



# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

724P0140

SENATE COMMERCE

ENGROSSED NO. **HB 1113** - 2/12/2008

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

Introduced by: Representatives Kirkeby, Brunner, Elliott, Gosch, Haverly, Lust, Nelson, Olson (Russell), Pederson (Gordon), Pitts, Rausch, Rhoden, Sigdestad, Turbiville, Van Etten, Vanneman, and Wick and Senators Napoli, Abdallah, Heidepriem, Katus, Kloucek, Koetzle, Lintz, Maher, McCracken, McNenny, and Schmidt (Dennis)

1 FOR AN ACT ENTITLED, An Act to provide minimum notice requirements to persons who  
2 lease real property for their own mobile or manufactured homes.

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

4 Section 1. Any person who leases real property to an owner of a mobile or manufactured  
5 home shall, if the property is developed for an alternate use, give no less than ninety days notice  
6 to vacate and remove the home from the real property. The provisions of this section do not  
7 apply if the notice is based upon a breach of the terms of a lease.



# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

960P0580

SENATE COMMERCE

ENGROSSED NO. **HB 1203** - 2/12/2008

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

Introduced by: Representatives Dreyer, McLaughlin, Pederson (Gordon), Pitts, and Tidemann and Senators Albers, Katus, McCracken, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for the sale or consumption of alcoholic  
2 beverages upon property adjoining licensed premises.

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

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

6 Notwithstanding the provisions of § 35-4-75, the governing body of the municipality  
7 charged with the approval of alcoholic beverage license issuance may, by ordinance, permit the  
8 sale and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-  
9 of-way abutting a licensed premises, provided that the license holder derives more than fifty  
10 percent of its gross receipts from the sale of prepared food for consumption on the licensed  
11 premises. The sidewalk or walkway subject to a public right-of-way shall be immediately  
12 adjacent to and abutting the licensed premises. This section does not apply to any federal-aid  
13 eligible highway unless approved in accordance with the applicable requirements for the receipt  
14 of federal aid.



1        Nothing contained in this section prevents the governing body from imposing conditions or  
2 restrictions that it deems appropriate.

3        The sidewalk or walkway subject to a public right-of-way where the sale and consumption  
4 of alcoholic beverages is permitted does not constitute a public place as defined in § 35-1-5.3,  
5 if the sidewalk or walkway subject to a public right-of-way has been properly authorized for sale  
6 and consumption of alcoholic beverages pursuant to this section. The hours of authorized sale  
7 and consumption on the sidewalk or walkway subject to a public right-of-way as provided by  
8 this section shall be consistent with the hours permitted for the on-sale license.

9        A violation of any provision of Title 35 by an alcoholic beverage license holder conducting  
10 business on a sidewalk or walkway subject to a public right-of-way pursuant to this section  
11 constitutes a violation of Title 35 as if the violation had occurred in or on the licensed premises.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

248P0556

## SENATE TRANSPORTATION ENGROSSED NO. **HB 1241** - 2/12/2008

Introduced by: Representatives Olson (Russell), Faehn, and Lucas and Senators Hauge, Abdallah, and Gant

1 FOR AN ACT ENTITLED, An Act to provide licensed dealers additional time to deliver a title  
2 under certain conditions and to authorize the establishment of a transaction fee for certain  
3 online access to the title and registration system.

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

5 Section 1. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 If a licensed dealer does not deliver title within thirty days as required by § 32-3-7, and the  
8 dealer has satisfied any lien in compliance with chapter 32-6B, 32-6C, 32-7A, or 32-7B and the  
9 delay in delivering title was caused because the lien holder failed to release the lien or deliver  
10 the title document in accordance with § 32-3-44, the dealer may request additional time to  
11 deliver title to the retail purchaser. The dealer's request for an extension shall be made within  
12 forty days of the date of sale. Any request after the forty days shall be denied and the dealer is  
13 in violation of § 32-3-7. The dealer shall provide to the department documentation to support  
14 the steps taken to satisfy the lien in a timely manner and request the title. If the department finds



1 the request for additional time is substantiated, the department may authorize the issuance of  
2 another temporary license permit not to exceed thirty days.

3 Section 2. That § 32-3-57 be amended to read as follows:

4 32-3-57. The secretary of revenue and regulation may promulgate rules pursuant to chapter  
5 1-26 and issue instructions as are necessary to ensure and obtain uniformity in the  
6 administration of the provisions of this chapter. ~~Such rules~~ Rules may be adopted in the  
7 following areas:

- 8 (1) Application requirements for new vehicles, trailers, snowmobiles, and mobile homes;
- 9 (2) Certificate of title for vehicles previously registered, time limits of making  
10 application, duplicate certificates, and transfer of certificate of title;
- 11 (3) Assignment of certificate of title;
- 12 (4) Corrections of titles and procedure when there is a body type change;
- 13 (5) Lien recording, assignment of liens, execution of cancellation of liens, and delivery  
14 of certificate of title;
- 15 (6) Transfer of ownership;
- 16 (7) Registration tax dealers guides for used vehicles or mobile homes, older motor  
17 vehicles and government vehicles, title and license requirements, nonresident  
18 reciprocity, manufacturer's price sticker, wrecked motor vehicles, leased vehicles,  
19 and homemade vehicles; and
- 20 (8) Establishment of a transaction fee for online access to the title and registration system  
21 that does not exceed fifty cents for each transaction.

22 All local officials charged with the administration of the provisions of this chapter are  
23 governed in their official acts by the rules promulgated by the secretary.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0199

## SENATE STATE AFFAIRS ENGROSSED NO. **SB 40** - 1/30/2008

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

Introduced by: The Committee on State Affairs at the request of the Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to establish certain requirements regarding the separation  
2 and protection of a gas and electric public utility's assets.

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

4 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 Unless the commission otherwise orders:

- 7 (1) A public utility shall hold all owned or operated public utility assets in one or more  
8 legal entities separate and segregated from the legal entities of any nonutility  
9 subsidiaries or affiliates;
- 10 (2) All secured debt of a public utility may be used only for public utility purposes. If  
11 more than twenty percent of a public utility's secured assets are divested, the debt  
12 shall follow the assets or be retired in the same proportion as the divested assets; and
- 13 (3) No public utility may extend credit to any of its nonutility subsidiaries or affiliates,  
14 pledge the assets of the public utility as collateral for the use or benefit of any of its



1 nonutility subsidiaries or affiliates, or guarantee any debt or obligations of any of its  
2 nonutility subsidiaries or affiliates.

3 Any public utility which does not comply with the provisions of this Act shall have two  
4 years within which to become compliant. Notwithstanding any provision of this Act, after notice  
5 and opportunity for hearing, the commission may grant a waiver of any provision of this Act if  
6 the commission finds a waiver would not pose an undue risk to the operation of the public utility  
7 and is in the public interest.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0220

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 44** - 2/14/2008

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing and  
2 regulation of grain dealers and buyers.

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

4 Section 1. That § 49-45-1 be amended to read as follows:

5 49-45-1. Before transacting the business of a grain ~~dealer~~ buyer in this state, a person shall  
6 obtain a grain ~~dealer~~ buyer license from the commission. A violation of this section is a ~~Class~~  
7 Class 1 misdemeanor. Each purchase of grain without a license is a separate offense.

8 Operation as a grain ~~dealer~~ buyer without a license may be enjoined upon complaint of the  
9 commission. In addition, the commission may assess a civil fine against an unlicensed grain  
10 ~~dealer~~ buyer in the amount of one ~~hundred thousand~~ dollars for each purchase of grain up to a  
11 maximum fine of ~~five~~ twenty thousand dollars.

12 Section 2. That § 49-45-1.1 be amended to read as follows:

13 49-45-1.1. Terms used in this chapter mean:

14 (1) "Commission," the Public Utilities Commission;



1 (2) "Grain," grain, grain sorghums, beans, and oil seeds. However, the term does not  
2 include grain that has been cleaned, processed, and specifically identified for an  
3 intended use of planting for reproduction ~~and for which a grain warehouse receipt has~~  
4 ~~not been issued~~ or grain purchased to feed livestock;

5 (3) ~~"Grain dealer," any person who buys grain for the purpose of resale. However,~~  
6 ~~nothing in this chapter applies to the isolated or occasional resale of grain by a person~~  
7 ~~who does not hold himself or herself out as engaging in the business of reselling~~  
8 ~~grain or to a person who purchases grain for the person's own use or consumption.~~  
9 ~~The word, use, or the word, consumption, as used in this subdivision, does not mean~~  
10 ~~the sale of the grain at retail or wholesale~~ buyer," any person who purchases grain for  
11 the purpose of reselling the unprocessed grain or who purchases three hundred  
12 thousand dollars worth or more of grain directly from producers in a calendar year.  
13 However, nothing in this chapter applies to the isolated or occasional resale of grain  
14 by a person who does not hold himself or herself out as engaging in the business of  
15 reselling grain or to a person who purchases grain for the person's own use or  
16 consumption;

17 (4) "Person," any natural person, firm, corporation, company, limited liability company,  
18 partnership, association, joint stock company or the lessee, trustee, or receiver  
19 appointed by any court for any one of the foregoing;

20 (5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to  
21 be paid more than thirty days after the delivery or release of the grain for sale,  
22 including those contracts commonly referred to as deferred-payment contracts,  
23 deferred-pricing contracts and price-later contracts.

24 Section 3. That § 49-45-3 be amended to read as follows:

1       49-45-3. ~~Every~~ Each license issued pursuant to § 49-45-1 expires on the next June thirtieth  
2 following the issuance of the license. The ~~Public Utilities Commission~~ commission may at any  
3 time for cause shown revoke or suspend any grain ~~dealer~~ buyer license. However, ~~such the~~ grain  
4 ~~dealer~~ buyer has the right of appeal from such decisions as provided by chapter 1-26 for the  
5 review of final decisions of the commission.

6       Section 4. That § 49-45-6 be amended to read as follows:

7       49-45-6. The ~~Public Utilities Commission~~ commission shall supervise the business of grain  
8 ~~dealers~~ buyers in this state and administer the laws relating thereto. The commission may  
9 promulgate rules, pursuant to chapter 1-26, concerning:

- 10       (1)    The form of a grain ~~dealer's~~ buyer's bond and application and the information  
11            required to be included for licensing;
- 12       (2)    Requirements for posting grain ~~dealer's~~ buyer's licenses;
- 13       (3)    Requirements and procedures for obtaining, placing, and returning grain ~~dealer~~ buyer  
14            decals and replacement decals;
- 15       (4)    Notice requirements to sellers who enter into voluntary credit sale agreements; ~~and~~
- 16       (5)    Requirements for filing financial statements with the commission and the financial  
17            standards by which the statements are approved when considering whether to license  
18            a grain ~~dealer~~ buyer; ~~and~~
- 19       (6)    Requirements for grain buyers to provide information to sellers regarding the statutes  
20            and rules relating to grain buyers.

21       Section 5. That § 49-45-7 be amended to read as follows:

22       49-45-7. An application for a grain ~~dealer~~ buyer license shall be filed with the commission  
23 and shall be in a form prescribed by the commission. The application shall set forth the name  
24 of each owner or principal in the management of the business. If the applicant is a corporation,

1 the application shall include the name of the president, secretary, and treasurer of the  
2 corporation. The application shall also include the location of the principal office or place of  
3 business and any additional places of business of the applicant and the number of tractors, truck  
4 tractors, or straight trucks that will be used in the transportation of grain purchased under this  
5 chapter.

6 Upon receipt of an application and sufficient bond as required by § 49-45-9, the commission  
7 may grant the license applied for or may, for good cause shown and after notice and an  
8 opportunity for hearing, deny the issuance of the license.

9 Section 6. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license.  
12 No grain buyer with a Class B grain buyer's license may purchase grain in excess of ten million  
13 dollars for the annual licensed period or enter into voluntary credit sale contracts. The  
14 commission shall require an applicant for a Class A grain buyer's license to submit a more  
15 detailed review of its financial condition than an applicant for a Class B grain buyer's license.

16 Section 7. That § 49-45-9 be amended to read as follows:

17 49-45-9. Before any grain ~~dealer~~ buyer license is issued by the commission, the applicant  
18 shall file with the commission a bond conditioned to secure the faithful performance of the  
19 applicant's obligations as a grain ~~dealer~~ buyer and full and unreserved compliance with the laws  
20 of this state and the rules of the commission, relating to the purchase of grain by the grain ~~dealer~~  
21 buyer. The bond is for the specific purpose of protecting persons selling grain to the grain ~~dealer~~  
22 buyer. However, the bond may not benefit any person entering into a voluntary credit sale with  
23 a grain ~~dealer~~ buyer. Any person who does business as a grain ~~dealer~~ buyer without a bond is  
24 guilty of a ~~Class 2~~ Class 1 misdemeanor. Each day a person conducts the business of a grain

1 ~~dealer~~ buyer without a bond is a separate offense.

2 ~~The minimum bond required to obtain a grain dealer license is fifty thousand dollars. The~~  
3 ~~amount of the bond for a Class A or Class B grain buyer's license shall be based on a rolling~~  
4 ~~average of the dollar amount of grain purchased by the applicant in South Dakota during the last~~  
5 ~~three calendar years. For a new grain buyer, the first year's bond shall be based on projected~~  
6 ~~purchases. For a grain buyer with less than three years experience as a grain buyer, the bond~~  
7 ~~shall be based on the average actual purchases made by the grain buyer in all of its previous~~  
8 ~~years as a grain buyer. The bond applies to all grain purchases for all of the grain buyer's~~  
9 ~~business locations.~~

10 The amount of the bond for a Class A grain buyer's license is:

<u>Dollar Amount of Grain Purchased</u>	<u>Bond Requirement</u>
<u>&lt;\$2,000,000</u>	<u>\$50,000</u>
<u>\$2,000,001 - \$10,000,000</u>	<u>\$75,000</u>
<u>\$10,000,001 - \$50,000,000</u>	<u>\$100,000</u>
<u>\$50,000,001 - \$100,000,000</u>	<u>\$200,000</u>
<u>&gt;\$100,000,000</u>	<u>\$300,000</u>

17 The amount of the bond for a Class B grain buyer's license is:

<u>Dollar Amount of Grain Purchased</u>	<u>Bond Requirement</u>
<u>&lt;\$2,000,000</u>	<u>\$50,000</u>
<u>\$2,000,001 - \$10,000,000</u>	<u>\$75,000</u>

21 ~~If the commission finds, after an opportunity for notice and hearing, that the bond filed by~~  
22 ~~a grain dealer, pursuant to this section, is inadequate because of circumstances peculiar to that~~  
23 ~~grain dealer, the amount of that bond may be increased to such amount as the commission~~  
24 ~~determines. In addition, the~~ The grain dealer buyer ~~may stipulate to a higher bond amount~~  
25 ~~requested by the commission.~~

1 Section 8. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 If the commission determines, because a corporate surety company becomes insolvent or  
4 ceases to write grain buyer bonds in this state, that a bond in the sum required by § 49-45-9  
5 cannot be executed, the commission may, by rule promulgated pursuant to chapter 1-26,  
6 authorize the filing of other financial documents in lieu of a corporate surety bond.

7 Section 9. That § 49-45-10 be amended to read as follows:

8 49-45-10. A grain ~~dealer~~ buyer shall pay the purchase price to the owner or ~~his~~ the owner's  
9 agent for grain upon delivery or demand of the owner or agent unless payment is to be made in  
10 accordance with the terms of a voluntary credit sale which complies with the requirements of  
11 this chapter and rules promulgated thereto.

12 Section 10. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Upon receiving grain, a grain buyer shall issue to the seller an original uniform scale ticket  
15 or comparable receipt for each load of grain received. Tickets or receipts shall be numbered  
16 consecutively and a copy of each ticket or receipt shall be retained for six years.

17 Section 11. That § 49-45-11 be amended to read as follows:

18 49-45-11. All voluntary credit sales of grain entered into by a grain ~~dealer~~ buyer shall be in  
19 writing. The ~~Public Utilities Commission~~ commission may, by ~~rule~~ rules promulgated pursuant  
20 to chapter 1-26, prescribe the form and content of such writings. If a grain buyer's license is  
21 terminated or not renewed, the grain buyer shall pay for grain subject to a voluntary credit sale  
22 within ten days after the license expiration date.

23 Section 12. That § 49-45-13 be amended to read as follows:

24 49-45-13. The ~~Public Utilities Commission~~ commission shall cause the business facilities

1 of every grain ~~dealer~~ buyer, whether licensed or unlicensed, to be inspected at such times as it  
2 the commission considers necessary, ~~by one or more members of the commission or by one of~~  
3 ~~its agents or employees, who.~~ The inspector shall report in writing to the commission the result  
4 of ~~such~~ the examination. The ~~commission or its agents or employees~~ inspector may at any time  
5 during ordinary business hours enter any ~~office~~ structure, vehicle, or enclosure in which the  
6 books ~~and~~ or accounts of any grain ~~dealer~~ buyer are kept, and may examine all the books or  
7 accounts relating to the transactions of ~~such~~ the grain ~~dealer~~ buyer either within or without the  
8 state. The commission may, in all matters arising under this chapter, exercise the power of  
9 subpoena and examine witnesses in accordance with chapter 1-26.

10 Section 13. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Upon completing an inspection, an inspector may issue a memorandum of adjustments. The  
13 commission may assess a civil fine in the amount of two hundred dollars for failure to comply  
14 with the memorandum of adjustments within thirty days. After thirty days, each day that the  
15 memorandum goes uncorrected may be considered a separate offense.

16 Section 14. That § 49-45-14 be amended to read as follows:

17 49-45-14. Every grain ~~dealer~~ buyer licensed ~~as such~~ in this state shall, at such times as the  
18 ~~Public Utilities Commission~~ commission requires, furnish the commission on forms prepared  
19 by the commission, reports showing the facts and information required by the commission. The  
20 reports are not for public inspection, but the commission may, upon request, furnish the total  
21 of the figures shown on such reports ~~when~~ if the figures requested are for not less than four  
22 grain ~~dealers~~ buyers. The commission may also ~~call for, from time to time, and~~ require that a  
23 grain ~~dealer~~ buyer shall provide; any other information regarding the business of the grain ~~dealer~~  
24 buyer. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

1 Section 15. That § 49-45-16 be amended to read as follows:

2 49-45-16. ~~If any~~ The commission may immediately suspend the license of a grain buyer and  
3 the grain buyer shall surrender the license to the commission if:

4 (1) The grain ~~dealer~~ buyer, whether licensed or unlicensed, refuses, neglects, or is  
5 unable, upon proper demand, to redeem any scale ticket issued by ~~him~~ the grain  
6 buyer, through redelivery or cash payment, ~~or if any;~~

7 (2) The grain ~~dealer~~ buyer refuses, neglects, or is unable to provide ~~the requisite a~~ a bond  
8 to procure a grain dealer's license, the commission shall in an amount required by the  
9 commission; or

10 (3) The commission has knowledge of any act of insolvency, including the filing of a  
11 petition in bankruptcy naming the grain buyer as debtor.

12 Within fifteen days the grain buyer may request a hearing pursuant to chapter 1-26 to  
13 determine if the license should be revoked. If no request is made within fifteen days, the  
14 commission shall revoke the license. If the commission determines it is necessary, the  
15 commission may apply to the circuit court in the county in which the grain ~~dealer~~ buyer operates  
16 for that court to appoint a receiver. The receiver ~~shall have~~ has such powers and duties as the  
17 court, ~~from time to time~~, may direct.

18 Section 16. That § 49-45-17 be amended to read as follows:

19 49-45-17. Any person injured by the breach of any obligation of a grain ~~dealer~~ buyer, for the  
20 performance of which a bond has been given under any of the provisions of this chapter, may  
21 sue on such bond in ~~his~~ the person's own name in any court of competent jurisdiction to recover  
22 any damages ~~he~~ the person may have sustained by reason of such breach.

23 Section 17. That § 49-45-18 be amended to read as follows:

24 49-45-18. If the commission becomes aware of any act by any grain ~~dealer~~ buyer as

1 described in § 49-45-16, ~~or has knowledge of any act of insolvency, including, but not limited~~  
2 ~~to, the filing of a petition in bankruptcy naming the grain dealer as debtor,~~ the commission shall  
3 may:

- 4 (1) ~~Take immediate possession of the grain dealer's facility, and undertake~~ Undertake an  
5 immediate audit and verify the names and addresses of all outstanding scale ticket  
6 holders as revealed by the audit, and audit and certify the quantity and class or classes  
7 of grain therein;
- 8 (2) Immediately notify the surety named in the grain ~~dealer~~ buyer bond, if any, held by  
9 such grain ~~dealer~~ buyer.

10 Section 18. That § 49-45-19 be amended to read as follows:

11 49-45-19. Upon revocation, termination, or cancellation of a grain ~~dealer~~ buyer license, any  
12 claim against the grain ~~dealer~~ buyer arising under this chapter shall be made in writing with the  
13 commission, grain ~~dealer~~ buyer and surety on the grain ~~dealer~~ buyer bond within six months  
14 after receiving notice of revocation, termination, or cancellation. Failure to make a timely claim  
15 shall relieve the surety of all obligations to the claimant. However, this section may not be  
16 construed to reduce the aggregate liability of the surety to other claimants below the face amount  
17 of the bond then in effect. Upon revocation of a grain ~~dealer~~ buyer license, the commission shall  
18 cause notice of ~~such the~~ the revocation to be published once each week for two consecutive weeks  
19 in a newspaper of general circulation in each of the counties in which the licensee maintains a  
20 business location and in a newspaper of general circulation within the state and shall cause  
21 notice of ~~such the~~ the revocation to be sent by certified mail to all scale ticket holders named in the  
22 audit prepared pursuant to § 49-45-18. The notice shall state the name and address of the grain  
23 ~~dealer~~ buyer, the effective date of revocation, and the name and address of the surety on the  
24 grain ~~dealer~~ buyer bond. The notice shall also state that any claims against the grain ~~dealer~~ buyer

1 shall be made in writing and sent by ordinary mail to the commission, the grain ~~dealer~~ buyer and  
2 the surety on the grain ~~dealer~~ buyer bond within six months after receiving notice of revocation.  
3 The provisions of this section do not apply if a receiver is appointed as provided in § 49-45-16  
4 before the expiration of six months after receiving notice of revocation, termination, or  
5 cancellation of the license.

6 Section 19. That § 49-45-20 be repealed.

7 ~~49-45-20. Every grain dealer shall keep posted at all times in a conspicuous place in his~~  
8 ~~facilities a printed copy of the statutes relating to, and the rules of the commission relating to~~  
9 ~~the conduct of grain dealers. A violation of this section is a Class 2 misdemeanor.~~

10 Section 20. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 A grain buyer with a Class A license shall keep all company owned grain in the grain buyer's  
13 possession insured at current market value of the grain against loss by fire, windstorm, and  
14 extended coverage risks. The grain buyer shall furnish the commission with proof of the  
15 insurance when the grain buyer applies for a license. A violation of this section is a Class 1  
16 misdemeanor.

17 Section 21. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 A grain buyer shall keep all records of grain purchased and all contracts issued and canceled  
20 in a safe place. The records shall be kept current and open for inspection by the commission.  
21 Each record shall be retained for a period of six years.

22 Section 22. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A grain buyer shall notify the commission, within twenty-four hours, if the facility of a

1 facility-based grain buyer is destroyed or substantially damaged.

2 Section 23. That § 49-45-21 be amended to read as follows:

3 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-  
4 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and  
5 Promotion Council pursuant to § 38-29-14, the South Dakota Corn Utilization Council pursuant  
6 to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to § 38-34-21. Under the  
7 terms of any such contract, the commission may inspect the records of licensed grain ~~dealers~~  
8 buyers to determine compliance with assessment and checkoff requirements imposed by  
9 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of chapter 38-34.

10 Section 24. That § 49-43-34 be repealed.

11 ~~49-43-34. Authorized inspectors employed by the Public Utilities Commission may place~~  
12 ~~a person under arrest without warrant for a violation of any provision of this chapter which is~~  
13 ~~committed in the presence of such inspector. Commission inspectors having been given such~~  
14 ~~limited arrest powers are not "law enforcement officers" for the purposes of § 23-3-27.~~

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0222

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 45** - 1/17/2008

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise the requirements regarding the licensing and  
2 regulation of public grain warehouses, to establish a grain warehouse fund, and to make a  
3 continuous appropriation from that fund.

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

5 Section 1. That § 49-43-1 be amended to read as follows:

6 49-43-1. ~~If the operator of any public grain warehouse receives grain into such warehouse,~~  
7 ~~he shall designate in writing whether the grain is to be sold or stored, such designation to be~~  
8 ~~made in accord with any prior agreement with the owner, and settlement~~ Any grain delivered  
9 to a public grain warehouse shall be considered stored at the time of delivery unless an  
10 arrangement has been made with the public grain warehouse operator prior to or at the time of  
11 delivery to apply the grain on contract, for shipment or consignment, or for cash sale. Grain may  
12 be held in open storage, a grain bank account, or placed on a warehouse receipt. The warehouse  
13 shall issue a scale ticket for any grain received by the warehouse. The warehouse shall keep  
14 sufficient grain inventory to cover all stored grain. Settlement for all grain stored or sold shall



1 be made immediately on demand by the owner.

2 Section 2. That § 49-43-1.1 be amended to read as follows:

3 49-43-1.1. Terms used in this chapter mean:

4 (1) "Commission," the Public Utilities Commission of this state;

5 (1A) "Grain bank," grain which is received by a public grain warehouse from depositors  
6 for storage and is to be withdrawn and processed into feed as needed;

7 (1B) "Open storage grain," grain received by a public grain warehouse from a depositor  
8 for which a warehouse receipt has not been issued or a purchase made and is not  
9 grain bank;

10 (2) "Public grain warehouse," any public warehouse where grain, as defined in  
11 subdivision 49-45-1.1(2), is received for storage for hire. A public grain warehouse  
12 may also purchase, receive or handle grain in accordance with the provisions of  
13 chapter 49-45 relating to grain ~~dealers~~ buyers;

14 (3) "Receipt," a warehouse receipt which complies with the requirements of this chapter  
15 and the rules of the commission promulgated pursuant thereto;

16 (4) "Scale ticket," a memorandum issued by a public grain ~~warehouseman~~ warehouse or  
17 ~~grain dealer~~ buyer to a depositor at the time grain is initially delivered, showing the  
18 weight of the load, kind of grain, date of delivery, and indicates whether the grain is  
19 to be sold or stored or sold under a warehouse receipt, in open storage, or in a grain  
20 bank account.

21 Section 3. That § 49-43-2 be amended to read as follows:

22 49-43-2. If any grain is delivered to any person doing a public grain warehouse business in  
23 this state, ~~and a receipt is issued therefor providing for a delivery of a like kind, amount and~~  
24 ~~grade to the holder of the receipt in return, such~~ and is held in open storage, in a grain bank

1 account, or placed on a warehouse receipt, the delivery is a bailment and not a sale of the grain  
2 so delivered.

3 Section 4. That § 49-43-2.1 be amended to read as follows:

4 49-43-2.1. The ~~lessee, owner or manager~~ operator of a public grain warehouse shall give a  
5 receipt for the grain received by it for storage, except for grain held in open storage or a grain  
6 bank account. No receipt ~~forms~~ form may be used except ~~those~~ any form requested and ordered  
7 in accordance with the ~~Public Utilities Commission~~ commission's rules promulgated pursuant  
8 to chapter 1-26.

9 The commission shall determine by rule or order the form and contents of ~~the~~ any receipt  
10 ~~forms~~ form, which shall be uniform.

11 ~~All~~ Any receipt ~~forms~~ form may be recovered by the commission ~~or its agents or employees~~  
12 if the ~~warehouseman's~~ public grain warehouse license is revoked, suspended, or otherwise  
13 terminated.

14 A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

15 Section 5. That § 49-43-3 be amended to read as follows:

16 49-43-3. In no case ~~shall~~ is the grain stored under a receipt as required by § 49-43-2.1, ~~be~~  
17 open storage grain, or grain bank liable to seizure upon process of any court in any action  
18 against the bailee, except an action by the owner of open storage grain, owner of grain bank, or  
19 owner or holder of ~~such~~ a warehouse receipt to enforce the terms of the same. In the event of  
20 the failure or insolvency of ~~such~~ the bailee, grain on hand in the public grain warehouse shall  
21 first be applied to the redemption and satisfaction of outstanding receipts issued ~~from such~~ by  
22 the warehouse and to owners of open storage grain and grain bank.

23 Section 6. That § 49-43-4 be repealed.

24 ~~49-43-4. Any public grain warehouseman storing his own grain and seed is subject to the~~

1 ~~grain warehouse law of this state and to the rules made thereunder.~~

2 Section 7. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The commission may promulgate rules pursuant to chapter 1-26 concerning:

- 5 (1) The procedure for filing grain reports;
- 6 (2) The form of a public grain warehouse's bond and application, and the information  
7 required to be included for licensing;
- 8 (3) Requirements and procedures for releasing bonds;
- 9 (4) Requirements for posting public grain warehouse's licenses;
- 10 (5) Procedures and requirements for license suspension, revocation, transfer of  
11 ownership, or insolvency by a public grain warehouse;
- 12 (6) Requirements for the form of, procedures for, and the issuance and control of grain  
13 warehouse receipts and scale tickets;
- 14 (7) Specifications for the safe storage of grain;
- 15 (8) Requirements for filing financial statements with the commission and the financial  
16 standards by which the statements are approved when considering whether to license  
17 a public grain warehouse; and
- 18 (9) The rates for receiving, handling, redelivering, and storing grain.

19 Section 8. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 No owner, lessee, or manager of any public grain warehouse may transact any business as  
22 a public grain warehouse until a license has been issued by the commission. Any person who  
23 does business as a public grain warehouse without a license is guilty of a Class 1 misdemeanor.  
24 Each day a person conducts the business of a public grain warehouse without a license is a

1 separate offense. The operation of a public grain warehouse without a license may be enjoined  
2 by the commission. In addition, the commission may assess a civil fine against an unlicensed  
3 warehouse operator in the amount of one thousand dollars a day up to a maximum of twenty  
4 thousand dollars.

5 Section 9. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Before any license is granted to a public grain warehouse, the warehouse operator shall file  
8 with the commission a bond conditioned to secure the faithful performance of the warehouse  
9 operator's obligations as a public warehouse and full and unreserved compliance with the laws  
10 of this state and the rules of the commission, relating to the storage of property for hire by the  
11 public warehouse. The bond shall be in the amount specified by § 49-43-5.3. Operation as a  
12 public grain warehouse without a bond is a Class 1 misdemeanor. Each day a person conducts  
13 the business of a public grain warehouse without a bond is a separate offense.

14 Section 10. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 Upon receipt of an application and sufficient bond, the commission may grant the license  
17 applied for or may, for good cause shown, deny the issuance of the license.

18 Section 11. That § 49-43-5.3 be amended to read as follows:

19 49-43-5.3. The bond required by ~~§ 49-42-5.1~~ section 9 of this Act for public grain  
20 ~~warehousemen~~ warehouses is for the specific purpose of protecting persons storing grain with  
21 the ~~warehousemen~~ warehouse.

22 The ~~warehouseman~~ warehouse operator shall furnish a single bond in an amount equal to  
23 one-half of the local market value of the grain stored in ~~his~~ the warehouse, or if multiple  
24 warehouses are operated by the ~~warehouseman~~ warehouse operator, the bond shall equal

1 one-half of the local market value of the grain stored at all warehouse locations. However, a  
 2 ~~warehouseman~~ warehouse operator shall provide a minimum bond of twenty-five thousand  
 3 dollars at any one municipality or location. ~~Such~~ The minimum bond amounts per municipality  
 4 or location does not limit the bond coverage available to depositors at any one warehouse  
 5 location. The entire bond, up to the amount on its face, shall provide coverage to a depositor  
 6 conducting business at any of the ~~warehouseman's~~ warehouse operator's locations.

7 The bond shall describe with particularity the exact locations of the warehouses to be  
 8 covered.

9 Section 12. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
 10 follows:

11 Each license issued pursuant to section 10 of this Act expires on the next June thirtieth  
 12 following the issuance of the license. The commission may at any time for good cause shown  
 13 revoke or suspend any grain warehouse license. However, the grain warehouse operator has the  
 14 right of appeal from the decision provided by chapter 1-26 for the review of final decisions of  
 15 the commission.

16 Section 13. That § 49-43-5.6 be amended to read as follows:

17 49-43-5.6. ~~If any warehouseman~~ The commission may immediately suspend the license of  
 18 a warehouse operator and the warehouse operator shall surrender the license to the commission  
 19 if:

20 (1) The warehouse operator, whether licensed or unlicensed, refuses, neglects, or is  
 21 unable, upon proper demand, to redeem any warehouse receipt or scale ticket for  
 22 grain in open storage or in grain bank issued by ~~him~~ the warehouse operator, through  
 23 redelivery or cash payment; ~~or if any warehouseman;~~

24 (2) The warehouse operator refuses, neglects, or is unable to provide ~~the requisite~~ a bond

1 to procure a warehouseman's license, the ~~Public Utilities Commission~~ shall in an  
2 amount required by the commission; or

3 (3) The commission has knowledge of any act of insolvency, including the filing of a  
4 petition in bankruptcy naming the warehouse as debtor.

5 Within fifteen days the warehouse operator may request a hearing pursuant to chapter 1-26  
6 to determine if the license should be revoked. If no request is made within fifteen days, the  
7 commission shall revoke the license. If the commission determines it is necessary, the  
8 commission may apply to the circuit court in the county in which the ~~warehouseman~~ warehouse  
9 operator operates for that court to appoint a receiver. The receiver shall have such powers and  
10 duties as the court, ~~from time to time~~, may direct.

11 Section 14. That § 49-43-5.8 be amended to read as follows:

12 49-43-5.8. If the ~~Public Utilities Commission~~ commission becomes aware of any act by any  
13 ~~warehouseman~~ warehouse operator as described in § 49-43-5.6, ~~or has knowledge of any act of~~  
14 ~~insolvency, including but not limited to the filing of a petition in bankruptcy naming the~~  
15 ~~warehouseman as debtor~~, the commission shall may:

16 (1) Take immediate possession of the warehouse facility, and undertake an immediate  
17 audit and verify the names and addresses of all outstanding warehouse receipt holders  
18 and scale ticket holders as revealed by the audit, and audit and certify the quantity  
19 and class or classes of grain therein;

20 (2) Immediately notify the surety named in both the ~~warehouseman's~~ warehouse's and  
21 ~~dealer's~~ grain buyer's bonds, if any, held by ~~such warehouseman~~ the warehouse.

22 Section 15. That § 49-43-9 be amended to read as follows:

23 49-43-9. The operator of ~~every~~ each public grain warehouse shall, on or before the tenth day  
24 of each month and at such additional times as the commission requires, furnish the commission

1 on forms prepared by the commission, reports showing the facts and information required by  
2 the commission. The reports are not for public inspection, but the commission may, upon  
3 request, furnish the total of the figures shown on ~~such the reports when~~ if the figures requested  
4 are for not less than four public grain warehouses. Nothing in this section prohibits the  
5 commission from providing the reports to state or federal governmental agencies who may not  
6 release information on individual reports to the public. A violation of this section by an operator  
7 is a ~~Class 2~~ Class 1 misdemeanor.

8 Section 16. That § 49-43-10 be amended to read as follows:

9 49-43-10. Each public grain warehouse shall obtain a yearly measurement of all the grain  
10 in its facility and shall provide the results of the measurement to the commission along with a  
11 daily position report as of the time of the measurement. The measurement shall be performed  
12 by a qualified person independent of the warehouse. If the commission finds the person  
13 performing the measurement is not qualified or independent, the commission may require a  
14 different person to perform the measurement.

15 The commission may also ~~call for, from time to time, and require~~ require the operator of a public  
16 grain warehouse ~~shall~~ to furnish under oath, a written report showing the condition and  
17 management of the business, the total number of bushels of each kind and grade of grain  
18 purchased and in store, the number delivered out, the number remaining in store at the date of  
19 the report, and any other information regarding the business of the public grain warehouse  
20 which the commission requires. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

21 No ~~warehouseman~~ warehouse need weigh the grain on hand more than once in each year,  
22 unless the commission requires an additional measurement as part of an investigation of the  
23 warehouse. If required by the commission, a ~~warehouseman~~ warehouse shall measure ~~his~~ its  
24 grain inventory at ~~his~~ its expense. The commission shall designate a person who is qualified to

1 perform the measurement, which may be an agent or employee of the ~~warehouseman~~ warehouse  
2 or a third party as appropriate under the circumstances of the investigation.

3 Section 17. That § 49-43-11 be amended to read as follows:

4 49-43-11. The lessee, owner, or manager of a public grain warehouse which has furnished  
5 a bond and received a public grain warehouse license, shall receive for storage all grain offered  
6 for storage at the warehouse, which at the time of ~~such~~ the offer are in suitable condition for  
7 storage, and which are tendered in the usual course of business. ~~However, if the capacity of the~~  
8 ~~warehouse to receive the grain is exhausted and the owner, lessee or manager of the warehouse~~  
9 ~~is prevented from shipping the grain to a terminal market by inability to obtain cars for shipment~~  
10 ~~or some other valid cause rendering the receiving of such grain impossible and over which the~~  
11 ~~owner, lessee, or manager has no control, the provisions of this section are waived. However,~~  
12 a warehouse operator may refuse to store grain if the capacity of the warehouse is exhausted or  
13 for other good cause. If requested, a warehouse operator that refuses to store grain shall provide  
14 the person requesting storage with the reason for the refusal in writing. The written notice of  
15 refusal shall state that the person being refused storage may file a complaint with the  
16 commission contesting the refusal. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

17 Section 18. That § 49-43-13 be amended to read as follows:

18 49-43-13. ~~The storage period for grain deposited in a public grain warehouse shall terminate~~  
19 ~~on June thirtieth of each year. In the absence of a demand for delivery, order to sell, or request~~  
20 ~~by the holder of an outstanding storage receipt, accompanied by the payment of all accrued~~  
21 ~~storage and handling charges as prescribed by law, the warehouseman may, upon the expiration~~  
22 ~~of the storage contract, sell such stored grain at the local market price, on the close of business~~  
23 ~~of that day, deduct from the proceeds thereof all legal accrued charges and cash advances which~~  
24 ~~may have been made upon such stored grain by the warehouseman and pay the balance of such~~

1 ~~proceeds to the owner upon surrender of the storage receipt. By June thirtieth of each year, each~~  
2 ~~warehouse operator shall provide written notice to each current depositor of all outstanding~~  
3 ~~warehouse receipts, grain in open storage, and grain in a grain bank account. The notice shall~~  
4 ~~state the market value of the grain and any accrued storage charges. Copies of the notices shall~~  
5 ~~be kept and made available for inspection by the commission.~~

6 Section 19. That § 49-43-15 be amended to read as follows:

7 49-43-15. No warehouse receipt may be issued by a public grain warehouse except upon  
8 actual delivery of grain into the warehouse; nor may a receipt be issued for a greater quantity  
9 of grain than was actually received; nor may more than one receipt be issued for the same lot  
10 of grain, unless receipt for part of a lot is desired, and then the aggregate receipts for a particular  
11 lot shall cover that lot and no more. A violation of this section is a ~~Class 2~~ Class 1  
12 misdemeanor.

13 Section 20. That § 49-43-22 be amended to read as follows:

14 49-43-22. Upon the return of any storage receipt by a receipt holder, a scale ticket for open  
15 storage grain, or a scale ticket for grain in a grain bank account, to the public grain warehouse  
16 issuing the receipt or scale ticket, and the tender of all proper charges on the grain represented  
17 by the receipt or scale ticket, ~~such~~ the grain or an equal quantity of the same grade, kind and  
18 quality shall immediately be delivered to the holder of ~~such~~ the receipt or scale ticket as rapidly  
19 as due diligence, care, and prudence justify.

20 Section 21. That § 49-43-23 be amended to read as follows:

21 49-43-23. Nothing in § 49-43-22 means the delivery of the identical grain specified in the  
22 receipt or scale ticket. A ~~warehouseman~~ warehouse may instead deliver an equal amount of the  
23 same grade, kind and quality. If the grain ~~so~~ delivered has not been cleaned by the  
24 ~~warehouseman~~ warehouse, there shall be added to the amount ~~so~~ delivered the amount originally

1 deducted from the grain stored for ~~dirt~~. ~~When such dockage and foreign material~~. If the grain  
2 is to be delivered from some terminal market point, the public grain ~~warehouseman~~ warehouse  
3 issuing ~~such the~~ storage receipts or scale tickets shall guarantee weight, grade, and quality.

4 Section 22. That § 49-43-27 be repealed.

5 ~~— 49-43-27. A representative of the Division of Commercial Inspection and Licensing may at~~  
6 ~~any time without notice enter any public warehouse in this state and test and seal any weighing~~  
7 ~~scale and measure used in conducting the warehouse business. The division may acquire~~  
8 ~~standard weights and measures and such additional facilities and equipment, including motor~~  
9 ~~vehicles or such other means of conveyance it deems necessary and suitable in carrying on the~~  
10 ~~work of inspecting, testing, and correcting scales in this state.~~

11 Section 23. That § 49-43-28 be repealed.

12 ~~— 49-43-28. If the person making an inspection pursuant to § 49-43-27 finds any scales in use~~  
13 ~~in the public warehouse inaccurate, he shall condemn the scales and attach thereto a card, notice,~~  
14 ~~or other device indicating that the scales are condemned. It is thereafter a Class 2 misdemeanor~~  
15 ~~for any person to remove, deface or destroy such card, notice or other device placed upon the~~  
16 ~~condemned scales, or to again use, or permit the use of such scales for any purpose, until they~~  
17 ~~have been repaired, retested, and found to be correct, and until the Division of Commercial~~  
18 ~~Inspection Licensing, or the person making the inspection, consents to the further use of such~~  
19 ~~scales.~~

20 Section 24. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Open storage grain is considered stored grain and is covered by the warehouse bond required  
23 pursuant to § 49-43-5.3.

24 Section 25. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A public grain warehouse shall keep all grain in the warehouse insured at current market  
3 value against loss by fire, windstorm, and extended coverage risks. The warehouse operator  
4 shall furnish the commission with proof of the insurance when the operator applies for a license.

5 A violation of this section is a Class 1 misdemeanor.

6 Section 26. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 A public grain warehouse shall keep all records of grain purchased and stored and all  
9 receipts, scale tickets, and contracts issued and canceled in a safe place. The records shall be  
10 kept current and open for inspection by the commission. Each record shall be retained for a  
11 period of six years.

12 Section 27. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The operator of a public grain warehouse shall notify the commission, within twenty-four  
15 hours, if the public grain warehouse is destroyed or substantially damaged.

16 Section 28. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 The commission shall cause every public grain warehouse to be inspected at such times as  
19 the commission considers necessary. The inspector shall report in writing to the commission the  
20 result of the inspection. The inspector may at any time during ordinary business hours enter any  
21 public grain warehouse or any office in which the books and accounts of any public warehouse  
22 are kept, and may examine all the books relating to the transaction of business in such public  
23 grain warehouse either within or without the state. The commission may in all matters arising  
24 under chapters 49-43 to 49-44, inclusive, exercise the power of subpoena and examine witnesses

1 in accordance with chapter 1-26.

2 Section 29. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any public grain warehouse operator in the state who refuses access to the warehouse's  
5 books and accounts or hinders and delays the commission or any of its employees or agents in  
6 examining the books and accounts, may be punished by a civil fine not exceeding two thousand  
7 dollars. In addition, the commission may revoke the license of the public warehouse.

8 Section 30. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Upon completing an inspection an inspector may issue a memorandum of adjustments. The  
11 commission may assess a civil fine in the amount of two hundred dollars for failure to comply  
12 with the memorandum of adjustments within thirty days. After thirty days, each day that the  
13 memorandum goes uncorrected may be considered a separate offense.

14 Section 31. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 Unless otherwise specifically provided by this chapter, the provisions regarding uniform  
17 warehouse receipts in chapter 57A-7 apply to the receipts and contracts of public grain  
18 warehouses operating within this state.

19 Section 32. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 Any public grain warehouse operator, or any officer, agent, or employee, who issues a  
22 receipt knowing that the goods for which the receipt is issued have not been actually received  
23 by the warehouse, or are not under the warehouse's actual control at the time of issuing the  
24 receipt, is guilty of a Class 5 felony.

1 Section 33. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 Any grain warehouse operator, or any officer, agent, or employee who fraudulently issues  
4 a receipt for goods knowing that it contains any false statement, is guilty of a Class 1  
5 misdemeanor.

6 Section 34. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Any grain warehouse operator, or any officer, agent or employee, who issues a duplicate or  
9 additional negotiable receipt for goods knowing that a former negotiable receipt for the same  
10 goods or any part of them is outstanding and uncanceled, without plainly placing upon the face  
11 thereof the word, duplicate, except in the case of a lost or destroyed receipt after proceedings  
12 as provided for in subdivision 57A-7-601(1), is guilty of a Class 5 felony.

13 Section 35. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 If there are deposited with or held by a warehouse goods of which the warehouse is owner,  
16 either solely or jointly or in common with others, the warehouse operator, or any officer, agent,  
17 or employee, who, knowing this ownership, issues or aids in issuing a negotiable receipt for  
18 such goods which does not state the ownership, is guilty of a Class 1 misdemeanor.

19 Section 36. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 Any grain warehouse operator, or any officer, agent, or employee, who delivers goods out  
22 of the possession of the grain warehouse, knowing that a negotiable receipt, the negotiation of  
23 which would transfer the right to the possession of such goods, is outstanding and uncanceled,  
24 without obtaining the possession of the receipt at or before the time of the delivery, except in

1 the cases provided for in subdivisions 57A-7-206(1) to (3), inclusive, subdivisions  
2 57A-7-210(1) and (2), and subdivision 57A-7-601(1), is guilty of a Class 1 misdemeanor.

3 Section 37. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person who deposits goods to which the person does not have title, or upon which there  
6 is a lien or mortgage, and who takes for the goods a negotiable receipt which the person  
7 afterwards negotiates for value with intent to deceive and without disclosing the person's lack  
8 of title or the existence of the lien or mortgage is guilty of a Class 1 misdemeanor.

9 Section 38. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 An aggrieved party may appeal any decision of the commission made in the course of  
12 administration of this chapter in accordance with chapter 1-26.

13 Section 39. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 It is a Class 1 misdemeanor for any person to falsely weigh any grain or any other  
16 agricultural product.

17 Section 40. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Any money collected by the commission pursuant to chapters 49-43 and 49-45 shall be paid  
20 into the state treasury and credited to the grain and warehouse fund which is hereby established  
21 in the state treasury. Any money credited in the fund and any interest earned on the fund are  
22 continuously appropriated to the commission for the implementation of the provisions of  
23 chapters 49-43 and 49-45.

24 Section 41. The balance of funds in the grain and warehouse fund as established by § 49-42-

1 8 shall be transferred to the grain and warehouse fund established by this Act.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0380

## SENATE APPROPRIATIONS ENGROSSED NO. **SB** **49** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Bureau of Finance and  
Management

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to suppression  
2 of wildfires in the state 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 four million fifty-  
5 six thousand two hundred seventy-eight dollars (\$4,056,278), or so much thereof as may be  
6 necessary, to the state fire suppression special revenue fund for costs related to the suppression  
7 of wildfires in South Dakota.

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

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

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



# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0369

## SENATE ENGROSSED NO. **SB 51** - 1/28/2008

Introduced by: The Committee on Health and Human Services at the request of the  
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain terminology, licensing requirements, and  
2 procedures regarding the Board of Examiners of Psychologists.

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

4 Section 1. That § 36-27A-1 be amended to read as follows:

5 36-27A-1. Terms used in this chapter, unless the context otherwise requires, mean:

6 (1) "Board," the Board of Examiners of Psychologists established under this chapter;

7 (2) "Program in psychology," a doctoral program, including a doctor of philosophy  
8 degree (Ph. D.), a doctor of psychology degree (Psy. D.) and a doctor of education  
9 degree (Ed. D.), for training in psychology that meets all of the following criteria:

10 (a) The program offers doctoral education and training in a regionally accredited  
11 institution of higher education in the United States, or, in the case of Canadian  
12 programs, the institution is recognized by the Association of Universities and  
13 Colleges of Canada as a member in good standing;

14 (b) The program, wherever it may be administratively housed, is identified as a  
15 psychology program ~~or primarily psychological in nature~~ as certified by the



- 1 educational institution. The board may review the institutional catalogs and  
2 brochures to determine the psychological nature of the program;
- 3 (c) The program must be a recognizable, coherent organizational entity within the  
4 institution;
- 5 (d) There must be a clear authority and primary responsibility for the core and  
6 specialty areas whether or not the program cuts across administrative lines;
- 7 (e) The program must be an integrated, organized sequence of study;
- 8 (f) There must be an identifiable psychology faculty;
- 9 (g) The program must have an identifiable body of students who are matriculated  
10 in that program for the purpose of receiving a degree;
- 11 (h) The program must include supervised practicum, ~~internship~~, field or laboratory  
12 training ~~appropriate to the practice of in psychology, and a supervised~~  
13 psychology internship pursuant to ARSD 20:60:08:01;
- 14 (i) The curriculum must encompass a minimum of three academic years of full  
15 time graduate study and completion of a psychology internship prior to  
16 awarding the doctoral degree. At least two of the three academic training years  
17 must be with the institution from which the doctoral degree is granted, and at  
18 least one year of which must be in full time residence at that same institution.
- 19 In addition to instruction in scientific and professional ethics and standards,  
20 research design and methodology, statistics and psychometrics, the core  
21 program shall require each student to demonstrate competence in each of the  
22 four following substantive areas. This may be met by including a minimum of  
23 three or more graduate semester hours (five or more graduate quarter hours)  
24 in these four substantive content areas:

- 1 (i) Biological ~~bases~~ aspects of behavior: physiological psychology,  
2 comparative psychology, neuro-psychology, ~~sensation and perception,~~  
3 psychopharmacology, psychophysics;
- 4 (ii) Cognitive-affective ~~bases~~ aspects of behavior: learning, thinking,  
5 motivation, emotion;
- 6 (iii) Social ~~bases~~ aspects of behavior: social psychology, ~~group processes~~  
7 community psychology, organizational and systems theory, minority  
8 group studies;
- 9 (iv) Individual differences: personality theory, human development,  
10 ~~abnormal psychology~~ psychopathology, cultural diversity.

11 In addition to these criteria, the programs in ~~psychology~~ shall include course  
12 requirements in specialty areas of psychology.

- 13 (3) "Psychological procedures," include but are not restricted to the application of  
14 principles, methods or procedures of understanding, predicting or influencing  
15 behavior, such as the principles pertaining to learning, conditioning, perception,  
16 motivation, thinking, emotions or interpersonal relationships; the methods or  
17 procedures of verbal interaction, interviewing, counseling, behavior modification,  
18 environmental manipulation, group process, psychotherapy, biofeedback or hypnosis;  
19 and the methods or procedures of administering or interpreting tests of mental  
20 abilities, aptitudes, interests, attitudes, personality characteristics, emotions or  
21 motivation;
- 22 (4) "Psychologist," a person licensed under this chapter in the practice of psychology  
23 who holds himself or herself out to the public by any title or description of services  
24 which uses the words psychological, psychology, psychologist, psychometrist, or any

1 derivations thereof;

2 (5) "The practice of psychology," the observation, description, evaluation, interpretation,

3 and modification of human behavior by the application of psychological principles,

4 methods, and procedures for the purpose of preventing or eliminating symptomatic,

5 maladaptive, or undesired behavior and of enhancing interpersonal relationships,

6 work and life adjustment, personal effectiveness, behavioral health, and mental

7 health. The term includes psychological testing and the evaluation or assessment of

8 personal characteristics, such as intelligence, personality, abilities, interests,

9 aptitudes, and neuropsychological functioning; individual, marital, family, or group

10 counseling; psychotherapy and other therapeutic techniques based on psychological

11 principles; diagnosis and treatment of mental and emotional disorders or disabilities,

12 compulsive disorders, disorders of habit or conduct as well as of the psychological

13 aspects of physical illness, accident, injury, or disability; and psychoeducational

14 evaluation, therapy, remediation, and consultation. The practice of psychology is the

15 rendering of psychological services to individuals, families, groups, and the public

16 and is without regard to whether payment is received for services rendered.

17 Section 2. That § 36-27A-2 be amended to read as follows:

18 36-27A-2. The provisions of this chapter do not apply to the following persons:

- 19 (1) Employees of a regionally accredited academic institution while performing their
- 20 teaching, training or research duties;
- 21 (2) Employees working in public or private nonprofit organizations or institutions if they
- 22 are being supervised by a licensed psychologist. The nature of an acceptable
- 23 supervisory relationship shall be specified by the Board of Examiners of
- 24 Psychologists in rules promulgated pursuant to chapter 1-26;

- 1       (3) Students of psychology, ~~psychological~~ psychology interns or persons preparing for  
2       the practice of psychology ~~in a training institution or facility approved by the board,~~  
3       if they are designated by the title ~~psychological~~ psychology trainee, psychology  
4       intern, or similar title which clearly indicates their training status. Persons engaged  
5       in obtaining their one year of supervised postdoctoral psychology practice are also  
6       exempt;
- 7       (4) Persons who are not residents of this state, and who have not established offices in  
8       this state, who render psychological services in this state for a period which does not  
9       exceed an aggregate of more than twenty days during any one year, if they are  
10      authorized under the laws of the state or country of their residence to perform these  
11      activities and services. If a provider exceeds ten consecutive days of practice in this  
12      state in any calendar year ~~he~~ the provider shall report to the board, in writing, the  
13      nature and extent of ~~his~~ the provider's practice in this state;
- 14      (5) Persons consulting in the specialty areas of experimental psychology,  
15      industrial/organizational psychology, developmental psychology, social psychology,  
16      human factors psychology, and research design. ~~Individuals~~ Persons, who represent  
17      themselves as consulting in these specialty areas, ~~must~~ shall notify the board of the  
18      general nature of their activities, unless they are otherwise exempted by this section;
- 19      (6) School psychologists and school psychological examiners certified by the division  
20      of education services and resources practicing and functioning within the scope of  
21      their employment if they use the title certified school psychologist or school  
22      psychological examiner;
- 23      (7) Qualified physicians, surgeons, dentists, osteopaths, optometrists, chiropractors,  
24      podiatrists, registered nurses, attorneys, court employees, marriage counselors, family

1 counselors, members of the clergy, mental health counselors, school counselors,  
 2 rehabilitation counselors, employment counselors, guidance counselors ~~or~~, social  
 3 workers, or licensed professional counselors doing work within the standards and  
 4 ethics of their respective professions if they do not hold themselves out to the public  
 5 by any title incorporating the term psychology; or

6 (8) Employers in the normal course of evaluating and assessing the skills, aptitudes, and  
 7 interests of employees and job applicants.

8 Section 3. That § 36-27A-8 be amended to read as follows:

9 36-27A-8. ~~The initial Board of Examiners of Psychologists shall meet at Pierre, South~~  
 10 ~~Dakota, within one month after appointment and elect a president, vice president, and a~~  
 11 ~~secretary from its members. Thereafter the~~ The board shall elect officers annually. The board  
 12 shall meet at least once a year at a place and time determined by the president of the board. The  
 13 board secretary ~~of the board shall be~~ is responsible for taking and keeping the minutes of all  
 14 board meetings.

15 Section 4. That § 36-27A-11 be amended to read as follows:

16 36-27A-11. A psychologist licensed by another state, or by a province of Canada, may  
 17 practice within this state for a maximum ~~period~~ of six months, during which time ~~his~~ the  
 18 psychologist's credentials ~~must~~ shall be reviewed and ~~his~~ the psychologist's application for  
 19 licensing accepted or denied. Within thirty calendar days after the commencement of ~~his~~ the  
 20 psychologist's practice in this state, ~~he~~ the psychologist shall apply to the Board of Examiners  
 21 of Psychologists for licensing. The board, upon application and payment of the license fee, shall  
 22 license any ~~individual person~~ who is licensed by any other country, state, territory or possession  
 23 of the United States, if the license was issued under the minimum requirements of this chapter  
 24 and who has practiced at least five years in such jurisdiction, and who does not have a complaint

1 pending with such state or province, or any other jurisdiction. The application shall include a  
2 consent by the applicant for the release of information by all prior jurisdictions where licensed  
3 of all information relative to the applicant, including any disciplinary proceedings even if, by  
4 agreement or otherwise, the proceedings are confidential.

5 Section 5. That § 36-27A-12 be amended to read as follows:

6 36-27A-12. The ~~Board of Examiners of Psychologists~~ board shall issue a license as a  
7 psychologist to an applicant who:

8 (1) Has a doctoral degree from a regionally accredited university or ~~college in a program~~  
9 in professional school of psychology, or is recognized by the Association of  
10 Universities and Colleges of Canada as a member in good standing; and

11 (2) Has passed ~~an~~ any examination specified by the board for this purpose; ~~and~~

12 (3) Has had a supervised ~~psychological~~ psychology internship amounting to not less than  
13 one thousand eight hundred hours in duration over a period of not more than two  
14 consecutive calendar years ~~and one year of postdoctoral psychological experience.~~

15 ~~— The nature of an acceptable supervised psychological internship shall be specified by the~~  
16 ~~board in rules promulgated pursuant to chapter 1-26. The board shall specify, by rules~~  
17 promulgated pursuant to chapter 1-26, the nature of an acceptable supervised psychology  
18 internship;

19 (4) Has had one year of supervised postdoctoral psychology practice. The board shall  
20 specify, by rules promulgated pursuant to chapter 1-26, the nature of an acceptable  
21 postdoctoral year of supervised psychology practice; and

22 (5) Has not been convicted of a felony or a misdemeanor involving moral turpitude as  
23 defined in subdivision 22-1-2(25).

24 Section 6. That § 36-27A-12.1 be amended to read as follows:

1       36-27A-12.1. The ~~Board of Examiners of Psychologists~~ board may issue a provisional  
2 license not to exceed twelve months in duration to an applicant who is completing the one-year  
3 ~~of supervised postdoctoral psychological experience~~ psychology practice if the applicant has  
4 satisfied the requirements of ~~subdivisions~~ subdivision 36-27A-12(1) and (2), passed a written  
5 national standardized examination, and has completed the supervised ~~psychological~~ psychology  
6 internship as specified in subdivision 36-27A-12(3).

7       Section 7. That § 36-27A-22 be amended to read as follows:

8       36-27A-22. The ~~Board of Examiners of Psychologists~~ board shall hold examinations at least  
9 semiannually at a place designated by the board. The type of ~~examination~~ examinations,  
10 including a national standardized examination, required shall be determined by the board.

11       Section 8. That § 36-27A-28 be amended to read as follows:

12       36-27A-28. The ~~license of a psychologist may be revoked or suspended or denied upon any~~  
13 ~~of board may suspend or revoke the license of a psychologist or require remediation or impose~~  
14 other sanctions on a psychologist, may deny licensure to any applicant, or require remediation  
15 prior to the issuance of a license, upon the following grounds:

- 16       (1) The licensee is guilty of fraud or deceit in ~~his~~ the licensee's admission to practice or  
17 in the practice of psychology, or an applicant for licensure is guilty of fraud or deceit  
18 in the applicant's attempted admission to practice psychology;
- 19       (2) The licensee or applicant for licensure has been convicted of a felony or a serious  
20 crime during the past five years. ~~"Felony"~~ The term, felony, means an offense which,  
21 if committed in South Dakota, would be a felony under South Dakota law. The term,  
22 serious crime, means a felony or a lesser crime involving moral turpitude as defined  
23 in subdivision 22-1-2(25);
- 24       (3) The licensee or applicant for licensure is or has been engaged in the practice of

- 1 psychology under a false or assumed name and has not registered that name pursuant  
2 to chapter 37-11, or is impersonating another practitioner of a like or different name;
- 3 (4) The licensee or applicant for licensure is using intoxicating liquors, narcotics or  
4 stimulants to such an extent as to impede ~~him~~ the licensee or applicant from the  
5 performance of ~~his~~ the licensee's or applicant's professional duties as a psychologist;
- 6 (5) The physical or mental condition of the licensee or applicant for licensure is  
7 determined to be such as to jeopardize or endanger those who seek the professional  
8 services of the licensee or applicant. By a majority vote of the entire ~~Board of~~  
9 ~~Examiners of Psychologists~~ board, the board may demand a physical or mental  
10 examination of a licensee or applicant for licensure. The failure to submit to the  
11 examination is immediate grounds for the suspension of the licensee's license or  
12 grounds for denial of a license to an applicant for licensure;
- 13 (6) The licensee or applicant for licensure has been found in violation of the code of  
14 ethics adopted by the board;
- 15 (7) The licensee has obtained or attempted to obtain a license, certificate or renewal  
16 thereof by bribery or fraudulent representation;
- 17 (8) The licensee knowingly made a false statement in connection with any application  
18 required by this chapter;
- 19 (9) The licensee lacks required training or fails to meet the continuing education  
20 requirements set by the board;
- 21 (10) The licensee knowingly made a false statement on any form promulgated pursuant  
22 to this chapter; or
- 23 (11) The licensee has violated any provision of this chapter or the rules promulgated by  
24 the board.

1 Section 9. That § 36-27A-30 be amended to read as follows:

2 36-27A-30. The decision of the ~~Board of Examiners of Psychologists~~ board to suspend or,

3 revoke, or deny a license requires a majority vote of all the board members.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

544P0250

SENATE TRANSPORTATION ENGROSSED NO. **SB**

**63** - 1/17/2008

Introduced by: Senators McCracken, Abdallah, Albers, Garnos, Hauge, Knudson, Maher, Napoli, Olson (Ed), Peterson (Jim), and Turbak Berry and Representatives Vehle, Gillespie, Gosch, Halverson, Hargens, Krebs, and Lust

1 FOR AN ACT ENTITLED, An Act to require local law enforcement officers to provide certain  
2 information to repossession businesses under certain circumstances.

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

4 Section 1. Any person in the business of repossessing motor vehicles may request any local  
5 law enforcement officer to provide the license plate number and color of a motor vehicle  
6 licensed in South Dakota. If a person in the business of repossessing motor vehicles provides  
7 a copy of the contract for the repossession of the motor vehicle to a local law enforcement  
8 officer, the officer shall provide the license plate number and color of the motor vehicle to the  
9 person. Any law enforcement officer, who in good faith releases information pursuant to this  
10 section, is immune from civil liability for such release.



# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

644P0188

SENATE TRANSPORTATION ENGROSSED NO. **SB**

**64** - 1/22/2008

Introduced by: Senators Napoli, Bartling, Duenwald, Heidepriem, Maher, McCracken, McNenny, Olson (Ed), Peterson (Jim), Schmidt (Dennis), and Sutton and Representatives Peters, Brunner, Hackl, Kirkeby, Lust, and Olson (Betty)

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding the regulation of  
2 recreational park trailers.

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

4 Section 1. That subdivision (2) of § 10-45D-1 be amended to read as follows:

5 (2) "Campground," any property or premise kept, used, maintained, advertised, or held  
6 out to the public to be a place where sites are available for placing of tents, campers,  
7 trailers, recreational park trailers, mobile homes, or other mobile accommodations  
8 to transient guests. Campgrounds include city, county, and state-owned  
9 campgrounds, as well as concessionaires or contractors who manage or operate  
10 publicly owned campgrounds. The following constitute campgrounds: campgrounds,  
11 camping cabins, camping resorts, commercial picnic grounds, organizational camps,  
12 park units, recreational vehicle parks, trailer parks, and youth camps;

13 Section 2. That § 32-3-1 be amended to read as follows:



1 32-3-1. Terms used in chapters 32-3 to 32-5B, inclusive, mean:

2 (1) "Commercial motor vehicle," any motor vehicle used or maintained for the  
3 transportation of persons or property for hire, compensation, or profit, or designed,  
4 used, or maintained primarily for the transportation of property, and not specifically  
5 excluded under § 32-9-3;

6 (2) "Component part," any part of a motor vehicle, trailer, or semitrailer other than a tire,  
7 having a vehicle identification number;

8 (3) "Dealer," any person who, for commission or with intent to make a profit or gain,  
9 sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale  
10 or exchange of new, or new and used vehicles, or who is engaged wholly or in part  
11 in the business of selling new, or new and used vehicles, whether or not such vehicles  
12 are owned by that person;

13 (4) "Department," Department of Revenue and Regulation;

14 (4A) "Gross vehicle weight rating," the value specified by the manufacturer as the loaded  
15 weight of a single vehicle;

16 (5) "Junking certificate," a certificate of ownership, which may not be restored to a title  
17 document which allows highway use, issued by the department to the owner of a  
18 vehicle which is going to be dismantled and sold for parts;

19 (6) "Manufactured home," a structure, transportable in one or more sections, which is  
20 eight body feet or more in width or forty body feet or more in length in the traveling  
21 mode, or is three hundred twenty or more square feet when erected on a site; which  
22 is built on a permanent chassis and designed to be used as a dwelling, with or without  
23 a permanent foundation, when connected to the required utilities; and which contains  
24 the plumbing, heating, air conditioning, and electrical systems therein. The term

1 includes any structure which meets all the requirements of this subdivision and any  
2 other structure which has been certified by the secretary of housing and urban  
3 development. The term does not include a recreational park trailer;

4 (7) "Manufacturer," any person, firm, corporation, limited liability company, or  
5 association engaged in the manufacture of new motor vehicles as a regular business;

6 (8) "Mobile home," a movable or portable unit, designed and constructed to be towed on  
7 its own chassis (comprised of frame and wheels) , and designed to be connected to  
8 utilities for year-round occupancy. The term includes:

9 (a) Units containing parts that may be folded, collapsed, or telescoped when being  
10 towed and that may be expanded to provide additional cubic capacity; and

11 (b) Units composed of two or more separately towable components designed to  
12 be joined into one integral unit capable of being separated again into the  
13 components for repeated towing.

14 The term does not include a recreational park trailer;

15 (9) "Moped," a motor driven cycle equipped with two or three wheels. If a combustion  
16 engine is used, the maximum piston or rotor displacement shall be fifty cubic  
17 centimeters regardless of the number of chambers in such power source. The power  
18 source shall be equipped with a power drive system that functions directly or  
19 automatically only, not requiring clutching or shifting by the operator after the drive  
20 system is engaged;

21 (10) "Motorcycle," includes motorcycles, motorbikes, mopeds, bicycles with motor  
22 attached, and all motor operated vehicles of the bicycle or tricycle type, whether the  
23 motive power be a part thereof or attached thereto, and having a saddle or seat with  
24 the driver sitting astride or upon it, or a platform on which the driver stands, but

- 1           excluding a tractor;
- 2       (11) "Motor vehicle," automobiles, motor trucks, motorcycles, house trailers, trailers, and
- 3           all vehicles propelled by power other than muscular power, except traction engines,
- 4           road rollers, farm wagons, freight trailers, vehicles that run only on rails or tracks,
- 5           and off-road vehicles as defined in § 32-20-1;
- 6       (12) "New motor vehicle," any motor vehicle to which a manufacturer's statement of
- 7           origin has not been transferred, or is a motor vehicle on which title was issued from
- 8           the manufacturer's statement of origin or manufacturer's certificate of origin and is
- 9           still in the name of the first person who took title to the vehicle;
- 10      (13) "Noncommercial motor vehicle," any motor vehicle not classified as a commercial
- 11           motor vehicle;
- 12      (14) "Noncommercial trailer or semitrailer," any trailer or semitrailer not used or
- 13           maintained for the transportation of persons or property for hire, compensation, or
- 14           profit;
- 15      (14A) "Notation," a physical or electronic process of recording a lien on a certificate of title,
- 16           a manufacturer's statement of origin, or a manufacturer's certificate of origin;
- 17      (15) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed
- 18           primarily to be operated on land other than a highway and includes, ~~but is not limited~~
- 19           ~~to,~~ all terrain vehicles, dune buggies, and any vehicle whose manufacturer's statement
- 20           of origin (MSO) or manufacturer's certificate of origin (MCO) states that the vehicle
- 21           is not for highway use. ~~Off-road vehicle~~ The term does not include a farm vehicle as
- 22           defined in this section;
- 23      (16) "Owner," any person, firm, association, or corporation renting a motor vehicle or
- 24           having the exclusive use thereof, under a lease or otherwise, for a period greater than

1 thirty days; as between contract vendor and contract vendee, the term "owner" shall  
2 refer to the contract vendee, unless the contrary clearly appears from the context of  
3 chapters 32-3 to 32-5B, inclusive, or a person having legal possession or title;

4 (17) "Rebuilt vehicle," any motor vehicle, trailer, or semitrailer that has been rebuilt by  
5 the addition or deletion of assemblies, subassemblies, parts, or component parts so  
6 that upon gross visual examination it does not appear to be the vehicle described in  
7 the certificate of title last issued for the vehicle, or whose title has been marked as  
8 "rebuilt" by this state or another state or jurisdiction;

9 (17A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary  
10 living quarters for recreational, camping, or seasonal use and which:

11 (a) Is built on a single chassis mounted on wheels;

12 (b) Has a gross trailer area not exceeding four hundred square feet in the setup  
13 mode;

14 (c) Is certified by the manufacturer as complying with American National  
15 Standards Institute Standard No. A119.5 in effect on January 1, 2008; and

16 (d) Has at least a seventeen digit identification number and the manufacturer has  
17 designated the vehicle as a recreational park model on the manufacturer  
18 statement of origin;

19 (18) "Recreational vehicle," a vehicular portable structure built on a chassis designed to  
20 be used as a temporary dwelling for travel, recreational, ~~and~~ vacation, or seasonal  
21 uses, permanently identified as "a travel trailer" or a recreational park trailer by the  
22 manufacturer of the trailer;

23 (19) "Road tractor," any motor vehicle designed and used for drawing other vehicles,  
24 except farm or logging tractors used exclusively for farming or logging, and not so

1 constructed as to carry any load thereon either independently or any part of the  
2 weight of a vehicle or load so drawn;

3 (20) "Secretary," secretary of revenue and regulation;

4 (21) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,  
5 designed and used in conjunction with a fifth wheel connecting device on a motor  
6 vehicle constructed so that some part of its weight and that of its load rests upon or  
7 is carried by another vehicle;

8 (22) "State," includes the territories and the federal districts of the United States;

9 (23) "Trailer," any vehicle without motive power designed for carrying property or  
10 passengers wholly on its own structure and for being drawn by a motor vehicle;

11 (24) "Truck tractor," any motor vehicle designed and used primarily for drawing other  
12 vehicles and not so constructed as to carry a load other than a part of the weight of  
13 the vehicle and load so drawn;

14 (25) "Used vehicle," any motor vehicle to which title has been issued to someone other  
15 than the first person who took title to the motor vehicle from the manufacturer's  
16 statement of origin or manufacturer's certificate of origin; and

17 (26) "Vehicle identification number," the number assigned by the manufacturer or by the  
18 department for the purpose of identifying the vehicle. The term includes any number  
19 or letters assigned by the manufacturer for the purpose of identifying a component  
20 part and any such number stamped on a vehicle or part according to law or the rules  
21 promulgated by the department for the purpose of identifying the vehicle or part.

22 Section 3. That § 32-6B-1 be amended by adding thereto a NEW SUBDIVISION to read as  
23 follows:

24 "Recreational park trailer," a vehicle that is primarily designed to provide temporary

1 living quarters for recreational, camping, or seasonal use and which:

- 2 (a) Is built on a single chassis mounted on wheels;
- 3 (b) Has a gross trailer area not exceeding four hundred square feet in the setup  
4 mode;
- 5 (c) Is certified by the manufacturer as complying with American National  
6 Standards Institute Standard No. A119.5 in effect on January 1, 2008; and
- 7 (d) Has at least a seventeen digit identification number and the manufacturer has  
8 designated the vehicle as a recreational park model on the manufacturer  
9 statement of origin.

10 Section 4. That § 32-6B-12 be amended to read as follows:

11 32-6B-12. Any dealer's license issued under this chapter shall be of the following classes:

- 12 (1) "Vehicle dealer's license," to permit the licensee to engage in the business of selling  
13 or exchanging new, or new and used, vehicles;
- 14 (2) "Used vehicle dealer's license," to permit the licensee to engage in the business of  
15 selling or exchanging used vehicles only;
- 16 (3) "Motorcycle dealer's license," to permit the licensee to engage in the business of  
17 selling or exchanging new or used motorcycles only;
- 18 (4) "Trailer dealer's license," to permit the licensee to engage in the business of selling  
19 or exchanging trailers, semitrailers, recreational park trailers, or travel trailers only,  
20 new or used; or
- 21 (5) "Emergency vehicle dealer's license," to permit the licensee to engage in the business  
22 of selling or exchanging new or used authorized emergency vehicles.

23 A license certificate identifying the class of dealership and containing a distinguishing  
24 identification number of licensee shall be issued by the department if the application is in

1 compliance with the provisions of this chapter.

2 Section 5. That subdivision (1) of § 34-18-1 be amended to read as follows:

3 34-18-1. Terms used in this chapter mean:

4 (1) Campground, a plot of ground for public use upon which two or more campsites are  
5 located, established, maintained, advertised, or held out to the public to be a place  
6 where camping units can be located and occupied as temporary living quarters for  
7 children or adults, or both. Camping units are considered to be trailers, tent campers,  
8 campers, tents, recreational park trailers, or other equipment that may be used by the  
9 ~~traveling~~ public at individual campsites located at campgrounds or areas used by the  
10 public as campgrounds;

11

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

833P0414

## HOUSE TRANSPORTATION ENGROSSED NO. **SB 87** - 2/5/2008

Introduced by: Senators Gant, Garnos, and Peterson (Jim) and Representatives Steele, Juhnke, and Weems

1 FOR AN ACT ENTITLED, An Act to reduce the period of effectiveness for cease and desist  
2 orders issued to certain dealers.

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

4 Section 1. That § 32-6B-41.1 be amended to read as follows:

5 32-6B-41.1. In addition to any other remedy provided by law, the secretary of revenue and  
6 regulation may issue an order directing a vehicle dealer to cease and desist from engaging in any  
7 act or practice enumerated in § 32-6B-41. A cease and desist order issued pursuant to this  
8 section ~~shall be~~ is effective for a period of ~~five~~ two years.

9 Section 2. That § 32-6C-14.1 be amended to read as follows:

10 32-6C-14.1. In addition to any other remedy provided by law, the secretary of revenue and  
11 regulation may issue an order directing a snowmobile dealer to cease and desist from engaging  
12 in any act or practice enumerated in § 32-6C-14. A cease and desist order issued pursuant to this  
13 section is effective for a period of ~~five~~ two years.

14 Section 3. That § 32-7A-4.3 be amended to read as follows:



1        32-7A-4.3. In addition to any other remedy provided by law, the secretary of revenue and  
2 regulation may issue an order directing a dealer to cease and desist from engaging in any act or  
3 practice enumerated in § 32-7A-4.2. A cease and desist order issued pursuant to this section is  
4 effective for a period of ~~five~~ two years.

5        Section 4. That § 32-7B-17.1 be amended to read as follows:

6        32-7B-17.1. In addition to any other remedy provided by law, the secretary of revenue and  
7 regulation may issue an order directing a boat dealer to cease and desist from engaging in any  
8 act or practice enumerated in § 32-7B-17. A cease and desist order issued pursuant to this  
9 section is effective for a period of ~~five~~ two years.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

283P0477

## SENATE COMMERCE ENGROSSED NO. **SB 97** - 1/22/2008

Introduced by: Senators Napoli, Albers, Gant, Gray, Greenfield, Lintz, McCracken, and Smidt (Orville) and Representatives Brunner, Haverly, Olson (Betty), Rave, and Weems

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding property condition  
2 disclosure statements.

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

4 Section 1. That § 43-4-44 be amended to read as follows:

5 43-4-44. The following form shall be used for the property condition disclosure statement:

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

7 (This disclosure shall be completed by the seller. This is a disclosure required by law. If you do  
8 not understand this form, seek legal advice.)

9 Seller \_\_\_\_\_

10 Property Address \_\_\_\_\_

11 \_\_\_\_\_

12 This Disclosure Statement concerns the real property identified above situated in the City of

13 \_\_\_\_\_ County of \_\_\_\_\_, State of South Dakota.

14 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE



1 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY  
 2 OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN  
 3 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR  
 4 WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent  
 5 representing any party in this transaction to provide a copy of this statement to any person or  
 6 entity in connection with any actual or anticipated sale of the property.

7 IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS  
 8 PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A  
 9 WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

10 I. LOT OR TITLE INFORMATION

11 1. When did you purchase or build the home? \_\_\_\_\_

12 If the answer is yes to any of the following, please explain under additional comments or on an  
 13 attached separate sheet.

14 \_\_\_\_\_

15 2. Were there any title problems when you purchased the property?

16 Yes \_\_\_\_ No \_\_\_\_

17 3. Are there any recorded liens or financial instruments against the property, other than a first  
 18 mortgage?

19 Yes \_\_\_\_ No \_\_\_\_

20 4. Are there any unrecorded liens or financial instruments against the property, other than a  
 21 first mortgage; or have any materials or services been provided in the past one hundred  
 22 twenty days that would create a lien against the property under chapter 44-9?

23 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

24 5. Are there any easements which have been granted in connection with the property (other

1 than normal utility easements for public water and sewer, gas and electric service, telephone  
2 service, cable television service, drainage, and sidewalks)?

3 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

4 6. Are there any problems related to establishing the lot lines/boundaries?

5 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

6 7. Do you have a location survey in your possession or a copy of the recorded plat? If yes,  
7 attach a copy.

8 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

9 8. Are you aware of any encroachments or shared features, from or on adjoining property (i.e.  
10 fences, driveway, sheds, outbuildings, or other improvements)?

11 Yes \_\_\_\_ No \_\_\_\_

12 9. Are you aware of any covenants or restrictions affecting the use of the property in  
13 accordance with local law? If yes, attach a copy of the covenants and restrictions.

14 Yes \_\_\_\_ No \_\_\_\_

15 10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or  
16 restrictive covenant violation notices, mechanic's liens, judgments, special assessments,  
17 zoning changes, or changes that could affect your property?

18 Yes \_\_\_\_ No \_\_\_\_

19 11. Is the property currently occupied by the owner?

20 Yes \_\_\_\_ No \_\_\_\_

21 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL ~~32-~~  
22 ~~3-1~~ 10-13-39?

23 Yes \_\_\_\_ No \_\_\_\_

24 13. Is the property currently part of a property tax freeze for any reason?

1 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

2 14. Is the property leased?

3 Yes \_\_\_\_ No \_\_\_\_

4 15. If leased, does the property use comply with local zoning laws?

5 Yes \_\_\_\_ No \_\_\_\_

6 16. Does this property or any portion of this property receive rent? If yes, how much \$ \_\_\_\_ and

7 how often \_\_\_\_?

8 Yes \_\_\_\_ No \_\_\_\_

9 17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium

10 association?

11 Yes \_\_\_\_ No \_\_\_\_

12 If yes, what are the fees or assessments? \$ \_\_\_\_ per \_\_\_\_ (i.e. annually, semi-annually, monthly)

13 Payable to whom: \_\_\_\_\_

14 For what purpose? \_\_\_\_\_

15 18. Are you aware if the property has ever had standing water in either the front, rear, or side

16 yard more than forty-eight hours after heavy rain?

17 Yes \_\_\_\_ No \_\_\_\_

18 19. Is the property located in or near a flood plain?

19 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

20 20. Are wetlands located upon any part of the property?

21 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

22 II. STRUCTURAL INFORMATION

23 If the answer is yes to any of the following, please explain under additional comments or on an

24 attached separate sheet.

1 1. Are you aware of any water penetration problems in the walls, windows, doors, basement,  
2 or crawl space?

3 Yes \_\_\_\_ No \_\_\_\_

4 2. What water damage related repairs, if any, have been made?

5 If any, when? \_\_\_\_\_

6 3. Are you aware if drain tile is installed on the property?

7 Yes \_\_\_\_ No \_\_\_\_

8 4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior  
9 driveways, sidewalks, patios, or other hard surface areas?

10 Yes \_\_\_\_ No \_\_\_\_

11 What related repairs, if any, have been made?

12 \_\_\_\_\_

13 5. Are you aware of any roof leakage, past or present?

14 Yes \_\_\_\_ No \_\_\_\_

15 Type of roof covering: \_\_\_\_\_

16 Age: \_\_\_\_\_

17 What roof repairs, if any, have been made, when and by whom? \_\_\_\_\_

18 Describe any existing unrepaired damage to the roof: \_\_\_\_\_

19 6. Are you aware of insulation in:

20 the ceiling/attic? Yes \_\_\_\_ No \_\_\_\_

21 the walls? Yes \_\_\_\_ No \_\_\_\_

22 the floors? Yes \_\_\_\_ No \_\_\_\_

23 7. Are you aware of any pest infestation or damage, either past or present?

24 Yes \_\_\_\_ No \_\_\_\_

- 1 8. Are you aware of the property having been treated for any pest infestation or damage?  
2 Yes \_\_\_\_ No \_\_\_\_  
3 If yes, who treated it and when? \_\_\_\_\_
- 4 9. Are you aware of any work upon the property which required a building, plumbing,  
5 electrical, or any other permit?  
6 Yes \_\_\_\_ No \_\_\_\_  
7 If yes, describe the work: \_\_\_\_\_  
8 Was a permit obtained? Yes \_\_\_\_\_  
9 Was the work approved by an inspector? Yes \_\_\_\_ No \_\_\_\_
- 10 10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods,  
11 hail, or snow)?  
12 Yes \_\_\_\_ No \_\_\_\_  
13 If yes, describe \_\_\_\_\_
- 14 Have any insurance claims been made?  
15 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_  
16 Was an insurance payment received?  
17 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_  
18 Has the damage been repaired?  
19 Yes \_\_\_\_ No \_\_\_\_  
20 If yes, describe in detail: \_\_\_\_\_  
21 \_\_\_\_\_
- 22 11. Are you aware of any problems with sewer blockage or backup, past or present?  
23 Yes \_\_\_\_ No \_\_\_\_
- 24 12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank,

1 or drain on the property into any adjoining lake, stream, or waterway?

2 Yes \_\_\_\_ No \_\_\_\_

3 If yes, describe in detail: \_\_\_\_\_

4 \_\_\_\_\_

5 III. SYSTEMS/UTILITIES INFORMATION

6	NONE/NOT		NOT	
7	INCLUDED	WORKING	WORKING	
8	1. 220 Volt Service	_____	_____	_____
9	2. Air Exchanger	_____	_____	_____
10	3. Air Purifier	_____	_____	_____
11	4. Attic Fan	_____	_____	_____
12	5. Burglar Alarm and Security System	_____	_____	_____
13	6. Ceiling Fan	_____	_____	_____
14	7. Central Air - Electric	_____	_____	_____
15	8. Central Air - Water Cooled	_____	_____	_____
16	9. Cistern	_____	_____	_____
17	10. Dishwasher	_____	_____	_____
18	11. Disposal	_____	_____	_____
19	12. Doorbell	_____	_____	_____
20	13. Fireplace	_____	_____	_____
21	14. Fireplace Insert	_____	_____	_____
22	15. Garage Door/Opener Control(s)	_____	_____	_____
23	16. Garage Wiring	_____	_____	_____
24	17. Heating System	_____	_____	_____
25	18. Hot Tub, Whirlpool, and Controls	_____	_____	_____
26	19. Humidifier	_____	_____	_____
27	20. Intercom	_____	_____	_____
28	21. Light Fixtures	_____	_____	_____

1	22. Microwave/Hood	_____	_____	_____
2	23. Plumbing and Fixtures	_____	_____	_____
3	24. Pool and Equipment	_____	_____	_____
4	25. Propane Tank	_____	_____	_____
5	26. Radon System	_____	_____	_____
6	27. Sauna	_____	_____	_____
7	28. Septic/Leaching Field	_____	_____	_____
8	29. Sewer Systems/Drains	_____	_____	_____
9	30. Smoke/Fire Alarm	_____	_____	_____
10	31. Solar House - Heating	_____	_____	_____
11	32. Sump Pump(s)	_____	_____	_____
12	33. Switches and Outlets	_____	_____	_____
13	34. Underground Sprinkler and Heads	_____	_____	_____
14	35. Vent Fan	_____	_____	_____
15	36. Water Heater - Electric or Gas	_____	_____	_____
16	37. Water Purifier	_____	_____	_____
17	38. Water Softener - Leased or Owned	_____	_____	_____
18	39. Well and Pump	_____	_____	_____
19	40. Wood Burning Stove	_____	_____	_____

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IV. HAZARDOUS CONDITIONS

23 Are you aware of any existing hazardous conditions of the property and are you aware of any  
 24 tests having been performed?

25

EXISTING CONDITIONS	TESTS PERFORMED
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26

YES	NO	YES	NO
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27

1. Methane Gas	_____	_____	_____	_____
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1 a. A human death by homicide or suicide? If yes, explain:

2 \_\_\_\_\_

3 Yes \_\_\_\_\_ No \_\_\_\_\_

4 b. Other felony committed against the property or a person on the property? If yes, explain:

5 \_\_\_\_\_

6 Yes \_\_\_\_\_ No \_\_\_\_\_

7 5. Is the water source public or private (select one) ?

8 6. If private, what is the date and result of the last water test?

9 \_\_\_\_\_

10 7. Is the sewer system public \_\_\_\_\_ or private \_\_\_\_\_ (select one)?

11 8. If private, what is the date of the last time the septic tank was pumped? \_\_\_\_\_

12 9. Are there broken window panes or seals?

13 Yes \_\_\_\_\_ No \_\_\_\_\_

14 If yes, specify: \_\_\_\_\_

15 10. Are there any items attached to the property that will not be left, such as: towel bars,  
16 mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines,  
17 swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

18 Yes \_\_\_\_\_ No \_\_\_\_\_

19 If yes, please list \_\_\_\_\_

20 11. Are you aware of any other material facts or problems that have not been disclosed on this  
21 form?

22 Yes \_\_\_\_\_ No \_\_\_\_\_

23 If yes, explain: \_\_\_\_\_

24 VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

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CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.

If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_

SELLER \_\_\_\_\_ DATE \_\_\_\_\_

THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

831P0124

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 111** - 2/14/2008

Introduced by: Senators Duenwald, Abdallah, Apa, Garnos, Hansen (Tom), Hauge, Lintz, Maher, McCracken, Napoli, Peterson (Jim), and Schmidt (Dennis) and Representatives Brunner, Cutler, DeVries, Gilson, Hackl, Jerke, Juhnke, Kirkeby, Koistinen, Lucas, Novstrup (David), Olson (Russell), Rausch, Steele, and Turbiville

1 FOR AN ACT ENTITLED, An Act to extend the prohibition of road hunting of big game to  
2 include hunting using certain additional weapons.

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

4 Section 1. That § 41-9-1.2 be amended to read as follows:

5 41-9-1.2. No person may hunt big game on interstate highways or controlled access facilities  
6 as defined in § 31-8-1 within this state.

7 No person may discharge a rifle firearm, muzzleloader, crossbow, or bow and arrow at a any  
8 big game animal, except turkey to be taken with a shotgun using shot shells or with a bow and  
9 arrow, from within the right-of-way of an improved public highway. However, any person who  
10 possesses a disabled hunter permit issued by the department to shoot from a vehicle as provided  
11 in § 41-8-37 may hunt on public rights-of-way adjoining publicly-owned hunting areas and on  
12 rights-of-way adjoining private lands with the written permission of the owner or lessee.

13 Retrieval of lawfully taken big game is permitted on all public rights-of-way.



1 A violation of this section is a Class 2 misdemeanor.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

814P0538

SENATE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **SB 114** - 1/30/2008

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

Introduced by: Senators Nesselhuf, Bartling, Dempster, Garnos, Gray, Hansen (Tom), McCracken, and Sutton and Representatives Willadsen, Cutler, Dykstra, Elliott, Faehn, Halverson, Miles, Rounds, and Weems

1 FOR AN ACT ENTITLED, An Act to allow for risk pool eligibility and rate flexibility for  
2 certain health insurance conversion plans.

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

4 Section 1. That § 58-17-74 be amended to read as follows:

5 58-17-74. Premium rates for individual health benefit plans subject to §§ 58-17-66 to 58-17-  
6 87, inclusive, are subject to the following provisions:

7 (1) Any new policy issued after the effective date of §§ 58-17-66 to 58-17-87, inclusive,  
8 is subject to the provisions of §§ 58-17-66 to 58-17-87, inclusive;

9 (2) The index rate for a rating period for any class of individual business may not exceed  
10 the index rate for any other class of individual business by more than twenty percent;

11 (3) For a class of business, the premium rates charged during a rating period to  
12 individuals with similar case characteristics for the same or similar coverage, or the  
13 rates that could be charged to such individuals under the rating system for that class



1 of business, may not vary from the index rate by more than thirty percent of the index  
2 rate;

3 (4) An adjustment applied to a single block of business may not exceed the adjustment  
4 applied to all blocks of business by more than fifteen percent due to the claim  
5 experience or health status of that block of business;

6 (5) Any adjustment in rates for claim experience and duration of coverage may not be  
7 charged to specific individual policyholders. Any such adjustment shall be applied  
8 uniformly to the rates charged for any person and dependents of the person within  
9 each class of business;

10 (6) Premium rates for individual health benefit plans shall comply with the requirements  
11 of §§ 58-17-66 to 58-17-87, inclusive;

12 (7) Each carrier shall apply rating factors consistently with respect to all persons in a  
13 class of business. Rating factors shall produce premiums for identical persons which  
14 differ only by the amounts attributable to plan design;

15 (8) No carrier may use characteristics other than age, gender, lifestyle, family  
16 composition, and geographic area without prior approval of the director. The  
17 maximum rating differential based solely on age may not exceed a factor of 5:1; and

18 (9) All rate adjustments based on geographic area shall reflect actual differences in the  
19 health care costs of the respective areas.

20 The rating provisions of subdivisions (1), (2), (3), (4), and (6) of this section do not apply  
21 to individual health benefit plans issued by a carrier to qualifying individuals on a guaranteed  
22 issue basis. However, the rate for any individual covered on a guaranteed issue basis may not  
23 exceed two and one half times the base rate of the class of business with the lowest index rate.

24 Section 2. That § 58-17-85 be amended to read as follows:

1 58-17-85. If a person has an aggregate of at least twelve months of creditable coverage, is  
2 a resident of this state, and applies within sixty-three days of the date of losing prior creditable  
3 coverage, the person is eligible for coverage as provided for in §§ 58-17-68, 58-17-70, 58-17-  
4 85, and 58-17-113 to 58-17-142, inclusive, if none of the following apply:

- 5 (1) The applicant is eligible for continuation of coverage under an employer plan;
- 6 (2) ~~The applicant's most recent creditable coverage is a conversion plan from an~~  
7 ~~employer group plan;~~
- 8 ~~(3) The person is eligible for an employer group plan, Part A or Part B of medicare, or~~  
9 ~~medicaid;~~
- 10 ~~(4)~~(3) The person has other health insurance coverage;
- 11 ~~(5)~~(4) The person's most recent coverage was terminated because of the person's  
12 nonpayment of premium or fraud;
- 13 ~~(6)~~(5) The person loses coverage under a short term or limited duration plan; or
- 14 ~~(7)~~(6) The person's last coverage was creditable coverage as defined in subdivision 58-17-  
15 69(13).

16 Any person who has exhausted continuation rights and who is eligible for conversion or  
17 other individual or association coverage has the option of obtaining coverage pursuant to this  
18 section or the conversion plan or other coverage. If a person chooses conversion coverage, other  
19 than pursuant to section 1 of this Act, in lieu of coverage pursuant to this section and the person  
20 later exhausts the lifetime maximum of the conversion coverage, the person may obtain  
21 coverage pursuant to this section as long as the person continues to satisfy the criteria of this  
22 section. A person who is otherwise eligible for the issuance of coverage pursuant to this section  
23 may not be required to show proof that coverage was denied by another carrier.

24 For purposes of this section, reasonable evidence that the prospective enrollee is a resident

1 of this state shall be required. Factors that may be considered include a driver's license, voter  
2 registration, and where the prospective enrollee resides.

3 Any person who was eligible for the risk pool and opted for coverage pursuant to section  
4 1 of this Act may, at any time while covered under that policy or within sixty-three days of  
5 terminating that coverage, elect to enroll in the risk pool.

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

708P0550

## SENATE TRANSPORTATION ENGROSSED NO. **SB** **139** - 1/22/2008

Introduced by: Senators Turbak Berry, Albers, Hoerth, Koetzle, and Lintz and  
Representatives Faehn, Koistinen, and Rave

1 FOR AN ACT ENTITLED, An Act to revise the definition for authorized emergency vehicles.

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

3 Section 1. That subdivision (2) of § 32-14-1 be amended to read as follows:

4 (2) "Authorized emergency vehicle," a vehicle of a fire department, a police vehicle, ~~and~~  
5 an ambulance ~~and~~ or emergency vehicle of a municipal department or public service  
6 corporation that is designated or authorized by the department, and an emergency  
7 vehicle titled to a local organization for emergency management created pursuant to  
8 chapter 33-15;

9



# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

635P0615

## HOUSE TRANSPORTATION ENGROSSED NO. **SB 156** - 2/5/2008

Introduced by: Senators Apa, Abdallah, Hunhoff, Koetzle, Maher, and Napoli and  
Representatives Pederson (Gordon), Dennert, Moore, and Turbiville

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding special motor vehicle  
2 license plates for veterans with a disability, prisoners of war, Pearl Harbor survivors, and  
3 Purple Heart recipients.

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

5 Section 1. That § 32-5-108 be amended to read as follows:

6 32-5-108. Any resident veteran owner of a motor vehicle who has received the United States  
7 Veterans' Administration K Award, meets the qualifications established by Public Law 187 of  
8 the Eighty-second Congress for a veteran to receive an automobile, or a veteran who has been  
9 rated as in receipt of a statutory benefit for loss or loss of use of one or more extremities, or a  
10 veteran who receives a veteran's allotment for total disability under compensation which is  
11 considered a service-connected injury, upon application to the department shall receive a ~~set~~  
12 maximum of two sets of special license plates for any automobile, pickup truck, or van licensed  
13 pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9. The veteran may choose to  
14 use one of the two sets of plates on a noncommercial motor vehicle that is a pickup truck and



1 that weighs more than six thousand pounds licensed pursuant to § 32-5-6.3 or a motor home  
2 licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license fees set out in §§ 32-5-  
3 6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the special plates and  
4 renewal stickers. The special plates shall be displayed as set forth in § 32-5-98. The design of  
5 the license plate shall consist of a white background bordered on the left by a blue field with  
6 white stars and on the right by alternating red and white stripes. The words "Disabled Veteran"  
7 shall be inscribed on the plate in blue, in at least ten point bold type. The license plate shall be  
8 reflectorized and validated each year with a sticker in the same manner as a noncommercial  
9 license plate. License fees for the special plates shall be ten dollars for the plates and the  
10 renewal stickers. No license fee or sticker fee pursuant to § 32-5-6 or 32-5-9 may be charged  
11 to the veteran. The fees shall be deposited in the license plate special revenue fund.

12 In order to qualify for a special license plate pursuant to this section, a veteran shall, in  
13 addition to meeting the qualifications established in the first paragraph, have incurred disabling  
14 injuries while serving the United States in active duty during a time of war or while participating  
15 in a military mission involving armed conflict. If it is determined that the veteran owner does  
16 not qualify for the special plates or if the veteran owner dies, the plates shall be surrendered to  
17 the county treasurer of applicant's residence. The treasurer shall notify the secretary who shall  
18 make the necessary changes in the registration file. Failure to surrender the special license plates  
19 as required by this section is a Class 2 misdemeanor.

20 Section 2. That § 32-5-109 be amended to read as follows:

21 32-5-109. Any resident of this state who was a prisoner of war while serving in the United  
22 States armed forces and who received an honorable discharge from the United States armed  
23 forces is eligible to apply to the secretary for a maximum of two sets special motor vehicle  
24 license plates if the resident has first complied with all laws of this state for any automobile,

1 pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9.  
2 The veteran may choose to use one of the two sets of plates on a noncommercial motor vehicle  
3 that is a pickup truck and that weighs more than six thousand pounds licensed pursuant to § 32-  
4 5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license  
5 fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the  
6 special plates and renewal stickers. Each application shall be on a form prescribed by the  
7 secretary and shall include certification of the applicant's prisoner of war status from the United  
8 States Veterans' Administration. The applicant shall pay a ten dollar fee and shall receive special  
9 plates. The special plates shall be displayed as set forth in § 32-5-98. A fee of ten dollars shall  
10 be paid for the renewal stickers. No registration fee or sticker fee may be charged to the  
11 applicant pursuant to § 32-5-6 or 32-5-9. The fees shall be deposited into the license plate  
12 special revenue fund. Upon approval of the application, the secretary shall issue the license  
13 plates which shall be numbered consecutively, beginning with the number 1, and the number  
14 shall be preceded by the letters POW. If it is determined that an applicant does not qualify for  
15 the special plates or if the applicant dies, the plates shall be surrendered to the county treasurer  
16 of the applicant's residence. The treasurer shall notify the secretary who shall make the  
17 necessary changes in the registration file. Failure to surrender the special license plates as  
18 required by this section is a Class 2 misdemeanor.

19 Section 3. That § 32-5-109.1 be amended to read as follows:

20 32-5-109.1. Any resident of this state who was serving in the United States armed forces  
21 and survived the attack at Pearl Harbor, Hawaii, on December 7, 1941, and who received an  
22 honorable discharge, may apply to the secretary for a maximum of two sets of special motor  
23 vehicle license plates if the applicant has complied with all the laws of this state for any  
24 automobile, pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle licensed pursuant

1 to § 32-5-9. The veteran may choose to use one of the two sets of plates on a noncommercial  
2 motor vehicle that is a pickup truck and that weighs more than six thousand pounds licensed  
3 pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay  
4 the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the  
5 ten dollars for the special plates and renewal stickers. Each application shall be on a form  
6 prescribed by the secretary and shall include such information as the secretary may require. The  
7 applicant shall pay a ten dollar fee and shall receive special plates. The special plates shall be  
8 displayed as set forth in § 32-5-98. A fee of ten dollars shall be paid for the renewal stickers. No  
9 registration fee or sticker fee may be charged to the applicant pursuant to § 32-5-6 or 32-5-9.  
10 The fee shall be deposited into the license plate special revenue fund. Upon approval of the  
11 application, the secretary shall issue the license plates. The license plates shall be numbered  
12 consecutively beginning with number 1 and contain a symbol to be determined by the secretary  
13 indicating that the owner of the vehicle is a Pearl Harbor survivor. If it is determined that an  
14 applicant does not qualify for the special plates or if the applicant dies, the plates shall be  
15 surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the  
16 secretary who shall make the necessary changes in the registration file.

17 Section 4. That § 32-5-109.2 be amended to read as follows:

18 32-5-109.2. Any resident veteran owner of a motor vehicle who has received the Purple  
19 Heart Medal may apply to the secretary to receive a maximum of two sets of special license  
20 plates for any automobile, pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle  
21 licensed pursuant to § 32-5-9. The veteran may choose to use one of the two sets of plates on  
22 a noncommercial motor vehicle that is a pickup truck and that weighs more than six thousand  
23 pounds licensed pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The  
24 veteran shall pay the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be

1 required to pay the ten dollars for the special plates and renewal stickers. The fee for the special  
2 license plates and the renewal stickers for the plates shall be issued only upon proof of payment  
3 of the current registration fees shall be ten dollars. The special plates shall be numbered  
4 consecutively beginning with number 1 and contain a symbol to be determined by the secretary  
5 indicating that the owner has received the Purple Heart Medal. The special plates shall be  
6 displayed as set forth in § 32-5-98. The special license plate shall be reflectorized and validated  
7 each year with a sticker in the same manner as a noncommercial license plate. No license fees  
8 ~~may be charged for the special plates and its or renewal stickers~~ fees may be charged to the  
9 applicant pursuant to § 32-5-6 or 32-5-9. If it is determined that the veteran owner does not  
10 qualify for the special plates or if the veteran owner dies, the plates shall be surrendered to the  
11 county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall  
12 make the necessary changes in the registration file. Failure to surrender the special license plates  
13 as required by this section is a Class 2 misdemeanor.