency vehicle responding to an emergency call if the driver sounds an audible siren or air horn or both ~~and~~ or displays flashing, oscillating, or rotating beams of red light or combinations of red, blue, or white light visible one hundred eighty degrees to the front of the vehicle. The lights shall be capable of warning the public of the presence of an emergency

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vehicle under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to authorized emergency vehicles operated by law enforcement officers who are measuring the speed of other vehicles by use of the emergency vehicle speedometer. Moreover, the driver of an ambulance who has been certified pursuant to § 34-11-6 may operate the emergency vehicle in excess of the speed limit without audible signals while operating outside the city limits of a municipality.

Section 3. That § 32-31-6 be amended to read as follows:

32-31-6. Upon the immediate approach of an authorized emergency vehicle making use of audible ~~and~~ or visual signals meeting the requirements of this chapter, or of a police vehicle properly and lawfully making use of an audible or visual signal only, the driver of every other vehicle shall immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the highway, or in case of a one-way highway the nearest edge or curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until the authorized emergency vehicle shall have passed. A violation of this section is a Class 2 misdemeanor.

Section 4. That § 32-26-15 be amended to read as follows:

32-26-15. The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and ambulances if they are operated upon official business and the drivers give an audible signal by bell, siren, or exhaust whistle or visual signal by flashing, oscillating, or rotating beams of red light or combinations of red, blue, or white light visible one hundred eighty degrees to the front of the vehicle. The provisions of this section do not relieve the driver of a police, fire department vehicle, or ambulance from the duty to drive with due regard for the safety of all persons using the highway nor does it protect the driver of any such vehicle from the consequence of an arbitrary exercise of such right-of-way. A violation of this

section is a Class 2 misdemeanor.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0380

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. HB 1059 - 01/17/2007

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

FOR AN ACT ENTITLED, An Act to provide for the sharing of certain child protection records.

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

Section 1. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of § 26-8A-13, or any other statute to the contrary, in any case that a child is under the jurisdiction of the court pursuant to chapter 26-8B or 26-8C, upon a request for information, the Department of Social Services shall, with due regard to any federal laws or regulations, including the Health Information Portability and Accountability Act of 1996, as amended to January 1, 2007, the Family Educational Rights and Privacy Act, as amended to January 1, 2007, and the federal rules governing the confidentiality of alcohol and drug abuse patient records pursuant to 42 C.F.R. Part 2, as amended to January 1, 2007, in the following instances:

(1) Conduct a child abuse and neglect central registry check and provide the results to the court, court services, or the state's attorney to determine the appropriateness of

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returning a child to the parents or placing the child with another caretaker at any time during the pendency of the proceedings;

(2) For a child committed to the Department of Corrections, conduct a child abuse and neglect central registry check and provide the results to the Department of Corrections for purposes of determining the appropriateness of returning a child to the parents or placing the child with another caretaker; and

(3) For a child committed to the Department of Corrections, release copies of, or the equivalent to, the child's: request for services history summary, initial family assessments, court reports, and family service agreements to the Department of Corrections for treatment planning purposes.

Upon receipt of an order of the court, the Department of Social Services shall make its child protection services file related to the child or the child's parents and siblings available to the court, court services, or the state's attorney with the exception of information protected by the Health Information Portability and Accountability Act of 1996, as amended to January 1, 2007, the Family Educational Rights and Privacy Act, as amended to January 1, 2007, and the federal rules governing the confidentiality of alcohol and drug abuse patient records pursuant to 42 C.F.R. Part 2, as amended to January 1, 2007. Under no circumstances may the court order the release of information pertaining to pending abuse or neglect investigations.

The information released under this section is discoverable to the parties under the provisions of chapter 26-7A, but is otherwise confidential. However, the court, court services, or the Department of Corrections may release the information in their possession or any portion necessary to institutions and agencies that have legal responsibility or authorization to care for, treat, or supervise a child. The attorneys for the child and respondents may review the records with the child and the respondents but may not copy or release copies of the records. A pro se

litigant is entitled to review the records but may not copy or release copies of the records.

The Department of Social Services shall impose reasonable fees for reproduction of its records released under this section. The Department of Social Services shall promulgate rules pursuant to chapter 1-26 for any fee imposed for records reproduction.

Section 2. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

For central registry screenings allowed under the provisions of section 1 of this Act, the Department of Social Services may not complete the requested screening until the court, court services, the Department of Corrections, or the state's attorney provides to the department a consent signed by the person being considered as a possible caretaker for the child.

Section 3. That chapter 26-11A be amended by adding thereto a NEW SECTION to read as follows:

File material concerning a child under the jurisdiction of the Department of Corrections shall be provided, upon request, to the Department of Social Services for the purposes of developing family service agreements and dispositional recommendations and to the court for use at the disposition.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0256

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. HB 1081 - 01/25/2007

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

FOR AN ACT ENTITLED, An Act to revise certain provisions to provide that motor vehicle license plates remain with the owner of the plates.

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

Section 1. That § 32-5-2.3 be repealed.

~~32-5-2.3. Each owner of a noncommercial motor vehicle registered before January 1, 1990, shall, no later than March 31, 1990, renew the registration of the vehicle by payment of the registration fee. To implement this section, the initial licensing and registration period may be for a period varying from six months to eighteen months to comply with § 32-5-2.2. All registration fees shall be prorated on a monthly basis.~~

Section 2. That § 32-5-2.4 be amended to read as follows:

32-5-2.4. ~~After the conversion period, all~~ <u>All</u> owners shall continue to renew the registrations of their vehicles during the month assigned to the first initial of their last name. <u>Each registration fee shall be prorated on a monthly basis.</u> All license plates or validation stickers issued on a staggered basis shall expire on the last day of the month assigned for the renewal of registration by § 32-5-2.2. If a person operates a motor vehicle without the current

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license plate displaying the proper validation sticker he is guilty of a Class 2 misdemeanor.

Section 3. That section 4 of chapter 158 of the 2005 Session Laws be amended to read as follows:

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

32-5-2.5. A person who acquires a motor vehicle required to be annually registered shall, at the time of application and no later than thirty days after the date of purchase apply for a certificate of title or transfer of title, ~~renew the vehicle's registration by purchasing license plates or validation decals which would be valid~~ register the vehicle until the appropriate month assigned to the person for renewal by § 32-5-2.2. ~~The person who acquires a vehicle that is registered in this state shall be given credit for all full months remaining on the vehicle's unexpired registration. This section does not apply if the vehicles are exempted from the excise tax by § 32-5B-2.~~

Section 4. That section 1 of chapter 158 of the 2005 Session Laws be amended to read as follows:

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

If the ownership of a vehicle registered pursuant to the provisions of this chapter is transferred or assigned, ~~the registration of the vehicle expires and~~ the transferor shall remove the number plates from the vehicle and shall receive credit for the unexpired months at the time the plates are attached to another vehicle. No refund may be issued if the plate is detached and not reattached. If the transferor fails to remove the number plates pursuant to this section, the transferor loses any credit and the plates are no longer valid. A violation of this section is ~~guilty of~~ a Class 2 misdemeanor.

Section 5. That section 2 of chapter 158 of the 2005 Session Laws be repealed.

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

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

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

~~(2) Destroy the number plates.~~

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

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

Section 6. That section 3 of chapter 158 of the 2005 Session Laws be amended to read as follows:

Section 3. ~~If a person purchases a motor vehicle that the number plates have been removed pursuant to section 1 of this Act, the person may operate the motor vehicle for five days from the date of purchase without number plates if a dated notarized bill of sale is carried in the motor vehicle.~~ If a vehicle is sold or transferred, the seller shall provide the purchaser with a seller's permit that shall allow for the movement of the vehicle until registered but no later than thirty days from the date of purchase. Failure to comply with this section is a Class 2 misdemeanor.

Section 7. That § 32-5-3 be amended to read as follows:

32-5-3. The application required by § 32-5-2 shall also state the name of ~~the~~ each owner along with the owner's South Dakota driver license number or social security number, or, if a business, the federal employer identification number, of the motor vehicle, ~~his~~ the owner's residence post office address ~~and~~ or ~~his~~ the owner's business address, including county, and if in a first or second class municipality, ~~his~~ the street number~~, and in case of a truck, truck tractor,~~

~~road tractor, trailer, semitrailer, or recreational vehicle whether or not used exclusively within the corporate limits of any municipality, and such other information as may be required by the department~~.

Section 8. That § 32-5-5 be amended to read as follows:

32-5-5. Vehicle license fees provided by this chapter are based, except as otherwise specifically provided, upon manufacturers' weights, including accessories. If a noncommercial motor vehicle is an automobile, pickup truck, or van with a manufacturer's shipping weight, including accessories, of ten thousand pounds or less, the license fees for such a motor vehicle shall be as provided by § 32-5-6. However, if the noncommercial motor vehicle is a pickup truck that weighs more than six thousand pounds, the owner has the choice of paying the license fees pursuant to § 32-5-6 or paying the license fees based on the gross weight of the motor vehicle as provided in § 32-5-6.3. The license fees for a noncommercial motor home are as provided by § 32-5-6.1. The license fees for a motorcycle are as provided by § 32-5-9. The license fees for a snowmobile are as provided by § 32-5-9.1. The license fees for any other noncommercial motor vehicle are based on the gross weight of the motor vehicle and are as provided in § 32-5-6.3. If the department determines the actual dry weight of any model vehicle with accessories to be at variance with the manufacturers' shipping weight, the department shall certify the correct weight to be used in determining fees. These fees shall be <u>assessed and</u> paid annually ~~to the county treasurer~~. <u>Upon initial registration of a vehicle, the fees shall be assessed based upon the date of sale.</u>

Section 9. That § 32-5-6.3 be amended to read as follows:

32-5-6.3. License fees on a noncommercial motor vehicle which is not an automobile, pickup truck, or van licensed pursuant to § 32-5-6 shall be determined by the gross weight of the motor vehicle as defined by subdivision 32-9-1(6), and based on the following:

(1) Eight thousand pounds or less, inclusive, fifty-five dollars;

(2) For each additional 2,000 pounds or major fraction thereof from 8,001 to 32,000 pounds, inclusive, three dollars;

(3) For each additional 2,000 pounds or major fraction thereof from 32,001 to 54,000 pounds, inclusive, six dollars;

(4) For each additional 2,000 pounds or major fraction thereof from 54,001 to 80,000 pounds, inclusive, eighteen dollars;

(5) For each additional 2,000 pounds or major fraction thereof in excess of 80,000 pounds, twenty-four dollars.

It is a Class 2 misdemeanor for a person to operate a motor vehicle licensed pursuant to this section at a gross weight in excess of the gross weight for which it has been licensed. <u>If the owner chooses to lower the registered weight, the plate shall be returned along with any validation decal and a new plate issued with the correct registered weight.</u>

Section 10. That § 32-5-23 be amended to read as follows:

32-5-23. If a registered and licensed motor vehicle is destroyed by collision or fire, disposed of for salvage, or if rejected or condemned for use on the highways as the result of action by any inspection authority of this state, the registered owner of the current license plates thereon may remove the license plates and ~~forward them to the department to be destroyed. The owner shall receive a refund of the regular license fee only for the fractional year involved, prorated monthly. The refund shall be paid by the county treasurer of the county issuing the license on order of the secretary. The refund can only be issued to the person who originally paid the license fees for the current year~~ <u>attach the plates to a newly acquired vehicle. Credit for the remaining months on the registration shall be given. If the plates were destroyed, the owner shall apply for a replacement set of plates for a fee of ten dollars</u>.

Section 11. That § 32-5-79 be repealed.

~~32-5-79. The department shall furnish all application blanks and receipt blanks necessary for the registration of motor vehicles and on or before the thirty-first day of December of each year shall furnish to each county treasurer, such quantity of number plates or decals as may be deemed necessary for the subsequent calendar year.~~

Section 12. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

At the time of sale of a vehicle, the seller shall file a report of sale with the department indicating the purchaser's name and address. Failure to file such a report is a Class 2 misdemeanor.

Section 13. That § 32-9-3.3 be amended to read as follows:

32-9-3.3. The owner of any vehicle or equipment as defined by subdivision 32-9-3(7) shall, prior to the calendar year in which it is to be operated, file an application for a license with the department. The application shall be on a form prescribed and furnished by the department and shall provide the department with the information necessary to implement this section. The fee shall be twenty-five dollars <u>and shall be apportioned on a monthly basis</u>.

Section 14. That § 32-11-4.1 be amended to read as follows:

32-11-4.1. All funds collected for motor vehicle licenses in each county shall be distributed in the following manner:

(1) Fifty-four percent of all funds collected shall be transmitted to the secretary of revenue and credited to the local government highway and bridge fund;

(1A) Twenty-two and one-half percent shall be credited to the county road and bridge fund of the county in which they were collected;

(2) Fourteen percent shall be retained by the county and placed in a fund to be known as

the special highway fund, which shall be used for the construction, reconstruction, and maintenance of roads and bridges in the county as provided by this section and §§ 32-11-5 to 32-11-9, inclusive. If the county in which funds are collected for motor vehicle licenses has completed the construction of the county highway system, the entire amount in the special highway fund shall be used for township roads, and the board of county commissioners may direct the county auditor to pay the collected amount directly to the townships pursuant to §§ 32-11-6 and 32-11-7;

(3) Five percent shall be forwarded to the municipalities within the counties in the following proportions: each municipality within each county shall receive funds in the proportion which the total street mileage of each municipality bears to the total street mileage of all the municipalities within the county. The apportionment shall be made quarterly by the county commissioners at the first meeting in January, April, July, and October. In any county having no municipalities, the five percent collection shall be placed in the county road and bridge fund of the county;

(4) ~~Two~~ One and three-fourths percent shall be credited to the state motor vehicle fund; and

(5) One-fourth of one percent shall be credited to the county treasurer fund in the county in which the fees were collected to cover expenses for supplies such as toner, paper, etc.;

(6) Two and one-half percent shall be credited to the state license plate special revenue fund.

Section 15. That § 32-3-18 be amended to read as follows:

32-3-18. Application for a certificate of title shall be made to the secretary, upon a form prescribed by the secretary~~, containing~~. The application shall contain a listing of all owners

along with either a South Dakota driver license number or social security number, or, if a business, the federal employer identification number; the address of the applicant; a full description of the vehicle with vehicle identification numbers, if any~~,~~; a statement of applicant's title and all liens and encumbrances thereon~~,~~; the county in which the vehicle is to be kept~~.~~; and the names and addresses of the holders of all liens, title reservations, and encumbrances thereon~~,~~ ~~and any other information as the secretary shall require~~. The application shall be accompanied by a fee of five dollars. If a certificate of title has previously been issued for the motor vehicle, trailer, or semitrailer in this state, it shall be accompanied by the certificate of title duly assigned, unless provided for in this chapter.

Section 16. That § 32-5-97.2 be repealed.

~~32-5-97.2. Electric or gas utilities as defined in chapter 49-34A or any common carrier offering telecommunications service to the public as defined in chapter 49-31 who own straight trucks with two or three axles, used wholly and exclusively to carry their own equipment or property used for the construction or maintenance of their operating utility property, may apply to the county treasurer for a decal with the word "utility" inscribed thereon. The decal shall be placed on the license plate of the vehicle for which the application is made. The department shall prescribe the form and size of the decal and the manner of application. The department shall supply the decals to the county treasurer.~~

Section 17. That § 32-5-55 be amended to read as follows:

32-5-55. Any owner of a motor vehicle, who is a resident of this state, who is a regularly enlisted or commissioned member of the South Dakota National Guard, other than an inactive member thereof, and who has complied with all of the laws of this state in relation to the registration of a motor vehicle, may receive plates bearing a ~~distinctive~~ special number and design, and designating the person as a member or retired member of the South Dakota National

Guard. The number plates shall be designed by the adjutant general and subject to the approval of the department. ~~The distinctive plates shall be in addition to the regular number plates issued for the motor vehicle pursuant to § 32-5-98.~~ The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the regular number plates shall be kept on or in the motor vehicle~~.

Section 18. That § 32-5-56 be amended to read as follows:

32-5-56. Each person receiving national guard ~~distinctive~~ special number plates shall pay a ten dollar fee ~~thereforwhich shall be fixed by the department so as to reimburse the State of South Dakota~~ for the cost of producing the special number plates. All fees collected under this section shall be placed in the license plate special revenue fund, as provided under § 32-5-67.

Section 19. That § 32-5-59 be amended to read as follows:

32-5-59. Each member of the South Dakota National Guard shall apply to the county treasurer of the county of ~~his~~ residence for the issuance of ~~regular~~ special number plates for the motor vehicles owned by ~~him~~ the member. The guard member, in order to receive the ~~distinctive~~ special plates, shall have paid the appropriate license fee for the ~~regular number plates and submitted the registration slip for the regular number plates to the adjutant general~~ registration of the vehicle.

Section 20. That § 32-5-62 be amended to read as follows:

32-5-62. If any member of the South Dakota National Guard is discharged, separated, or furloughed therefrom to a reserve or inactive status, the adjutant general shall, before relieving the member, require ~~him~~ the member to surrender the ~~distinctive~~ special number plates identifying him or her as a member of the South Dakota National Guard. The ~~distinctive~~ special plates shall be surrendered to the adjutant general who shall notify the secretary who shall make the necessary changes in ~~his~~ the registration file. The vehicle owner shall ~~retain the~~ obtain regular number plates issued under § 32-5-55.

Section 21. That § 32-5-63 be amended to read as follows:

32-5-63. If at any time a motor vehicle subject to the ~~distinctive~~ special number plates issued for the national guard shall be sold, conveyed, or otherwise transferred by the member or retired member of the South Dakota National Guard to whom such ~~distinctive~~ special number plates have been issued, ~~he~~ the member shall notify the ~~adjutant general~~ county treasurer of the county of residence. The ~~adjutant general~~ county shall process a new registration indicating the motor vehicle to which the ~~distinctive~~ special plates are to be transferred and send it to the department. The secretary shall make the necessary changes in the file. The department shall notify the applicant of any corrections which need to be made.

~~The regular number plates shall remain with the motor vehicle to which they were issued. If the motor vehicle to which the distinctive plates are being transferred does not have valid regular number license plates, the guard member shall obtain regular number license plates.~~

Section 22. That § 32-5-65 be amended to read as follows:

32-5-65. Any commercial radio station or broadcasting company that holds an unrevoked and unexpired official license issued by the federal communications commission or employees of ~~such~~ the station or company when requested and approved by the station or the company, and who are residents of this state and have complied with all the laws of this state in ~~obtaining regular number plates for such motor vehicle~~ regards to the registration of a motor vehicle, may apply for a set of ~~distinctive~~ special plates bearing an inscription thereon of the call letters authorized for the station or company radio license by making application therefor as provided in § 32-5-66. The ~~distinctive~~ special plates are in ~~addition to~~ lieu of the regular number plates issued for the motor vehicle. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98 ~~and the regular number plates shall be kept on or in the motor vehicle~~. A ten dollar fee shall be charged for the ~~distinctive~~ special plates and for the renewal stickers. If the federal

communication commission's license is revoked, the owner shall surrender the ~~distinctive~~ special license plates to the department. If the employee is no longer employed by the station or the broadcasting company, the employee shall surrender the ~~distinctive~~ special license plates to the department. The secretary shall make the necessary changes in ~~his~~ the registration file. The owner shall ~~retain the~~ obtain regular number plates. Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 23. That § 32-5-65.1 be amended to read as follows:

32-5-65.1. Any owner of a motor vehicle who holds an unrevoked and unexpired official amateur radio license, is a resident of this state and has complied with all the laws of this state in ~~obtaining regular number plates for such motor vehicle~~ regards to the registration of a motor vehicle, may apply for a set of ~~distinctive~~ special plates bearing an inscription thereon of the call letters authorized for his amateur radio license by making application therefor as provided in § 32-5-66. The ~~distinctive~~ special plates are in ~~addition to~~ lieu of the regular number plates issued for the motor vehicle. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the regular number plates shall be kept on or in the motor vehicle~~. A ten dollar fee shall be charged for the ~~distinctive~~ special plates and for renewal stickers. If the amateur radio license is revoked, the owner shall surrender the ~~distinctive~~ special license plates to the department. The secretary shall make the necessary changes in ~~his~~ the registration file. The owner shall ~~retain the~~ obtain regular number plates. Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 24. That § 32-5-66 be repealed.

~~32-5-66. Application for the special plates authorized by §§ 32-5-65 and 32-5-65.1 shall be made in writing to the secretary, and if the applicant has met all of the requirements of law and the rules promulgated by the secretary, special plates bearing an inscription of the applicant's~~

~~radio call letters shall be furnished to the applicant.~~

Section 25. That § 32-5-67 be amended to read as follows:

32-5-67. All fees received pursuant to ~~§ 32-5-66~~ §§ 32-5-65 and 32-5-65.1 shall be credited to a fund to be known as the license plate special revenue fund. The special revenue fund shall be expended for the purchase of special plates required pursuant to this chapter and the expenses of the office incident to the issuance thereof. Disbursements from this fund shall be made by warrants drawn by the state auditor on vouchers duly approved by the secretary.

Section 26. That § 32-5-76 be amended to read as follows:

32-5-76. An owner of a motor vehicle, who is a resident of this state, who has complied with all the laws of this state in ~~obtaining regular number license plates for the motor vehicle~~ regards to the registration of a motor vehicle, and who operates or directs the operation of the vehicle, may submit to the county treasurer an application containing a physician's certificate on a form approved by the secretary, stating that the applicant is a person with a substantial physical disability that makes it impossible or causes substantial hardship to walk. The secretary shall promulgate a rule, pursuant to chapter 1-26, defining a person with a physical disability. The county treasurer shall procure, issue, and deliver to the applicant plates with letters, numbers, or symbols, or any combination thereof, as the secretary may prescribe. The plates shall be designed to readily apprise law enforcement officers of the fact that the motor vehicle is owned, operated, or used in transporting a person with a substantial disability. No charge may be made for the issuance of the ~~distinctive~~ special plates. The ~~distinctive~~ special plates shall be in ~~addition to~~ lieu of the regular number plates issued for the motor vehicle. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the regular number plates shall be kept on or in the motor vehicle~~. If the applicant is no longer a person with a physical disability or is deceased, the ~~distinctive~~ special plates shall be surrendered within thirty days to the county

treasurer of the applicant's residence, and the treasurer shall notify the secretary who shall make the necessary changes in the registration file. The owner shall obtain regular number plates ~~shall remain with the motor vehicle to which the plates were issued~~. Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to submit a false or fraudulent application.

Section 27. That § 32-5-76.3 be amended to read as follows:

32-5-76.3. Any nursing facility licensed pursuant to the provisions of chapter 34-12 and which has complied with all laws of this state in ~~obtaining title, license plates, and registration for its motor vehicles~~ regards to the registration of a motor vehicle, may apply for a set of ~~distinctive~~ special plates as prescribed by § 32-5-76 permitting the operator of a vehicle transporting any person with a disability to park pursuant to § 32-30-11.1. However, the vehicle may only park for the time reasonably necessary to load or unload passengers in any space reserved for persons with disabilities. The application shall be made on a form approved by the secretary. If the department determines that the applicant is licensed as a nursing facility, the secretary shall issue and deliver a set of ~~distinctive~~ special plates to the applicant. The secretary may promulgate rules, pursuant to chapter 1-26, regarding the application for, term of, and conditions under which the ~~distinctive~~ special plates may be issued. If the applicant no longer transports persons with physical disabilities, the applicant shall surrender the ~~distinctive~~ special plates to the department within thirty days. Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 28. That § 32-5-89.2 be amended to read as follows:

32-5-89.2. Any owner of a motor vehicle, including a motorcycle, who is a resident of this state, and who has complied with all laws of this state in ~~obtaining regular license plates for a motor vehicle, including a motorcycle~~ regards to the registration of a motor vehicle, may have

the license plates replaced by special personalized license plates which shall conform in size and color combinations as may be provided by the secretary. No personalized license plate for a motor vehicle other than a motorcycle may contain more than seven letters nor less than two letters. No personalized license plate for a motorcycle may contain more than six letters nor less than two letters. There may be no duplication of the personalized license plates issued by the secretary. The secretary may refuse to issue any letter combination which carries connotations offensive to good taste and decency.

Section 29. That § 32-5-89.3 be amended to read as follows:

32-5-89.3. Application for special personalized license plates shall be made on forms prescribed by the secretary. Upon the receipt of a properly completed application form and payment of a fee of twenty-five dollars for any motor vehicle other than a motorcycle, the department shall order the special plates. The fee for a personalized license plate for a motorcycle is twenty dollars. Upon issuance of the personalized license plates, the owner shall display the special plates on the assigned vehicle.~~The regular plates assigned to the vehicle shall be kept in or on the vehicle.~~

Personalized license plates shall be validated with ~~distinctive~~ stickers and are valid only for the registration year for which the stickers are issued. The annual fee for personalized license plate validation stickers for a motor vehicle other than a motorcycle is twenty-five dollars. The annual fee for a personalized license plate validation sticker for a motorcycle is twenty dollars. During the year originally issued, the personalized license metal plate fee includes the cost of that year's validation sticker. ~~Special personalized plates and current year validation stickers are not in lieu of regular plates or the applicable license fees prescribed in this chapter.~~ The fees for personalized plates and validation stickers shall be credited to a fund to be known as the license plate special revenue fund.

Section 30. That § 32-5-89.6 be repealed.

~~32-5-89.6. Any applicant issued a personalized vehicle license plate that was issued after January 1, 1996, and before July 1, 1996, may receive a refund of license fees in the amount of fifty dollars. Any applicant issued a personalized motorcycle license plate that was issued after January 1, 1996, and before July 1, 1996, may receive a refund of license fees in the amount of thirty dollars.~~

Section 31. That § 32-5-108 be amended to read as follows:

32-5-108. Any resident veteran owner of a motor vehicle who has received the United States Veterans' Administration K Award, meets the qualifications established by Public Law 187 of the Eighty-second Congress for a veteran to receive an automobile, or a veteran who has been rated as in receipt of a statutory benefit for loss or loss of use of one or more extremities, or a veteran who receives a veteran's allotment for total disability under compensation which is considered a service-connected injury, upon application to the department shall receive a set of ~~distinct~~ special license plates~~ in addition to a set of regular number license plates~~. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the number plates shall be kept on or in the motor vehicle~~. The design of the license plate shall consist of a white background bordered on the left by a blue field with white stars and on the right by alternating red and white stripes. The words "Disabled Veteran" shall be inscribed on the plate in blue, in at least ten point bold type. The license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. License fees for the ~~distinctive~~ special plates ~~and the regular number plates~~ shall be ten dollars for ~~both and ten dollars for~~ the plates and the renewal stickers. No license fee or sticker fee pursuant to § 32-5-6 may be charged to the veteran. The fees shall be deposited in the license plate special revenue fund.

In order to qualify for a special license plate pursuant to this section, a veteran shall, in

addition to meeting the qualifications established in the first paragraph, have incurred ~~his~~ disabling injuries while serving the United States in active duty during a time of war or while participating in a military mission involving armed conflict. If it is determined that the veteran owner does not qualify for the ~~distinctive~~ special plates or if the veteran owner dies, the plates shall be surrendered to the county treasurer of applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. ~~The regular number plates shall remain with the motor vehicle to which they were issued.~~ Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 32. That § 32-5-109 be amended to read as follows:

32-5-109. Any resident of this state who was a prisoner of war while serving in the United States armed forces and who received an honorable discharge from the United States armed forces is eligible to apply to the secretary for special motor vehicle license plates if ~~he~~ the resident has first complied with all laws of this state ~~in obtaining standard motor vehicle license plates~~. Each application shall be on a form prescribed by the secretary and shall include certification of the applicant's prisoner of war status from the United States Veterans' Administration. The applicant shall pay a ten dollar fee and shall receive ~~both distinctive~~ special plates ~~and regular number plates~~. The ~~regular number plates shall be kept on or in the motor vehicle, and the distinctive~~ special plates shall be displayed as set forth in § 32-5-98. A fee of ten dollars shall be paid for the renewal stickers. No registration fee or sticker fee may be charged to the applicant pursuant to § 32-5-6. The fees shall be deposited into the license plate special revenue fund. Upon approval of the application, the secretary shall issue the license plates which shall be numbered consecutively, beginning with the number 1, and the number shall be preceded by the letters POW. If it is determined that an applicant does not qualify for the ~~distinctive~~ special plates or if the applicant dies, the plates shall be surrendered to the county

treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. ~~The regular number plates shall remain with the motor vehicle to which they were issued.~~ Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 33. That § 32-5-109.1 be amended to read as follows:

32-5-109.1. Any resident of this state who was serving in the United States armed forces and survived the attack at Pearl Harbor, Hawaii, on December 7, 1941, and who received an honorable discharge, may apply to the secretary for special motor vehicle license plates. Each application shall be on a form prescribed by the secretary and shall include such information as the secretary may require. The applicant shall pay a ten dollar fee and shall receive ~~both distinctive~~ special plates ~~and regular number plates~~. The ~~regular number plates shall be kept on or in the motor vehicle, and the distinctive~~ special plates shall be displayed as set forth in § 32-5-98. A fee of ten dollars shall be paid for the renewal stickers. No registration fee or sticker fee may be charged to the applicant pursuant to § 32-5-6. The fee shall be deposited into the license plate special revenue fund. Upon approval of the application, the secretary shall issue the license plates. The license plates shall be numbered consecutively beginning with number 1 and contain a symbol to be determined by the secretary indicating that the owner of the vehicle is a Pearl Harbor survivor. If it is determined that an applicant does not qualify for the ~~distinctive~~ special plates or if the applicant dies, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. ~~The regular number plates shall remain with the motor vehicle to which they were issued.~~

Section 34. That § 32-5-109.2 be amended to read as follows:

32-5-109.2. Any resident veteran owner of a motor vehicle who has received the Purple

Heart Medal may apply to the secretary to receive a maximum of two sets of ~~distinct~~ special license plates. ~~Such distinctive~~ The special license plates and the renewal stickers for the plates shall be issued only upon proof of payment of the current registration fees ~~for regular plates issued by a county treasurer~~. The ~~distinctive~~ special plates shall be numbered consecutively beginning with number 1 and contain a symbol to be determined by the secretary indicating that the owner has received the Purple Heart Medal. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the number plates shall be kept on or in the motor vehicle~~. The ~~distinctive~~ special license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. No license fees may be charged for the ~~distinctive~~ special plates and its renewal stickers. If it is determined that the veteran owner does not qualify for the ~~distinctive~~ special plates or if the veteran owner dies, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. ~~The regular number plates shall remain with the motor vehicle to which they were issued.~~ Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 35. That § 32-5-109.3 be amended to read as follows:

32-5-109.3. Any resident veteran owner of a motor vehicle who has received the Congressional Medal of Honor may apply to the secretary to receive a maximum of two sets of ~~distinctive~~ special license plates. The ~~distinctive~~ special plates shall be numbered and contain a symbol to be determined by the secretary indicating that the owner has received the Congressional Medal of Honor. The symbol shall include a facsimile of the medallion portion of the Congressional Medal of Honor for the branch of the armed forces in which the recipient served at the time the award was earned. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the number plates shall be kept on or in the motor vehicle~~. The ~~distinctive~~

special license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. No license fees may be charged for the ~~distinctive~~ special plates and its renewal stickers, and any annual vehicle registration fees or other fees associated with the plates and renewal stickers are waived. If it is determined that the veteran owner does not qualify for the ~~distinctive~~ special plates, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. The ~~regular number plates shall remain with the motor vehicle to which they were issued, except that the distinctive~~ special plates may be retained by the veteran owner's family upon the veteran owner's death, but may not be displayed on the vehicle beyond the expiration of the plates or renewal stickers. Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 36. That § 32-5-109.4 be amended to read as follows:

32-5-109.4. An owner of a motor vehicle, who is a resident of this state, who has a valid South Dakota driver's license, and who signs an affidavit attesting to the fact that he or she is an honorably discharged veteran having served on active duty in the armed forces of the United States, may apply to the secretary to receive a set of ~~distinctive~~ special motor vehicle license plates designating the person as a veteran. If an owner of a motor vehicle falsely attests that he or she is an honorably discharged veteran having served on active duty in the armed forces of the United States, the owner is guilty of a Class 2 misdemeanor. The plate may allow for additional indication of the conflict, rank, or status of the veteran. The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~, and the number plates shall be kept on or in the motor vehicle~~. The ~~distinctive~~ special license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. In addition to the noncommercial license plate fees an additional fee of ten dollars shall be charged for the

~~distinctive~~ special license plates and any renewal stickers. If it is determined that the veteran owner does not qualify for the ~~distinctive~~ special plates or if the veteran owner dies, the plates shall be surrendered to the county treasurer of the applicant's residence. However, if the veteran owner dies, the ~~distinctive~~ specialplates may be retained by the veteran owner's family, but may not be displayed on the vehicle beyond the expiration of the plates or renewal stickers. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. ~~The noncommercial number plates shall remain with the motor vehicle to which they were issued.~~ Failure to surrender the ~~distinctive~~ special license plates as required by this section is a Class 2 misdemeanor.

Section 37. That § 32-5-111 be amended to read as follows:

32-5-111. The secretary of revenue and regulation may promulgate rules pursuant to chapter 1-26 and issue such instructions as are necessary to ensure and obtain uniformity in the administration of the provisions of this chapter. ~~Such rules may be adopted in the following areas:~~

~~(1) License plate issuance;~~

~~(2) Special plate amateur radio licenses;~~

~~(3) Military personnel and domestic volunteers;~~

~~(4) Farm truck special licensing;~~

~~(5) Personalized license plates;~~

~~(6) Registration tax dealers guides for used vehicles or mobile homes, older motor vehicles and government vehicles, title and license requirements, nonresident reciprocity, manufacturer's price sticker, wrecked motor vehicles, leased vehicles, and homemade vehicles.~~

All local officials charged with the administration of the provisions of this chapter are

governed in their official acts by the rules promulgated by the secretary.

Section 38. That § 32-5-113 be amended to read as follows:

32-5-113. Any owner of a motor vehicle, who is a resident of this state, who is a firefighter and who has complied with all of the laws of this state in relation to the registration of a motor vehicle, may receive plates bearing a ~~distinctive~~ special number and design, and designating ~~such~~ the person as a firefighter. ~~Such~~ The number plates shall be designed by the fire marshal and subject to the approval of the Department of Revenue and Regulation. ~~The distinctive plates shall be in addition to the regular number plates issued for the motor vehicle pursuant to § 32-5-98.~~ The ~~distinctive~~ special plates shall be displayed as set forth in § 32-5-98~~ and the regular number plates shall be kept on or in the motor vehicle~~.

Section 39. That § 32-5-114 be amended to read as follows:

32-5-114. Each person receiving firefighter ~~distinctive~~ special number plates shall pay a ten dollar fee ~~therefor~~ which shall ~~be fixed by the Department of Revenue and Regulation so as to~~ reimburse the State of South Dakota for the cost of producing such special number plates and decals. All fees collected under this section shall be placed in the license plate special revenue fund, as provided under § 32-5-67.

Section 40. That § 32-5-116 be amended to read as follows:

32-5-116. Any firefighter desiring ~~distinctive~~ special license plates authorized by § 32-5-113 for use during the next year shall make application to the Department of Revenue and Regulation specifying the number of vehicles to be licensed, ~~his~~ the firefighter's name, and the county of ~~his~~ residence. The department shall notify the manufacturer of the number of special number plates required in sufficient time that ~~such distinctive~~ the plates may be produced and sent to the department.

Section 41. That § 32-5-117 be repealed.

~~32-5-117. Each firefighter requesting such special number plates shall be issued a certificate showing his county of residence and the number of vehicles upon which such special plates are to be used. Such certificate shall bear the signature of the secretary of revenue and regulation , and shall be in such form as the Department of Revenue and Regulation provides.~~

Section 42. That § 32-5-118 be amended to read as follows:

32-5-118. Each firefighter shall apply to the county treasurer of the county of ~~his~~ the firefighter's residence for the issuance of ~~regular~~ special number plates for the motor vehicles owned by ~~him~~ the firefighter. The firefighter, in order to receive the ~~distinctive~~ special plates, shall have paid the registration fee for the ~~regular number~~ plates ~~and submitted the registration slip for the regular number plates to the Department of Revenue and Regulation~~.

Section 43. That § 32-5-120 be amended to read as follows:

32-5-120. ~~Whenever~~If any firefighter is discharged, separated, or retires ~~he~~, the firefighter shall surrender the ~~distinctive~~ special number plates identifying him or her as a firefighter. The ~~distinctive~~ special plates shall be surrendered to the secretary of revenue and regulation who shall make the necessary changes in ~~his~~ the registration file. The firefighter shall ~~retain the~~ obtain regular number plates ~~issued under § 32-5-113~~.

Section 44. That § 32-5-121 be amended to read as follows:

32-5-121. If at any time a motor vehicle subject to the ~~distinctive~~ special number plates issued for the firefighter shall be sold, conveyed, or otherwise transferred by the firefighter to whom ~~such distinctive~~ the special number plates have been issued, ~~he~~ the firefighter shall notify the Department of Revenue and Regulation . The Department of Revenue and Regulation shall process a new registration indicating the motor vehicle to which the ~~distinctive~~ special plates are to be transferred. The secretary shall make the necessary changes in the file. The department shall notify the applicant of any corrections which need to be made.

~~The regular number plates shall remain with the motor vehicle to which they were issued. If the motor vehicle to which the distinctive plates are being transferred does not have valid regular number license plates, the firefighter shall obtain regular number license plates.~~

Section 45. That § 32-5-122 be amended to read as follows:

32-5-122. All statutes of this state relating to the registration of motor vehicles, and the titling and licensing of motor vehicles, the fees for registering, titling, and licensing of motor vehicles, and the retention of plates from year to year shall be applicable to firefighters and the ~~distinctive~~ special plates issued in conformity with § 32-5-113.

Section 46. That § 32-5-123 be amended to read as follows:

32-5-123. Any owner of a motor vehicle who is a resident of this state and who has complied with all of the laws of this state in relation to the registration of a motor vehicle may receive plates bearing a ~~distinctive~~ special design identifying an Indian tribe located within the state. ~~Such~~ The special license plates shall be issued only upon proof of payment of the current registration fees ~~for regular plates issued by a county treasurer of this state~~. The ~~distinctive~~ special plates shall be in ~~addition to~~ lieu of the regular number plates issued for the motor vehicle pursuant to § 32-5-98. ~~The distinctive plates shall be displayed as set forth in § 32-5-98 and the regular number plates shall be kept on or in the motor vehicle.~~ Annual renewal of these special plates shall be in accordance with the general provisions of this chapter.

Section 47. That § 32-5-124 be amended to read as follows:

32-5-124. A ten dollar administrative fee shall be charged for the ~~distinctive~~ special plates and deposited into the treasury of the designated tribe to be used for the maintenance, construction, and supervision of tribal highways and bridges.

Section 48. That § 32-5-141 be repealed.

~~32-5-141. If, before April 1, 2000, an applicant requests a refund of the fifteen dollar~~

~~temporary permit fee, the department shall authorize the refund upon receipt of the request, the temporary permit, and a copy of the registration.~~

Section 49. This Act is effective on January 1, 2009.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

562N0414

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. SB 70 - 01/24/2007

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

Introduced by: Senators Gant, Garnos, and Napoli and Representatives Weems, Peters, and Wick

FOR AN ACT ENTITLED, An Act to revise certain fees, continuing education requirements, and examination requirements for massage therapists.

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

Section 1. That § 36-35-12 be amended to read as follows:

36-35-12. The board may issue a license to engage in the practice of massage to any person who submits an application form and the nonrefundable application fee as approved in § 36-35-17 and who demonstrates the following qualifications:

(1) Eighteen years of age or older;

(2) Good moral character;

(3) High school diploma or equivalent;

(4) Completion of no less than five hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board;

(5) Absence of unprofessional conduct;

(6) Malpractice insurance coverage with limits at or above an amount set by the board;

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and

(7) Passing score on an examination administered by a national certification board ~~accredited by the National Commission of Certifying Agencies and in good standing with the National Organization of Competency Assurance~~ approved by the board in rules promulgated pursuant to chapter 1-26.

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

Section 2. That § 36-35-17 be amended to read as follows:

36-35-17. Any applicant for a license under this chapter shall submit a nonrefundable application fee of ~~one hundred~~ seventy-five dollars. Any person who has a license issued or renewed by the board shall submit a license fee in an amount set by the board, but not to exceed ~~three~~ one hundred dollars.

Section 3. That § 36-35-19 be amended to read as follows:

36-35-19. Any person licensed under this chapter shall complete four hours of continuing education relating to competence in the practice of massage on an annual basis ~~in an amount,~~ of a type~~,~~ and from a facility or instructor approved by the board. No more than two of the required continuing education hours may be obtained by electronic means. The board may waive the continuing education requirement upon proof of illness or hardship.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

445N0172 **SENATE JUDICIARY COMMITTEE ENGROSSED NO.**

SB 89 - 01/24/2007

Introduced by: Senators Knudson and Heidepriem and Representatives Lust, Cutler, and Engels

FOR AN ACT ENTITLED, An Act to adopt the Uniform Prudent Management of Institutional Funds Act.

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

Section 1. This Act may be cited as the Uniform Prudent Management of Institutional Funds Act.

Section 2. In this Act:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an

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institutional fund.

(4) "Institution" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution; or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 3. (a) Subject to the intent of a donor expressed in a gift instrument, an institution,

in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve

capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this Act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Section 4. (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment

fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a).

Section 5. (a) Subject to any specific limitation set forth in a gift instrument or in law other than this Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent

person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this Act.

Section 6. (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will

further the purposes of the fund. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;

(2) More than twenty years have elapsed since the fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Section 7. Compliance with this Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Section 8. This Act applies to institutional funds existing on or established after July 1, 2007. As applied to institutional funds existing on July 1, 2007, this Act governs only decisions made or actions taken on or after that date. This Act does not apply to any funds directly held or managed by a governmental agency.

Section 9. This Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or

supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

Section 10. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 11. That §§ 55-14-1 to 55-14-7, inclusive, be repealed.