

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

284P0335

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1080** - 2/11/2008

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a student
2 athlete development center on the campus of South Dakota State University and to make an
3 appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
8 roofing and structures, and such other services and improvements as may be required to erect,
9 a student athlete development center on the campus of South Dakota State University in
10 Brookings, in Brookings County, at an estimated cost of six million dollars.

11 Section 2. There is hereby appropriated the sum of six million dollars (\$6,000,000), or so
12 much thereof as may be necessary, of other fund expenditure authority, payable from funds
13 donated for the purposes of this Act, to the Board of Regents for the construction authorized by
14 this Act.

15 Section 3. The design and construction of the facilities approved by this Act shall be under



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

5 Section 4. No general fund dollars may be used for the maintenance and repair of the
6 facilities authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0340

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1083** - 2/11/2008

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a new public
2 restroom facility at McCrory Gardens on the campus of South Dakota State University and
3 to make an appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
8 roofing and structures, and such other services and improvements as may be required to erect,
9 a new public restroom facility at McCrory Gardens on the campus of South Dakota State
10 University in Brookings, in Brookings County, at an estimated cost of fifty thousand dollars.

11 Section 2. There is hereby appropriated the sum of fifty thousand dollars (\$50,000), or so
12 much thereof as may be necessary, of other fund expenditure authority, payable from funds
13 donated for the purposes of this Act, to the Board of Regents for the construction authorized by
14 this Act.

15 Section 3. The design and construction of the facilities approved by this Act shall be under



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

5 Section 4. No general fund dollars may be used for the maintenance and repair of the
6 facilities authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

862P0295

SENATE JUDICIARY ENGROSSED NO. **HB 1099** - 2/13/2008

Introduced by: Representatives Vehle, Deadrick, and Elliott and Senator Hansen (Tom) at the request of the Interim Committee on Education for Divorcing Parents, Visitation, and Custody Task Force

1 FOR AN ACT ENTITLED, An Act to require custody or visitation dispute mediation under
2 certain circumstances.

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

4 Section 1. That § 25-4-56 be amended to read as follows:

5 25-4-56. In any custody or visitation dispute between parents, the court shall, ~~unless the~~
6 ~~court deems it inappropriate under the facts of the case,~~ order mediation to assist the parties in
7 formulating or modifying a plan, or in implementing a plan, for custody or visitation and shall
8 allocate the cost of the mediation between the parties. However, mediation shall not be ordered
9 if:

10 (1) One of the parents has been convicted of domestic abuse as defined in subdivision
11 25-10-1(1); or

12 (2) One of the parents has been convicted of assault against a person as defined in
13 subdivision 25-10-1(2), except against any person related by consanguinity, but not
14 living in the same household; or



1 (3) One of the parents has a history of domestic abuse; or

2 (4) Mediation is not readily available or the court determines that mediation is not
3 appropriate based on the facts and circumstances of the case.

4 The court may also direct that an investigation be conducted to assist the court in making a
5 custody or visitation determination and shall allocate the costs of such investigation between
6 the parties. A history of domestic abuse may only be proven by greater convincing force of the
7 evidence.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

573P0495

SENATE ENGROSSED NO. **HB 1294** - 2/20/2008

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

Introduced by: Representatives Faehn, Brunner, Cutler, Davis, Halverson, Howie, Krebs, McLaughlin, Pitts, Rave, Street, Tidemann, Turbiville, Van Etten, Vehle, Wick, and Willadsen and Senators Turbak Berry, Garnos, Greenfield, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to authorize a class of full-service restaurant on-sale
2 licenses to be issued by first class municipalities.

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

4 Section 1. In addition to the number of on-sale licenses that may be issued pursuant to
5 § 35-4-11, a first class municipality may issue additional on-sale licenses for full-service
6 restaurants. The number of full-service restaurant on-sale licenses that may be issued pursuant
7 to this section may not exceed ten percent of the total number of on-sale licenses allowed or
8 issued pursuant to §§ 35-4-11 and 35-4-13 or three on-sale licenses, whichever is greater.

9 Section 2. Terms used in this Act mean:

10 (1) "Bar," any permanently installed counter within the restaurant area from which
11 alcoholic beverages are regularly served to customers by a person who is tending bar
12 or drawing or mixing alcoholic beverages;

13 (2) "Full-service restaurant," any restaurant at which a waiter or waitress delivers food



1 and drink offered from a printed food menu to patrons at tables, booths, or the bar.
2 Any restaurant that only serves fry orders or food and victuals such as sandwiches,
3 hamburgers, or salads is not a full-service restaurant;

4 (3) "Restaurant," any area in a building maintained, advertised, and held out to the public
5 as a place where individually priced meals are prepared and served primarily for
6 consumption in such area and where seventy percent or more of the gross revenue of
7 the restaurant is derived from the sale of prepared food and nonalcoholic beverages.
8 The restaurant shall have a dining room or rooms, a kitchen, and the number and
9 kinds of employees necessary for the preparing, cooking, and serving of meals.

10 Section 3. An applicant for a full-service restaurant on-sale license shall provide sufficient
11 documentation to the municipality to prove that the primary source of revenue from the
12 operation of the restaurant will be derived from the sale of prepared food and nonalcoholic
13 beverages and not from the sale of alcoholic beverages. The supporting documentation
14 concerning the primary source of revenue submitted pursuant to this section is confidential.

15 Section 4. When the municipality is renewing a full-service restaurant on-sale license, the
16 municipality shall condition the license renewal upon receiving documentation that seventy
17 percent or more of gross sales from the preceding twelve months operation of the full service
18 restaurant is derived from the sale of prepared food and nonalcoholic beverages. The full-service
19 restaurant on-sale licensee shall submit an annual report to the municipality on the sales for the
20 full-service restaurant that includes an oath verifying the validity of the information provided
21 in the report. The report and the supporting documentation submitted pursuant to this section
22 are confidential. The report shall contain the annual gross sales of the licensee for the following
23 two categories:

24 (1) Food and nonalcoholic beverage sales; and

1 (2) Alcoholic beverage sales.

2 Section 5. A full-service restaurant on-sale licensee may only serve alcoholic beverages for
3 on-premise consumption in the bar and dining room area of the restaurant.

4 Section 6. The provisions of § 35-4-81 apply to each full-service restaurant on-sale licensee,
5 except, that no licensee may sell, serve, or allow to be consumed on the premises covered by
6 the license, any alcoholic beverages between the hours of eleven p.m. and eleven a.m.

7 Section 7. A restaurant that has a full-service restaurant on-sale license may only be
8 advertised or held out to the public as primarily a food eating establishment.

9 Section 8. No restaurant that has a full-service restaurant on-sale license may conduct video
10 lottery pursuant to chapter 42-7A upon the location where the license is held.

11 Section 9. No premise licensed under the provisions of subdivision 35-4-2 (4), (6), (11), or
12 (13) prior to July 1, 2008, may be licensed as a full-service restaurant on-sale license prior to
13 July 1, 2020.

14 Section 10. The license fee for a full-service restaurant on-sale license issued by a first class
15 municipality with a population that is:

16 (1) Sixty thousand or more, may not be less than two hundred thousand dollars;

17 (2) Twenty thousand or more but less than sixty thousand, may not be less than one
18 hundred thousand dollars; and

19 (3) Less than twenty thousand, may not be less than seventy-five thousand dollars.

20 Section 11. No on-sale license annexed into a municipality pursuant to § 35-4-13 may be
21 transferred to a new location for a period of three years after the annexation.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0150

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

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 banks.

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

4 Section 1. That § 51A-1-2 be amended to read as follows:

5 51A-1-2. Terms used in this title mean:

- 6 (1) "Articles of incorporation," articles of incorporation for a bank organized by
7 incorporators as a corporation pursuant to ~~chapters 47-2 to 47-9, inclusive, chapter~~
8 47-1A and articles of organization for a bank organized by organizers or members
9 as a limited liability company pursuant to chapter 47-34A;
- 10 (2) "Bank," any corporation or limited liability company, organized pursuant to chapter
11 47-34A, authorized under this title to engage in the business of banking or in the
12 combined business of a bank and trust company or in the combined business of a
13 bank with trust powers;
- 14 (3) "Bank holding company," a bank holding company as defined in 12 U.S.C. 1841, as
15 amended as of January 1, 1988;



- 1 (4) "Banking," the business of receiving deposits, discounting commercial paper, or
2 buying and selling exchange, and any other activity authorized by this title;
- 3 (5) "Banking day," that part of any day on which a bank is open to the public for carrying
4 on substantially all of its banking functions;
- 5 (6) "Board of directors," board of directors for a bank organized by incorporators as a
6 corporation pursuant to ~~chapters 47-2 to 47-9, inclusive,~~ chapter 47-1A and a
7 manager for a manager-managed bank or a member for a member-managed bank
8 organized as a limited liability company pursuant to chapter 47-34A;
- 9 (7) "Branch bank," a branch place of business maintained by a bank to conduct its
10 banking business;
- 11 (8) "By-laws," by-laws for a bank organized by incorporators as a corporation pursuant
12 to ~~chapters 47-2 to 47-9, inclusive,~~ chapter 47-1A and operating agreement for a bank
13 organized by organizers or members as a limited liability company pursuant to
14 chapter 47-34A;
- 15 (9) "Commission," the State Banking Commission;
- 16 (10) "Debt cancellation contract," a loan term or contractual arrangement modifying loan
17 terms under which a bank agrees to cancel all or part of a customer's obligation to
18 repay an extension of credit from the bank upon the occurrence of a specified event.
19 The contract may be separate from or a part of other loan documents. The term, debt
20 cancellation contract, does not include loan payment deferral arrangements in which
21 the triggering event is the borrower's unilateral election to defer repayment, or the
22 bank's unilateral decision to allow a deferral of repayment;
- 23 (11) "Debt suspension contract," a loan term or contractual arrangement modifying loan
24 terms under which a bank agrees to suspend all or part of a customer's obligation to

1 repay an extension of credit from the bank upon the occurrence of a specified event.
2 The contract may be separate from or a part of other loan documents. The term, debt
3 suspension contract, does not include loan payment deferral arrangements in which
4 the triggering event is the borrower's unilateral election to defer repayment, or the
5 bank's unilateral decision to allow a deferral of repayment.

6 (12) "Deputy director," the deputy director of the Division of Banking;

7 (13) "Director," the director of the Division of Banking;

8 (14) "Dividends," distributions for a corporation organized by incorporators as a
9 corporation pursuant to ~~chapters 47-2 to 47-9, inclusive;~~ chapter 47-1A and
10 distributions for a bank organized by organizers or members as a limited liability
11 company pursuant to chapter 47-34A.

12 (15) "Division," the Division of Banking of the Department of Revenue and Regulation;

13 (16) "Executive officer," every officer who participates or has authority to participate,
14 otherwise than in the capacity of a director, in major policy-making functions of the
15 bank, regardless of whether the officer has an official title or whether the officer's
16 title contains a designation of assistant and regardless of whether the officer is
17 serving without salary or other compensation. The chairman of the board, the
18 president, every vice-president, the cashier, secretary, and treasurer of a bank are
19 assumed to be executive officers, unless, by resolution of the board of directors or by
20 the bank's bylaws, any such officer is excluded from participation in major
21 policy-making functions, otherwise than in the capacity of a director of the bank, and
22 the officer does not actually participate therein;

23 (17) "Fully defeased bonds or notes," obligations issued by any state, or municipal or
24 school district subdivision the repayment of which has been irrevocably guaranteed

1 by other securities which securities are issued by or are fully guaranteed by the
2 United States Government;

3 (18) "Loan production office," an office ~~in this state~~ which is apart from its main bank or
4 branch which is staffed or controlled by a bank and is where loans are solicited but
5 are not approved or disbursed.

6 (19) "Mobile branch bank," a branch bank that does not have a single, permanent site and
7 uses a vehicle that travels to various locations to enable the public to conduct banking
8 business. A mobile branch bank may serve defined locations on a regular schedule
9 or may serve a defined area at varying times and locations;

10 (20) "National bank," any corporation organized pursuant to 12 U.S.C. § 21, as amended
11 as of January 1, 1990;

12 ~~(20)~~(21) "Stock," shares for a bank organized by incorporators as a corporation
13 pursuant to ~~chapters 47-2 to 47-9, inclusive, chapter 47-1A~~ and member equity
14 for a bank organized as a limited liability company pursuant to chapter 47-
15 34A;

16 ~~(21)~~(22) "Stockholder," a shareholder of a bank organized by incorporators as a
17 corporation pursuant to ~~chapters 47-2 to 47-9, inclusive, chapter 47-1A~~ and a
18 member for a bank organized by organizers or members as a member as a
19 limited liability company pursuant to chapter 47-34A;

20 Section 2. That § 51A-1-5 be amended to read as follows:

21 51A-1-5. Any officer, employee, or director of a bank who fails to obey any lawful order
22 made by the director or commission under provisions of this title is subject to the imposition of
23 a civil fine by the director or commission not exceeding ~~one hundred~~ one thousand dollars per
24 violation for each day the officer, employee, director, or bank has willfully failed to comply with

1 the order. Any funds received from such fines shall be deposited in the banking special revenue
2 fund.

3 Section 3. That § 51A-1-18 be amended to read as follows:

4 51A-1-18. The director, with the approval of the commission, may enter into any ~~interstate~~
5 agreement or compact with authorized representatives of other jurisdictions to provide for the
6 administration of ~~state~~ banking laws under the provisions of a signed ~~interstate~~ agreement or
7 compact. In administering any ~~interstate~~ agreement on behalf of this state, the director may
8 adopt the policies, principles, and guidelines contained within the ~~interstate~~ agreement. Copies
9 of the ~~interstate~~ agreement or compact, procedures manual, and guidelines shall be filed within
10 fifteen days after execution of the agreement or compact or the effective date of the agreement
11 or compact, whichever is the later, at the Department of Revenue and Regulation. The director
12 shall make any agreement or compact available to interested parties, upon request.

13 Section 4. That § 51A-2-10 be amended to read as follows:

14 51A-2-10. The commission shall hold at least ~~four~~ two regular meetings each year. Special
15 meetings, to be held on such notice as the director may direct, may be called at any time upon
16 the written request of two members or by the director. All meetings shall be held at the office
17 of the director unless another location in the state is designated by ~~him~~ the director for ~~such~~ the
18 meeting. The commission shall keep an official record of all its proceedings.

19 Section 5. That § 51A-2-11 be amended to read as follows:

20 51A-2-11. A majority of the voting members of the commission ~~shall constitute~~ constitutes
21 a quorum for the conduct of all business. At any meeting at which a quorum is not present,
22 whether by reason of the inability of the member to participate or ~~his~~ the member's
23 disqualification pursuant to § 51A-2-16, the ~~director~~ Governor or the Governor's designee,
24 temporarily assuming the powers and duties of a member of the commission, shall replace ~~such~~

1 the interested member of the commission. The commission as then composed shall proceed with
2 the matters before it.

3 Section 6. That § 51A-2-14.1 be amended to read as follows:

4 51A-2-14.1. Notwithstanding any restrictions, limitations, and requirements of law, in
5 addition to all powers, expressed or implied, that a state bank has under the laws of this state,
6 a state bank shall have the powers and authorities conferred as of January 1, ~~1999~~ 2008, upon
7 federally chartered banks doing business in this state. A state bank may exercise the powers and
8 authorities conferred on a federally chartered bank after this date only if the director finds that
9 the exercise of such powers and authorities:

- 10 (1) Serves the convenience and advantage of depositors, borrowers, or the general
11 public; and
12 (2) Maintains the fairness of competition and parity between state chartered and federally
13 chartered banks.

14 If the director finds that the before-mentioned conditions have been met, the director shall
15 make a declaratory ruling allowing state banks the same powers and authorities.

16 As used in this section, powers and authorities, include, without limitation, powers and
17 authorities in corporate governance and operational matters.

18 Section 7. That § 51A-2-16 be amended to read as follows:

19 51A-2-16. ~~The commission shall pass upon every application to organize or change the~~
20 ~~control of a bank under the laws of this state, every application for merger, and every application~~
21 ~~to establish or close a branch bank, every application to establish a loan production office, or~~
22 ~~change of location. However, if an applicant requests a change of location within a community~~
23 ~~in which it is the sole bank, the director of banking may approve the application without notice~~
24 ~~or hearing before the commission. All proceedings before the commission on every such~~

1 ~~application shall be held in conformance with chapter 1-26. If the application involves~~
2 ~~establishment of any kind of competitive banking service in the trade territory of a bank in~~
3 ~~which any banking commissioner is interested, the commissioner shall be deemed disqualified;~~
4 ~~and the commission shall be recomposed as provided in § 51A-2-11. The director shall act upon~~
5 ~~an application to organize or change control of a bank, an application for a bank merger, an~~
6 ~~application to open or close a branch bank, mobile branch bank, or loan production office, or~~
7 ~~an application to change a bank's location. Upon the filing of a completed application deemed~~
8 ~~acceptable to the director, the director shall cause a public notice of the application to be~~
9 ~~published in a newspaper of general circulation serving the community most directly affected~~
10 ~~by the application together with such other means of notification to interested persons as the~~
11 ~~director may determine.~~

12 The notice shall direct that any interested persons may file a written objection or written
13 comment to the application with the division within thirty days following the date of
14 publication. Within forty-five days following the date of publication, the director shall consider
15 any written objection and written comment and, in accordance with § 51A-3-9, either approve
16 or disapprove the application. The director shall provide written notice of the director's action
17 on the application to the applicant and to any person having filed with the division any written
18 objection or written comment by mail to the person's last known address.

19 An applicant aggrieved by the director's action on the application, may, within fifteen days
20 after the notice has been mailed, file with the division a written request for a hearing before the
21 commission. Any person who has filed a written objection to the application may, within fifteen
22 days after the notice has been mailed, file a motion with the commission in accordance with § 1-
23 26-17.1 to become a party to the application proceeding and request a hearing before the
24 commission. Unless the commission grants the motion or unless the applicant has filed a written

1 request for hearing before the commission, the director's determination on the application is
2 final.

3 All proceedings before the commission on an application shall be held in conformance with
4 chapter 1-26. If the application involves establishment of any type of competitive banking
5 service in the trade territory of a bank in which any banking commissioner is interested, the
6 commissioner shall be deemed disqualified and the commission shall be recomposed as
7 provided in § 51A-2-11.

8 Section 8. That § 51A-2-22 be amended to read as follows:

9 51A-2-22. The director, may, subject to the approval of the commission, order the removal
10 or prohibition from the banking industry in South Dakota, or both, of any director, officer, or
11 employee of a bank, upon showing that the director, officer or employee has engaged or
12 participated in any unlawful banking activity, any unsafe or unsound practice in which the bank
13 has suffered or will suffer financial loss or other damage, or upon showing that the director,
14 officer, or employee has knowingly caused the bank to be in violation of any part of this title
15 or any rule issued thereunder, or who is determined by the director to have knowingly and
16 willfully violated the terms of any order issued pursuant to § 51A-2-25 or 12 U.S.C. § 1818.
17 Any person so affected by an order of the director or commission has the right to a hearing
18 pursuant to chapter 1-26.

19 Section 9. That § 51A-2-25 be amended to read as follows:

20 51A-2-25. The director may issue a temporary order having force until the next regular
21 meeting of the commission, or special meeting of the commission if requested by the director
22 or by a member of the commission, requiring that any person cease and desist from engaging
23 in any unsound or unlawful banking practice.

24 Section 10. That § 51A-2-36 be amended to read as follows:

1 51A-2-36. The division shall charge and collect a fee from all banks to cover the cost of
2 examining and supervising banks based upon asset size and other factors as established by the
3 commission. ~~Each bank shall pay that portion of the total cost as its total assets bear on the~~
4 ~~aggregate of all assets in all banks, banking entities, subsidiaries and affiliates subject to this~~
5 ~~title~~. The commission shall set the fee and the other factors by rules promulgated pursuant to
6 chapter 1-26.

7 Section 11. That § 51A-2-37 be amended to read as follows:

8 51A-2-37. If the director considers it necessary, ~~he~~ the director may examine the books and
9 records of a corporation that holds twenty-five percent or more of the stock of a bank. If any
10 parent corporation of a state chartered bank refuses to give any information required in the
11 course of an examination, that parent corporation is subject to a civil fine of ~~one hundred~~ one
12 thousand dollars for each day that the refusal continues. Continued refusal may result in the
13 taking and possession of such bank as provided in § 51A-15-11.

14 Section 12. That § 51A-3-9 be amended to read as follows:

15 51A-3-9. ~~Within ninety days of the receipt of the application required in § 51A-3-7, unless~~
16 ~~the commission orders that a longer time is necessary, the director shall investigate and make~~
17 ~~a report of the following:~~

18 ~~(1) The character, reputation and financial standing of the organizers or incorporators~~
19 ~~and their motives in seeking to organize the proposed state bank;~~

20 ~~(2) The character, financial responsibility, business experience and standing in the~~
21 ~~community of the prospective stockholders and of those proposed as directors of the~~
22 ~~bank;~~

23 ~~(3) The need in the community where the bank would be located for banking or banking~~
24 ~~and trust facilities, or additional banking or banking and trust facilities as the case~~

1 may be;

2 ~~(4) The ability of the community to support the proposed bank, giving consideration to:~~

3 ~~(a) The competition offered by existing banks;~~

4 ~~(b) The banking history of the community;~~

5 ~~(c) The opportunities for profitable employment of bank funds as indicated by the~~

6 ~~average demand for credit, the number of potential depositors, the volume of~~

7 ~~bank transactions, and the business and industries of the community, with~~

8 ~~particular regard for their stability, diversification and size; and~~

9 ~~(d) If the bank is to exercise trust powers, the opportunities for profitable~~

10 ~~employment of fiduciary services;~~

11 ~~(5) Such other facts and circumstances bearing on the proposed bank and its relation to~~

12 ~~the community as in the opinion of the director or the commission may be relevant;~~

13 ~~(6) The adequacy of the capital structure of the proposed bank in relation to the amount~~

14 ~~of the anticipated business of the bank and the safety of prospective depositors.~~

15 ~~The director shall submit such report, together with all other pertinent information in his~~

16 ~~possession, to the commission for its consideration pursuant to § 51A-3-11. In ruling upon any~~

17 ~~bank application required in § 51A-2-16, the director or the commission, as the case may be,~~

18 ~~shall consider the following conditions:~~

19 (1) The financial history and condition of the applicant;

20 (2) The adequacy of the applicant's financial structure;

21 (3) The future earning prospects of the applicant;

22 (4) The general character and fitness of the management and ownership of the applicant;

23 (5) The applicant's ability to serve the community as described in the application; and

24 (6) Such other facts and circumstances as in the opinion of the director or commission

1 may be relevant.

2 In any hearing before the commission on an application, the director shall submit to the
3 commission for its consideration pursuant to § 51A-3-10 the director's findings with respect to
4 the above conditions together with all other pertinent information in the director's possession.

5 Section 13. That § 51A-3-10 be amended to read as follows:

6 51A-3-10. ~~The commission shall investigate and examine any applications filed pursuant~~
7 ~~to § 51A-2-16. The commission shall prepare and file in appropriate written form, findings of~~
8 ~~fact and conclusions of law based upon their investigation, which findings and conclusions shall~~
9 ~~become a permanent part of the record relating to the pending application. Within ninety days~~
10 ~~following an applicant's request for hearing or the commission's order granting a motion to~~
11 ~~intervene and request for hearing filed in accordance with § 51A-2-16, the commission shall~~
12 ~~conduct a hearing on the application. The commission shall consider the evidence presented at~~
13 ~~the hearing and the director's findings and other pertinent information submitted by the director~~
14 ~~in accordance with § 51A-3-9. The commission shall, within forty-five days from the date of~~
15 ~~the hearing, prepare and file in appropriate written form, findings of fact and conclusions of law~~
16 ~~which shall become a permanent part of the record relating to the pending application.~~

17 Section 14. That § 51A-3-11 be repealed.

18 ~~— 51A-3-11. Within one hundred eighty days after the filing of an application, the commission~~
19 ~~shall consider the director's findings and recommendations and all other available relevant~~
20 ~~information and shall in its discretion approve or disapprove the application, which action shall~~
21 ~~be subject to appeal pursuant to chapter 1-26.~~

22 Section 15. That § 51A-3-12 be amended to read as follows:

23 51A-3-12. If the ~~commission~~ director approves ~~the~~ a charter application, ~~its~~ the director's
24 approval shall be endorsed on the articles of incorporation or organization. The original shall

1 be filed and recorded in the office of the secretary of state, and a certified copy thereof shall be
2 forthwith filed in the office of the director. The remaining copy shall be returned to the
3 incorporators or organizers within twenty days of the action of the ~~commission~~ director. If the
4 ~~commission~~ director disapproves an application, the director shall so notify the incorporators
5 or organizers within twenty days of such disapproval, in writing, stating the reasons for such
6 disapproval and shall return all copies of the articles of incorporation or organization to them.

7 Section 16. That § 51A-3-25 be amended to read as follows:

8 51A-3-25. ~~Except as provided by this section, any transfers in the shares of a bank that~~
9 ~~create a change in the control of the bank, either directly or indirectly, are subject to the prior~~
10 ~~written approval of the director. The director may approve or disapprove an application for~~
11 ~~change of control, or recommend that the application receive a hearing before the commission.~~
12 ~~However, at no time may the director approve an application for which an objection or request~~
13 ~~to appear has been received. All applications for change of control that are disapproved or~~
14 ~~recommended for hearing by the director shall be received by the commission for its~~
15 ~~consideration pursuant to §§ 51A-2-16 and 51A-3-9 to 51A-3-11, inclusive.~~

16 ~~—A~~ For the purposes of application approval under § 51A-2-16, a change of control created
17 by the acquisition of shares in satisfaction of a debt previously contracted in good faith or
18 through testate or intestate succession ~~or~~, bona fide gift, or trust distribution does not require
19 prior written approval. The acquirer shall advise the director within thirty days after the
20 acquisition and provide such information as the director may request.

21 For the purposes of this section, the term^m, control^m, means the power, directly or indirectly,
22 to direct the management or policies of a bank or to vote twenty-five percent or more of any
23 class of voting securities of a bank.

24 Section 17. That § 51A-4-18 be amended to read as follows:

1 51A-4-18. In the event of a legal holiday, power failure, fire, act of God, riot, strike, robbery
2 or attempted robbery, epidemic, interruption of communication facilities, or for such other
3 reason as the director may ~~approve~~ determine to be good cause, or in the event of the declaration
4 of the existence of an emergency by the Governor or such other person lawfully exercising the
5 power and duties of the office of Governor, a bank, in the reasonable and proper exercise of its
6 discretion, may determine not to open its main office or any branch on any business or banking
7 day, or, if having opened, to close such main office or any branch during the continuation of any
8 such occurrence or emergency.

9 Except for legal holidays, the bank shall, as soon as practicable, notify the director of ~~such~~
10 the nonopening or closing period. In no case may ~~such~~ the bank be required to comply with any
11 other provision of law regarding the closing or reopening of banks or financial institutions. Any
12 act, which could not be executed because of ~~such~~ the closing, may be performed on the next
13 succeeding business day that ~~such~~ the main office or branch is reopened for business. Any other
14 provision or rule of law notwithstanding, no liability or loss of rights of any kind on the part of
15 any person, firm, or corporation, or of such bank, may accrue or result by virtue of ~~such~~ the
16 nonopening or closing.

17 In the event of an emergency or natural disaster affecting a bank's community, a bank may,
18 without notice or advance permission from the director, temporarily extend its banking hours
19 for the public convenience during the term of the emergency and disaster. In the event of an
20 emergency or natural disaster, the director may waive any provision under this Title to provide
21 for the continued access to banking facilities by the citizens of this state.

22 The right of a bank not to open or close under this section and the protections afforded with
23 respect thereto are in addition to and not in lieu of any rights or protections granted under
24 § 57A-4-108.

1 Section 18. That § 51A-4-31 be repealed.

2 ~~—51A-4-31. Real estate acquired by any bank through the collection of debts previously~~
3 ~~contracted in the due course of business may be charged off at one-sixtieth of the acquisition~~
4 ~~cost of such real estate and such charge-off shall be made monthly within thirty days after~~
5 ~~acquisition of the real estate. The director may extend the monthly charge-off of the real estate~~
6 ~~upon written request of the bank. For the purposes of this chapter, the book value of the real~~
7 ~~estate exclusive of the charge-off, is considered a bankable asset.~~

8 Section 19. That § 51A-4-32 be repealed.

9 ~~—51A-4-32. The director may approve or disapprove time limits of less than five years and~~
10 ~~may increase the rate of charge-off to not more than one-one hundred eightieth per month (six~~
11 ~~and two-thirds percent per year). The director shall approve or disapprove a request received~~
12 ~~from a bank under § 51A-4-31 on a case-by-case basis after considering the material facts and~~
13 ~~information and evidence submitted by a bank. Further, the director shall review annually all~~
14 ~~approvals granted under this section and may modify or extend approvals so granted. The~~
15 ~~director shall give a bank a ten-day notification of any modification or revision or termination~~
16 ~~of time limits previously set.~~

17 Section 20. That § 51A-4-33 be repealed.

18 ~~—51A-4-33. In addition to the provisions of §§ 51A-4-31 and 51A-4-32, immediately after~~
19 ~~a bank receives a report of examination, the bank may amortize each loan classified as a loss~~
20 ~~over a period not to exceed fifteen years, using the straight-line method pursuant to rules~~
21 ~~established by the commission if the loan:~~

22 ~~—(1)—Was classified in an amount not less than fifty thousand dollars; and~~

23 ~~—(2)—Was advanced as a business, commercial or agricultural loan; and~~

24 ~~—(3)—Was not advanced to any officer, director or employee of the bank; and~~

1 ~~— (4) — Was not the result of fraud or willful abuse on the part of the bank, its directors or~~
2 ~~employees.~~

3 Section 21. That § 51A-4-34 be repealed.

4 ~~— 51A-4-34. In addition to the provisions of §§ 51A-4-31 to 51A-4-33, inclusive, a bank may,~~
5 ~~before examination, amortize a loan loss over a period not to exceed fifteen years using the~~
6 ~~straight-line method pursuant to rules established by the commission if the loan:~~

7 ~~— (1) — Resulted in a loss in an amount of not less than fifty thousand dollars; and~~

8 ~~— (2) — Was advanced as a business, commercial or agricultural loan; and~~

9 ~~— (3) — Was not advanced to any officer, director or employee of the bank or their related~~
10 ~~interests; and~~

11 ~~— (4) — Was not the result of fraud or willful abuse on the part of the bank, its directors or~~
12 ~~employees.~~

13 ~~— In such event the bank shall, within thirty days of such action, notify the director in writing.~~

14 Section 22. That § 51A-4-35 be repealed.

15 ~~— 51A-4-35. Following a report of examination, any bank loans classified as ineligible for~~
16 ~~amortization shall be charged to the bank's reserve for loan and lease losses in compliance with~~
17 ~~existing rules.~~

18 Section 23. That § 51A-4-36 be repealed.

19 ~~— 51A-4-36. The following types of loan losses may not be amortized as provided in §§ 51A-~~
20 ~~4-33 and 51A-4-34:~~

21 ~~— (1) — Consumer transactions involving the purchase of goods or services for personal,~~
22 ~~family or household use;~~

23 ~~— (2) — Residential mortgage transactions;~~

24 ~~— (3) — Home improvement loans;~~

1 ~~—(4)— Extensions of credit created by overdraft;~~

2 ~~—(5)— Credit cards; and~~

3 ~~—(6)— Similar losses~~

4 Section 24. That § 51A-4-37 be repealed.

5 ~~—51A-4-37. Notwithstanding any other provision of law, any bank and subsidiaries thereof~~
6 ~~which are located in this state may invest in real estate used primarily for agricultural purposes.~~

7 ~~Such investment is limited to a maximum of ten percent of any bank's paid-up capital and~~
8 ~~surplus for all such investments. The investment is restricted as follows:~~

9 ~~—(1)— The investment shall represent a minority interest therein; and~~

10 ~~—(2)— Any co-investor has the irrevocable option, but not the obligation, to repurchase at~~
11 ~~the co-investor's discretion, any or all of the investment owned by the bank and~~
12 ~~authorized by §§ 51A-4-37 and 51A-4-38, at any time. Such repurchase shall be~~
13 ~~made at the fair market value of the bank's investment at the time of the exercise of~~
14 ~~the option; and~~

15 ~~—(3)— No transfer or sale of the bank's interest to a third party may take place during the~~
16 ~~first ten years of the bank's investment without the prior written consent of the~~
17 ~~co-investor.~~

18 ~~— For the purposes of §§ 51A-4-31 to 51A-4-41, inclusive, a co-investor is the individual,~~
19 ~~association, partnership or corporation other than a bank or bank subsidiary who sells an equity~~
20 ~~interest to a bank pursuant to §§ 51A-4-31 to 51A-4-41, inclusive.~~

21 Section 25. That § 51A-4-38 be repealed.

22 ~~—51A-4-38. Notwithstanding any other provision of law, any bank and its subsidiaries, in~~
23 ~~addition to the investment authorized by § 51A-4-37, may also invest in other business ventures~~
24 ~~to the same extent, and with the same restrictions, except that the sum total of the investments~~

1 authorized by this section may not exceed ten percent of the bank's paid-up capital and surplus.

2 Section 26. That § 51A-4-39 be repealed.

3 ~~—51A-4-39. No value received or accrued as a result of any investment authorized by §§ 51A-~~
4 ~~4-31 to 51A-4-41, inclusive, may be considered interest on any loan or an extension of credit~~
5 ~~regardless of the existence of a lending relationship between the bank and the co-investors.~~

6 Section 27. That § 51A-4-40 be repealed.

7 ~~—51A-4-40. The restrictions on the investments authorized by §§ 51A-4-37 and 51A-4-38 do~~
8 ~~not apply to the powers granted to any bank pursuant to § 51A-4-4.~~

9 Section 28. That § 51A-7-1 be amended to read as follows:

10 51A-7-1. A branch bank or mobile branch bank may be operated by a bank only as
11 authorized by this title and by the ~~commission~~ director under such rules as the commission shall
12 require.

13 Section 29. That § 51A-7-2 be amended to read as follows:

14 51A-7-2. Every branch bank or mobile branch bank is subject to examination by the director
15 as provided in §§ 51A-2-18 and 51A-2-20 and shall pay the fees prescribed therefor.

16 Section 30. That § 51A-7-4 be amended to read as follows:

17 51A-7-4. ~~Branch banks~~ A branch bank may be established de novo or by a ~~bank~~
18 consolidating or merging with or purchasing the assets of another state bank, national bank or
19 savings and loan association organized pursuant to Title 52 or 12 U.S.C. § 1464, as amended
20 as of January 1, 1990. ~~No branch bank may be established in a municipality of less than three~~
21 ~~thousand population where there is an existing national or state bank regularly transacting~~
22 ~~banking business, or in any municipality of three thousand population or more and less than ten~~
23 ~~thousand population where there are two or more existing national or state banks regularly~~
24 ~~transacting banking business. However, a branch bank shall be allowed in such a municipality~~

1 ~~if an outside state or national bank establishes a branch by purchasing the assets of, or by merger~~
2 ~~or consolidation with, one of the existing state banks, national banks or savings and loan~~
3 ~~associations organized pursuant to Title 52 or 12 U.S.C. § 1464, as amended as of January 1,~~
4 ~~1990, or another federally insured financial institution.~~

5 Section 31. That § 51A-7-5 be repealed.

6 ~~—51A-7-5. For the purposes of determining whether a branch bank facility may be located in~~
7 ~~a municipality as provided in § 51A-7-4, a branch bank located in such municipality shall not~~
8 ~~be construed to be a bank.~~

9 Section 32. That § 51A-7-6 be amended to read as follows:

10 51A-7-6. No branch bank may close without the approval of the ~~commission~~ director. If a
11 branch is closed the branch certificate shall be surrendered to the division. A violation of this
12 section is a Class 2 misdemeanor.

13 Section 33. That § 51A-7-11 be amended to read as follows:

14 51A-7-11. No detached drive-in facility ~~shall~~ may be constructed or operated without the
15 prior written approval of the ~~commission~~ director, in the case of a state bank, or the appropriate
16 federal regulatory authority in the case of a national bank.

17 Section 34. That § 51A-7-12 be amended to read as follows:

18 51A-7-12. A branch bank, mobile branch bank, or drive-in facility shall clearly indicate the
19 identity of its parent bank.

20 Section 35. That § 51A-7-14 be amended to read as follows:

21 51A-7-14. With prior approval of the ~~commission~~ director, any South Dakota state bank may
22 establish and maintain a branch or acquire a branch in a state other than South Dakota. A South
23 Dakota state bank may conduct any activities at a branch outside of South Dakota that are
24 permissible for a bank chartered by the host state where the branch is located.

1 Section 36. That § 51A-7-15 be amended to read as follows:

2 51A-7-15. ~~A South Dakota state bank desiring to establish and maintain a branch in another~~
3 ~~state shall file an application with the commission and pay any branch application fee which has~~
4 ~~been established by rule. If the commission finds that the applicant has the financial resources~~
5 ~~sufficient to undertake the proposed expansion without adversely affecting its safety or~~
6 ~~soundness and if the commission finds that the establishment of the proposed branch is in the~~
7 ~~public interest, the commission shall approve the application. In acting on an application, the~~
8 ~~commission may consider the views of the appropriate bank supervisory agencies. The applicant~~
9 ~~bank may establish the branch if it has received the written approval of the commission. The~~
10 ~~commission shall act upon any application within ninety days of the filing of the application.~~
11 No South Dakota state bank may establish or maintain a branch in another state until the
12 application and appropriate fee has been submitted and approved as provided in § 51A-2-16.
13 In acting on an application, the director or commission, as the case may be, may consider the
14 views of the appropriate bank supervisory agencies.

15 Section 37. That § 51A-7-16 be amended to read as follows:

16 51A-7-16. ~~An out-of-state bank that meets the requirements of §§ 51A-7-13 to 51A-7-27,~~
17 ~~inclusive, may establish and maintain a branch in South Dakota, but only by establishing the~~
18 ~~branch through the acquisition of a bank which has been chartered for not less than sixty months~~
19 ~~prior to the date of acquisition. An out-of-state bank which establishes and maintains a branch~~
20 ~~bank under §§ 51A-7-13 to 51A-7-27, inclusive, may add additional branches under § 51A-7~~
21 ~~in the same manner as a South Dakota bank. To the extent another state imposes a restriction~~
22 ~~on the ability of a South Dakota bank to establish, acquire, or retain a branch in that state, the~~
23 ~~other state's restriction shall apply to the establishment, acquisition, or retention of a branch in~~
24 ~~South Dakota by a bank from that state.~~

1 Section 38. That § 51A-7-17 be repealed.

2 ~~—51A-7-17. An out-of-state bank which wants to acquire a branch in South Dakota shall~~
3 ~~provide written application of the proposed transaction to the commission not later than the date~~
4 ~~on which the bank applies to the responsible federal bank supervisory agency for approval to~~
5 ~~establish the branch. The filing of the application shall be accompanied by the filing fee~~
6 ~~established by the commission by rule.~~

7 Section 39. That § 51A-7-18 be repealed.

8 ~~—51A-7-18. A branch of an out-of-state bank may not be established in South Dakota unless~~
9 ~~requisite filing fees have been paid and an application as prescribed by the commission has been~~
10 ~~filed with the commission and after a hearing has been held before the commission pursuant to~~
11 ~~§ 51A-2-16. If the commission approves the application, the director shall issue a certificate of~~
12 ~~authority after the applicant confirms in writing to the director that as long as it maintains a~~
13 ~~branch in South Dakota, it will comply with all applicable laws of South Dakota and provides~~
14 ~~satisfactory evidence to the director of compliance with the applicable laws of §§ 47-1A-1501~~
15 ~~and 47-1A-1503. An out-of-state state bank which establishes and maintains a branch in South~~
16 ~~Dakota may conduct any activities at the branch that are authorized under the laws of South~~
17 ~~Dakota for South Dakota state banks, and has all rights and privileges permitted South Dakota~~
18 ~~state bank branches.~~

19 Section 40. That § 51A-7-21 be repealed.

20 ~~—51A-7-21. The director may enter into cooperative, coordinating, and information-sharing~~
21 ~~agreements with any other bank supervisory agencies or any organization affiliated with or~~
22 ~~representing one or more bank supervisory agencies with respect to the periodic examination~~
23 ~~of or other supervision of any branch located in South Dakota or by an out-of-state state bank,~~
24 ~~or any branch of a South Dakota state bank in any host state. The director may accept reports~~

1 of examination and reports of investigation from these agencies and organizations in lieu of
2 conducting its own examinations or investigations.

3 Section 41. That § 51A-7-22 be repealed.

4 ~~— 51A-7-22. The commission may enter into contracts with any bank supervisory agency that~~
5 ~~has concurrent jurisdiction over a South Dakota state bank or an out-of-state state bank~~
6 ~~maintaining a branch in South Dakota to contract for the services of the agency's examiners or~~
7 ~~to contract for the services of the director's examiners to such agency.~~

8 Section 42. That § 51A-7-24 be repealed.

9 ~~— 51A-7-24. Each out-of-state state bank that maintains one or more branches in South Dakota~~
10 ~~may be assessed fees and shall pay the fees in accordance with the laws of South Dakota and~~
11 ~~rules promulgated by the commission pursuant to chapter 1-26. The fees may be shared with~~
12 ~~other bank supervisory agencies or any organization affiliated with or representing one or more~~
13 ~~bank supervisory agencies in accordance with agreements between the agencies or organizations~~
14 ~~and the director.~~

15 Section 43. That § 51A-7-27 be repealed.

16 ~~— 51A-7-27. Each out-of-state state bank that establishes and maintains a branch in South~~
17 ~~Dakota pursuant to §§ 51A-7-13 to 51A-7-27, inclusive, shall give at least thirty days' prior~~
18 ~~written notice to the director of any merger, consolidation, or other transaction that would cause~~
19 ~~a change of control with respect to such out-of-state bank. However, if it is an emergency~~
20 ~~transaction, shorter notice may be given if the notice is consistent with applicable state or~~
21 ~~federal law.~~

22 Section 44. That chapter 51A-7 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 No person may use the word, bank, or any variation of the word, bank, or logo of an existing

1 bank, trust company, savings association, savings bank, or affiliate in a manner that intentionally
2 misleads a person about the source of origin, affiliation, or sponsorship of a product or service
3 or about the true identity source of a communication regardless of the nature of the
4 communication.

5 Section 45. That § 15-2-19 be amended to read as follows:

6 15-2-19. ~~This chapter shall not affect actions against directors or stockholders of a moneyed~~
7 ~~corporation or banking association to recover a penalty or forfeiture imposed, or to enforce a~~
8 ~~liability created by law; but such actions must be brought within six years after the discovery,~~
9 ~~by the aggrieved party, of the facts upon which the penalty or forfeiture attached or the liability~~
10 ~~was created. No action may be brought against a director, shareholder, or an agent or employee~~
11 of a bank or bank holding company, for any error, mistake, or omission, whether based on
12 contract or tort, unless it is commenced within three years of the occurrence of the alleged error,
13 mistake, or omission. For purposes of this section the term, bank, or, bank holding company,
14 includes state banks as defined in Title 51A, national banks organized pursuant to 12 U.S.C.
15 § 21 as amended as of January 1, 2008, and federal savings associations organized pursuant to
16 12 U.S.C. § 1464 as amended as of January 1, 2008.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0229

SENATE COMMERCE ENGROSSED NO. **SB 52** - 1/17/2008

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 franchises and business opportunities.

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

4 Section 1. Terms used in this Act, unless the context otherwise requires, mean:

- 5 (1) "Action," any complaint, cross claim, counterclaim, and third-party complaint in a
6 judicial action or proceeding, and their equivalent in an administrative action or
7 arbitration;
- 8 (2) "Affiliate," any entity controlled by, controlling, or under common control with
9 another entity;
- 10 (3) "Confidentiality clause," any contract, order, or settlement provision that directly or
11 indirectly restricts a current or former franchisee from discussing the franchisee's
12 personal experience as a franchisee in the franchisor's system with any prospective
13 franchisee. The term does not include any clause that protects franchisor's trademarks
14 or other proprietary information;



- 1 (4) "Director," the director of the Division of Securities;
- 2 (5) "Disclosure document," the Federal Trade Commission franchise disclosure
3 document as set forth pursuant to 16 C.F.R. Part 436, as of January 1, 2008;
- 4 (6) "Disclose, state, describe, and list," to present all material facts accurately, clearly,
5 concisely, and legibly in plain English;
- 6 (7) "Filing, filed," the receipt pursuant to this Act of a record by the director;
- 7 (8) "Financial performance representation," any representation, including any oral,
8 written, or visual representation, to a prospective franchisee, including a
9 representation in the general media, that states, expressly or by implication, a specific
10 level or range of actual or potential sales, income, gross profits, or net profits. The
11 term includes any chart, table, or mathematical calculation that shows possible results
12 based on a combination of variables;
- 13 (9) "Fiscal year," the franchisor's fiscal year;
- 14 (10) "Fractional franchise," any franchise relationship that satisfies the following criteria
15 when the relationship is created:
 - 16 (a) The franchisee, or any of the franchisee's current directors or officers, or any
17 current directors or officers of a parent or affiliate, has more than two years of
18 experience in the same type of business; and
 - 19 (b) The parties have a reasonable basis to anticipate that the sales arising from the
20 relationship will not exceed twenty percent of the franchisee's total dollar
21 volume in sales during the first year of operation;
- 22 (11) "Franchise," any continuing commercial relationship or arrangement, whatever it may
23 be called, in which the terms of the offer or contract specify, or the franchise seller
24 promises or represents, orally or in writing, that:

- 1 (a) The franchisee will obtain the right to operate a business that is identified or
2 associated with the franchisor's trademark, or to offer, sell, or distribute goods,
3 services, or commodities that are identified or associated with the franchisor's
4 trademark;
- 5 (b) The franchisor will exert or has authority to exert a significant degree of
6 control over the franchisee's method of operation, or provide significant
7 assistance in the franchisee's method of operation; and
- 8 (c) As a condition of obtaining or commencing operation of the franchise, the
9 franchisee makes a required payment or commits to make a required payment
10 to the franchisor or its affiliate;
- 11 (12) "Franchisee," any person who is granted a franchise;
- 12 (13) "Franchise seller," any person that offers for sale, sells, or arranges for the sale of a
13 franchise. The term includes the franchisor and the franchisor's employees,
14 representatives, agents, subfranchisors, and third-party brokers who are involved in
15 franchise sales activities. The term does not include existing franchisees who sell
16 only their own outlet and who are otherwise not engaged in franchise sales on behalf
17 of the franchisor;
- 18 (14) "Franchisor," any person who grants a franchise and participates in the franchise
19 relationship. Unless otherwise stated, the term includes subfranchisors. For purposes
20 of this subdivision, a subfranchisor is any person who functions as a franchisor by
21 engaging in both pre-sale activities and post-sale performance;
- 22 (15) "Leased department," any arrangement whereby a retailer licenses or otherwise
23 permits a seller to conduct business from the retailer's location where the seller
24 purchases no goods, services, or commodities directly or indirectly from the retailer,

1 a person the retailer requires the seller to do business with, or a retailer-affiliate if the
2 retailer advises the seller to do business with the affiliate;

3 (16) "Offer," any attempt to dispose of, and any solicitation of an offer to buy, a franchise
4 or interest in a franchise for value by purchase, license, or otherwise. The term does
5 not include an offer to extend or renew an existing franchise if there is no
6 interruption in the franchisee's operation of the business, unless the terms and
7 conditions of the extension or renewal differ materially from the original agreement.
8 The term also does not include an offer of a franchise by an existing franchisee if the
9 franchisor has had no significant involvement with the prospective franchisee. A
10 franchisor's prior dealing with a prospective franchisee alone is not deemed to be
11 significant involvement;

12 (17) "Order," any consent, authorization, approval, prohibition or requirement, or other
13 order applicable to a specific case, issued by the director;

14 (18) "Notice filing application," the form adopted by the director and used to make notice
15 filings of franchises;

16 (19) "Parent," an entity that controls another entity directly, or indirectly through one or
17 more subsidiaries;

18 (20) "Person," any individual, group, association, limited or general partnership,
19 corporation, limited liability company, or any other entity;

20 (21) "Plain English," the organization of information and language usage understandable
21 by a person unfamiliar with the franchise business. The term incorporates short
22 sentences; definite, concrete, everyday language; active voice; and tabular
23 presentation of information, whenever possible. The term avoids legal jargon, highly
24 technical business terms, and multiple negatives;

- 1 (22) "Predecessor," any person from whom the franchisor acquired, directly or indirectly,
2 the major portion of the franchisor's assets;
- 3 (23) "Principal business address," the street address of a person's home office in the
4 United States. The term does not include a post office box or private mail drop;
- 5 (24) "Prospective franchisee," any person (including any agent, representative, or
6 employee) who approaches or is approached by a franchise seller to discuss the
7 possible establishment of a franchise relationship;
- 8 (25) "Record," information that is inscribed on a tangible medium or that is stored in an
9 electronic or other medium and is retrievable in perceivable form;
- 10 (26) "Required payment," any consideration that the franchisee must pay to the franchisor
11 or an affiliate, either by contract or by practical necessity, as a condition of obtaining
12 or commencing operation of the franchise. The term does not include any payment
13 for the purchase of reasonable amounts of inventory at bona fide wholesale prices for
14 resale or lease;
- 15 (27) "Rule," any rule promulgated by the director in accordance with chapter 1-26;
- 16 (28) "Sale of a franchise," any agreement whereby a person obtains a franchise from a
17 franchise seller for value by purchase, license, or otherwise. The term does not
18 include extending or renewing an existing franchise agreement if there has been no
19 interruption in the franchisee's operation of the business, unless the new agreement
20 contains terms and conditions that differ materially from the original agreement. The
21 term also does not include the transfer of a franchise by an existing franchisee if the
22 franchisor has had no significant involvement with the prospective transferee. A
23 franchisor's approval or disapproval of a transfer alone is not deemed to be significant
24 involvement;

1 (29) "Signature," a person's affirmative method of authenticating his or her identity. The
2 term includes a person's handwritten signature, as well as a person's use of security
3 codes, passwords, electronic signatures, and similar devices to authenticate his or her
4 identity;

5 (30) "Trademark," any trademark, service mark, name, logo, and other commercial
6 symbol;

7 (31) "Willfully," if applied to the intent with which an act is done or omitted, implies
8 simply a purpose or willingness to commit the act, or make the omission referred to.
9 The term does not require any intent to violate law, or to injure another, or to acquire
10 any advantage;

11 (32) "Written or in writing," any document or information in printed form or in any form
12 capable of being preserved in tangible form and read. The term includes: type-set,
13 word processed, or handwritten document; information on computer disk or
14 CD-ROM; information sent via email; or information posted on the internet. The
15 term does not include mere oral statements.

16 Section 2. This Act applies to any franchise that is offered or sold in this state. A franchise
17 is offered in this state if:

- 18 (1) An offer to sell is made in this state;
- 19 (2) The offer originates from within this state; or
- 20 (3) The offer is directed by the offeror into this state from outside this state and is
21 received where directed.

22 A franchise is sold in this state if the offer to sell is accepted in this state.

23 A franchise is offered or sold in this state if the franchise is offered or sold to a resident of
24 this state and the franchise is to be operated in this state, or, if the franchisee is domiciled in this

1 state when the franchised business is or will be operated in this state.

2 Section 3. An offer to sell is not made in this state solely because the offer appears in a
3 newspaper or other publication of general and regular circulation which had more than two-
4 thirds of its circulation outside this state during the past twelve months or solely because the
5 offer appears in a broadcast or transmission originating outside this state.

6 An offer to sell or to purchase is not made in this state if the offer to sell is made over the
7 internet or similar proprietary or common carrier electronic system if the following conditions
8 are met:

- 9 (1) The internet offer indicates that the franchise is not being offered to residents of
10 South Dakota;
- 11 (2) The internet offer is not directed to any person in South Dakota by or on behalf of the
12 franchisor or anyone acting with the franchisor's knowledge; and
- 13 (3) No franchise is sold in South Dakota by or on behalf of the franchisor until the
14 offering has been filed by notice and the franchise disclosure document has been
15 delivered to the purchaser prior to the sale and in compliance with this Act.

16 An offer or sale of a franchise is not made in this state if the offer or sale is made to a person
17 not a resident of this state, if the franchise will not be located in this state, and if the offer or sale
18 does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree
19 or purchaser is present and is not part of an unlawful attempt to evade this Act.

20 Section 4. It is unlawful for any person to offer or sell a franchise in this state unless the
21 franchise has properly notice filed under this Act or is exempt from notice filing pursuant to
22 sections 12 to 15, inclusive, of this Act.

23 Section 5. An initial application for the notice filing of a franchise shall be made by filing
24 with the director of the Division of Securities a franchise notice filing application and one clean

1 copy of the disclosure document and consent to service of process, accompanied by a fee of two
2 hundred fifty dollars.

3 If after considering identified conditions and events and management's plans, the auditor
4 concludes that there is substantial doubt about the franchisor's ability to continue as a going
5 concern for a reasonable period of time, the director shall be notified by separate letter as to the
6 going concern issue with the notice filing application.

7 After a notice filing becomes effective, the applicant has a continuing obligation to notify
8 the director of a going concern within fifteen days after the auditor concludes there is a going
9 concern.

10 Except as otherwise provided in this section, if no order or injunction pursuant to section
11 41 or 48 of this Act is in effect, and the filing is complete as required by this section, a notice
12 filing is effective upon receipt by the director.

13 If the director requires the submission of additional information pursuant to section 6 or 36
14 of this Act, and if no order or injunction pursuant to section 41 or 48 of this Act is in effect, the
15 notice filing becomes effective on the fifteenth business day after the additional information is
16 filed with and approved by the director, or at such earlier time as the director determines, unless
17 the applicant requests postponement of the effectiveness of the notice filing. Business day
18 means any day on which state offices are open for regular business.

19 The notice filing of a franchise under this Act expires one year following the date of receipt
20 of the initial application, unless the director prescribes a different period by rule or order. A
21 notice filing may be renewed for one year or a shorter period if designated by the director by
22 filing an application to renew in the same manner as set forth in this section, except that the
23 renewal fee is one hundred fifty dollars. Any filing received after the expiration date shall be
24 treated as an initial filing subject to a filing fee of two hundred fifty dollars.

1 An applicant may withdraw a notice filing if the applicant files a written request for
2 withdrawal with the director. Withdrawal is effective fifteen days from the day on which the
3 withdrawal request is filed unless a shorter period is designated by the director.

4 The director may by rule or order construe any public offering, disclosure document, or
5 similar statement which complies with the requirements of any federal law or administrative
6 rule or with the law of any other state requiring substantially the same disclosure of information
7 as is required by this Act to be in full or partial compliance with this section.

8 The director may by rule or order provide that any information required in the disclosure
9 document need not be included by any class of franchisors if the director finds that the
10 information is inappropriate to the class and that disclosure adequate for the protection of
11 prospective franchisees is otherwise included within the disclosure document.

12 The director may accept any disclosure document or other document filed with the director
13 in an electronic format that is readily accessible by the Division of Securities' then existing
14 electronic systems and in a format that can be downloaded, printed, or otherwise maintained as
15 a record for future reference. If the director accepts electronic filings, the director shall publish
16 a notice on the division's website stating the acceptance of electronic filing and the electronic
17 format to be used.

18 If the franchisor is unable to demonstrate to the director the franchisor's financial ability to
19 fulfill its initial obligations to franchisees, the director may require an escrow of funds paid by
20 the franchisee to the franchisor or its affiliate until the franchisor performs its initial obligations
21 and the franchisee has commenced operations. The director may allow alternatives to escrow
22 depending upon the various facts presented on a case by case basis.

23 Section 6. The director may require the franchisor to alter or amend the proposed disclosure
24 document in order to assure full and fair disclosure to prospective purchasers.

1 Section 7. There is no filing required with the division for updating disclosure documents;
2 but disclosure information shall be updated as follows:

3 (1) Any information in the disclosure document shall be current as of the close of the
4 franchisor's most recent fiscal year. After the close of the fiscal year, the franchisor
5 shall, within one hundred twenty days, prepare a revised disclosure document, after
6 which a franchise seller may distribute only the revised document and no other
7 disclosure document;

8 (2) The franchisor shall, within a reasonable time after the close of each quarter of the
9 fiscal year, prepare revisions to be attached to the disclosure document to reflect any
10 material change to the disclosures included, or required to be included, in the
11 disclosure document. Each prospective franchisee shall receive the disclosure
12 document and the quarterly revisions for the most recent period available at the time
13 of disclosure;

14 (3) If applicable, the annual update shall include the franchisor's first quarterly update,
15 either by incorporating the quarterly update information into the disclosure document
16 itself, or through an addendum;

17 (4) When furnishing a disclosure document, the franchise seller shall notify the
18 prospective franchisee of any material changes that the seller knows or should have
19 known occurred in the information contained in any financial performance
20 presentation; and

21 (5) Information that must be audited pursuant to the disclosure requirements need not be
22 audited for quarterly revisions if the franchisor states in immediate conjunction with
23 the information that the information was not audited.

24 Section 8. For the purposes of section 7 of this Act, a start-up franchise system that does not

1 yet have audited financial statements, may phase-in the use of audited financial statements by
2 providing, at a minimum, the following statements in the times indicated below:

- 3 (1) The franchisor's first partial or full fiscal year selling franchises: an unaudited
4 opening balance sheet;
- 5 (2) The franchisor's second fiscal year selling franchises: audited balance sheet opinion
6 as of the end of the first partial or full fiscal year selling franchises; and
- 7 (3) The franchisor's third and subsequent fiscal years selling franchises: all required
8 financial statements for the previous fiscal year, plus any previously disclosed
9 audited statements that still must be disclosed such as the franchisor's balance sheet
10 for the previous two fiscal year-ends before the disclosure document issuance date
11 and statements of operations, stockholders equity, and cash flows for each of the
12 franchisor's previous three fiscal years.

13 Section 9. For the purposes of section 7 of this Act, a start-up franchisor may phase-in the
14 disclosure of audited financial statements, if the franchisor:

- 15 (1) Prepares audited financial statements as soon as practicable;
- 16 (2) Prepares unaudited statements in a format that conforms as closely as possible to
17 audited statements; and
- 18 (3) Includes one or more years of unaudited financial statements or clearly and
19 conspicuously discloses in the disclosure document that the franchisor has not been
20 in business for three years or more, and cannot include all of the financial statements
21 required in the disclosure document such as the franchisor's balance sheet for the
22 previous two fiscal year-ends before the disclosure document issuance date and
23 statements of operations, stockholders equity, and cash flows for each of the
24 franchisor's previous three fiscal years.

1 Section 10. This Act does not prevent the negotiation of the terms and conditions of a
2 franchise before it is sold. After the initial offer, a franchisor need not amend its disclosure
3 document to negotiate with an offeree, or make supplementary disclosure to that offeree, by
4 reason of a change negotiated in the terms and conditions of a franchise.

5 Section 11. The person offering or selling any franchise subject to the requirements of
6 sections 17 and 18 of this Act shall obtain a receipt, signed by the prospective franchisee,
7 acknowledging that the prospective franchisee has received a copy of the disclosure document
8 prior to the prospective franchisee affixing a signature to any franchise or other agreement and
9 prior to the payment of any consideration by the prospective franchisee. The receipt shall be
10 kept in the possession of the franchise seller, subject to inspection by the director, for a period
11 of three years from the date the receipt is taken.

12 Section 12. The following are exempt from this Act:

- 13 (1) Any franchise relationship covered by the Petroleum Marketing Practices Act, 15
14 U.S.C. 2801, as of January 1, 2008;
- 15 (2) Any franchise relationship where there is no written document that describes any
16 material term or aspect of the relationship or arrangement;
- 17 (3) Any fractional franchise;
- 18 (4) Any leased department;
- 19 (5) The total of the required payments, or commitments to make a required payment, to
20 the franchisor or an affiliate that are made any time from before to within six months
21 after commencing operation of the franchisee's business is less than five hundred
22 dollars;
- 23 (6) Any franchise relationship covering farm machinery, motor vehicles, or recreational
24 vehicles, including snowmobiles, motorcycles, motor homes, mobile homes, and

1 manufactured homes.

2 Section 13. The following franchises are subject to this Act but are exempt from sections
3 4 and 17 of this Act, if any of the following conditions are satisfied:

- 4 (1) The franchisee's initial investment, excluding any financing received from the
5 franchisor or an affiliate, and excluding the cost of unimproved land, totals at least
6 one million dollars and the prospective franchisee signs an acknowledgment
7 verifying the grounds for the exemption. The acknowledgment shall state: The
8 franchise sale is for more than one million dollars, excluding the cost of unimproved
9 land and any financing received from the franchisor or an affiliate;
- 10 (2) The franchisee (or its parent or any affiliates) is an entity that has been in business
11 for at least five years and has a net worth of at least five million dollars; or
- 12 (3) The offer or sale of a franchise by an executor, administrator, sheriff, marshal,
13 receiver, trustee, trustee in bankruptcy, guardian, or conservator on behalf of a person
14 other than the franchisor or the estate of the franchisor; or
- 15 (4) One or more purchasers of at least a fifty percent ownership interest in the franchise;
16 within sixty days of the sale, has been, for at least two years, an officer, director,
17 general partner, individual with management responsibility for the offer and sale of
18 the franchisor's franchises or the administrator of the franchised network; or within
19 sixty days of the sale, has been, for at least two years, an owner of at least a twenty-
20 five percent interest in the franchise.

21 Section 14. The following franchises are subject to this Act but are exempt from section 4
22 of this Act if any of the following conditions are satisfied:

- 23 (1) The offer or sale to an existing franchisee of an additional franchise that is
24 substantially the same as the franchise that the franchisee has operated for at least two

1 years at the time of the offer or sale; or

2 (2) The offer or sale of a franchise to a bank, saving and loan association, financial
3 organization or life insurance corporation within the meanings given these terms by
4 chapters 43-41B, 52-1, and 58-1.

5 Section 15. The director may by rule or order exclude the offer and sale of a franchise from
6 the requirements of sections 4 and 17 of this Act if the filing or disclosure is not necessary or
7 appropriate in the public interest or for the protection of prospective franchisees.

8 Section 16. For purposes of the exemptions set forth in subdivision (5) of section 12 of this
9 Act and subdivisions (1) and (2) of section 13 of this Act, the director may adjust by rule or
10 order the size of the thresholds.

11 Section 17. In connection with the offer or sale of a franchise in this state, unless the
12 transaction is exempted by the provisions of sections 12 to 16, inclusive, of this Act, it is a
13 prohibited practice and a violation of this Act for any person, directly or indirectly, to:

14 (1) Fail to furnish a prospective franchisee with a copy of the franchisor's current
15 disclosure document at least fourteen calendar-days before the prospective franchisee
16 signs a binding agreement with, or makes any payment to, the franchisor or an
17 affiliate in connection with the proposed franchise sale;

18 (2) Alter unilaterally and materially the terms and conditions of the basic franchise
19 agreement or any related agreements attached to the disclosure document without
20 furnishing the prospective franchisee with a copy of each revised agreement at least
21 seven calendar-days before the prospective franchisee signs the revised agreement.

22 Any change to an agreement that arises out of negotiations initiated by the
23 prospective franchisee does not trigger this seven calendar-day period; or

24 (3) Fail to include all of the information required in the disclosure document if preparing

1 the disclosure document to be furnished to a prospective franchisee. A franchise
2 seller is liable for a violation of this subdivision if the seller either directly
3 participated in the preparation of the disclosure document or had the authority to
4 control those who did.

5 Section 18. For purposes of subdivision (1) and (2) of section 17 of this Act, the franchisor
6 has furnished the disclosure documents by the required date if:

- 7 (1) A copy of the disclosure document was hand-delivered, faxed, e-mailed, or otherwise
8 delivered to the prospective franchisee by the required date;
- 9 (2) Directions for accessing the disclosure document on the internet were provided to the
10 prospective franchisee by the required date; or
- 11 (3) A paper or tangible electronic copy was sent to the address specified by the
12 prospective franchisee by first-class United States mail at least three days before the
13 required date.

14 Section 19. Every franchisor offering or selling a franchise in this state shall maintain
15 complete and accurate books and records of the offers and sales of franchises. The books and
16 records shall include all of the disclosure documents and advertising and correspondence that
17 have been used with franchisees and prospective franchisees including past and present
18 operations manuals, training records, training manuals, copies of executed agreements, and any
19 due diligence records concerning franchisees. The books and records shall be maintained at an
20 office readily accessible to the franchisor for three years. The books and records may be kept
21 on photographic or electronic media but shall be printed if the director requests.

22 Section 20. In any proceeding under this Act the burden of proving an exemption is upon
23 the person claiming it.

24 Section 21. A written provision in a franchise contract evidencing a transaction involving

1 commerce to settle by arbitration a controversy thereafter arising out of the contract or
2 transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing
3 to submit to arbitration an existing controversy arising out of the contract, transaction, or
4 refusal, is valid, irrevocable, and enforceable except upon such grounds as exist at law or in
5 equity for the revocation of any contract. However, any condition, stipulation, or provision
6 requiring a franchisee to waive compliance with or relieving a person of a duty or liability
7 imposed by or a right provided by this Act or a rule or order under this Act is void.

8 Section 22. Each applicant for notice filing under this Act, and each franchisor on whose
9 behalf an application for notice filing is filed, except any applicant and franchisor which are
10 domestic South Dakota entities, shall file with the director an irrevocable consent to service of
11 process.

12 The irrevocable consent to service shall be in such form as the director may prescribe. The
13 irrevocable consent to service of process shall appoint the director to be the applicant's or
14 franchisor's agent to receive service of any lawful process in any civil action against the
15 applicant or franchisor or their successor, executor, or administrator, which arises under this Act
16 or any rule or order thereunder.

17 After the irrevocable consent to service of process has been filed, it has the same force and
18 validity as if served personally on the applicant or franchisor or their successor, executor, or
19 administrator.

20 If any person, including any nonresident of this state and any foreign corporation, or other
21 entity engages in conduct prohibited or made actionable by this Act, whether or not they have
22 filed a consent to service of process pursuant to this section, and personal jurisdiction over them
23 cannot otherwise be obtained in this state, that conduct shall be considered equivalent to their
24 appointment of the director to be their agent to receive service of any lawful process in any suit

1 against them or their successors, executor, or administrator which grows out of that conduct and
2 which is brought under this Act, with the same force and validity as if served on them
3 personally.

4 If, under this section, the director is an agent to receive process, service may be made by
5 leaving a copy of the process in the office of the director as follows:

6 (1) The process is not effective unless the plaintiff, who may be the director in an action
7 instituted by the director, forthwith sends notice of the service and a copy of the
8 process by certified mail to the defendant, or forthwith sends notice of the service and
9 a copy of the process to the respondent at their last known address on file with the
10 director; and

11 (2) The plaintiff's affidavit of compliance with this section is filed with the court at the
12 time as the filing of the complaint.

13 Section 23. No person may publish or cause to be published in this state any advertisement
14 concerning any franchise after the director has found that the advertisement contains any
15 statement that is false or misleading or omits to make any statement necessary in order to make
16 the statements made, in light of the circumstances under which they were made, not misleading,
17 and has so notified the person by written order. The director may issue an order without prior
18 notice or hearing.

19 After the issuance of an order, the person desiring to use the advertisement may, in writing,
20 request a hearing on the order. Upon the receipt of the written request, the director shall set a
21 hearing to commence within fifteen days after the receipt of the request unless the person
22 making the request consents to a later date. After the hearing, which shall be conducted in
23 accordance with chapter 1-26, the director shall, by written order, either affirm, modify, or
24 vacate the order.

1 Unless the director requests the filing of an advertisement, there is no requirement to file
2 advertising with the division.

3 Section 24. No person may, directly or indirectly, employ a device, scheme, or artifice to
4 defraud in connection with the offer or sale of a franchise. A violation of this section is a
5 fraudulent practice and a Class 4 felony.

6 Section 25. No person may, directly or indirectly, in connection with the offer or sale of a
7 franchise willfully:

8 (1) Make an untrue statement of material fact or omit to state a material fact necessary
9 in order to make the statements made, in the light of the circumstances under which
10 they are made, not misleading;

11 (2) Engage in an act, practice, or course of business which operates or would operate as
12 a fraud or deceit on a person;

13 (3) Represent to a prospective franchisee that the notice filing of a franchise application
14 constitutes a finding by the director that a disclosure document filed under this Act
15 is true, complete, and not misleading or that the director has passed upon the merits
16 of the disclosure document and the franchise;

17 (4) Violate an order of the director after the person receives notice that the order was
18 issued;

19 (5) Misrepresent that a franchise is notice filed or exempted from notice filing under this
20 Act; and

21 (6) Omit to state a material fact or make or cause to be made an untrue statement of a
22 material fact in any application, notice, or report filed with the director under this
23 Act.

24 A violation of this section is a Class 6 felony.

1 Section 26. No person may, directly or indirectly, in connection with the offer or sale of a
2 franchise:

3 (1) Make any claim or representation, orally, visually, or in writing, that contradicts the
4 information required to be in the disclosure document;

5 (2) Misrepresent that any person:

6 (a) Purchased a franchise from the franchisor or operated a franchise of the type
7 offered by the franchisor; or

8 (b) Can provide an independent and reliable report about the franchise or the
9 experiences of any current or former franchisees;

10 (3) Disseminate any financial performance representations to prospective franchisees
11 unless the franchisor has a reasonable basis and written substantiation for the
12 representation at the time the representation is made, and the representation is
13 included in the franchisor's disclosure document and the franchise seller:

14 (a) Discloses the dates when the reported level of financial performance was
15 achieved and of those outlets whose data were used in arriving at the
16 representation, and the number and percent that actually attained or surpassed
17 the stated results if the representation relates to the past performance of the
18 franchisor's outlets; and

19 (b) Includes a clear and conspicuous admonition that a new franchisee's individual
20 financial results may differ from the result stated in the financial performance
21 representation;

22 (4) Fail to make available to prospective franchisees, and to the director upon reasonable
23 request, written substantiation for any financial performance representations made
24 in the disclosure document;

- 1 (5) Fail to furnish a copy of the franchisor's disclosure document to a prospective
2 franchisee earlier in the sales process than required by section 17 of this Act, upon
3 reasonable request;
- 4 (6) Fail to furnish a copy of the franchisor's most recent disclosure document and any
5 quarterly updates to a prospective franchisee, upon reasonable request, before the
6 prospective franchisee signs a franchise agreement;
- 7 (7) Present for signing a franchise agreement in which the terms and conditions differ
8 materially from those presented as an attachment to the disclosure document, unless
9 the franchise seller informed the prospective franchisee of the differences at least
10 seven days before execution of the franchise agreement;
- 11 (8) Disclaim or require a prospective franchisee to waive reliance on any representation
12 made in the disclosure document or in its exhibits or amendments. However, this
13 provision is not intended to prevent a prospective franchisee from voluntarily
14 waiving specific contractual terms and conditions set forth in his or her disclosure
15 document during the course of franchise sale negotiations; and
- 16 (9) Fail to return any funds or deposits in accordance with any conditions disclosed in
17 the franchisor's disclosure document, franchise agreement, or any related document.

18 Section 27. The director may not approve or express any opinion on the legality of any
19 matter a franchisor may be required to disclose under this Act.

20 Section 28. The director shall administer this Act.

21 Section 29. The director may promulgate rules pursuant to chapter 1-26 to carry out the
22 provisions of this Act including forms governing disclosure documents, applications, financial
23 statements, and defining any terms, whether or not used in this Act, if the definitions are not
24 inconsistent with this Act. For the purpose of rules the director may classify franchises, persons

1 and matters within the director's jurisdiction, and prescribe different requirements for different
2 classes.

3 Section 30. The director may, upon request and upon payment of a fee of fifty dollars,
4 respond to requests for interpretive opinions relating to this Act.

5 Section 31. A document is filed when it is received by the director.

6 Section 32. The director shall maintain a record which shows the notice filed franchise and
7 for whom filed, and shall specify the conditions, limitations, and restrictions upon the filing, if
8 any, or shall make proper reference to a formal order of the director on file showing the
9 conditions, limitations, and restrictions.

10 Section 33. Each application, notice and report filed with the director under this Act is open
11 to public inspection in accordance with rules prescribed by the director. The director may
12 publish information filed with the director or obtained by the director, if, in the judgment of the
13 director, such action is in the public interest.

14 No record obtained by the director pursuant to section 35 of this Act is open to public
15 inspection.

16 Section 34. The director shall upon request furnish copies to any person, at a reasonable
17 charge, certified under the director's seal of office if certification is requested, of any notice
18 filing, application and order on file in the director's office. Any copy so certified is admissible
19 in evidence under chapter 19-4.

20 Section 35. The director may make such public or private investigations within or outside
21 of this state as the director deems necessary to determine if any person has violated or is about
22 to violate any rule, order, or provision under this Act or to aid in the enforcement of this Act and
23 in the prescribing of rules and forms under this Act. The director may publish information
24 concerning the violation of any rule, order, or provision under this Act.

1 Section 36. The director may make a written request to any person for information
2 concerning any investigation being conducted by the director. Failure to respond fully and
3 completely to such a request within fifteen days after receipt thereof constitutes cause for the
4 issuance of a cease and desist order.

5 Section 37. For the purpose of any investigation or proceeding under this Act, the director
6 or any person designated by the director may administer oaths and affirmations, subpoena
7 witnesses and compel their attendance, take evidence and require the production of any books,
8 papers, correspondence, memoranda, agreements, or other documents or records which the
9 director deems relevant or material to the inquiry.

10 Any order of the director shall be served by mailing a copy thereof by certified mail to the
11 most recent address of the recipient of the order as it appears in the files of the director. Any
12 subpoena shall be served in the same manner as provided in civil actions in circuit court.

13 No provision of this Act either creates any privilege or derogates from any privilege which
14 exists at common law or otherwise, if documentary or other evidence is sought under a
15 subpoena directed to the director or any of the director's officers or employees.

16 If any person refuses to obey a subpoena, the circuit court, upon application by the director,
17 may issue an order directing the person to appear before the director, or the officer designated
18 by the director, to produce documentary evidence if so ordered, or to give evidence on the
19 matter under investigation or in question. Failure to obey the order of the court is punishable by
20 the court as a contempt of court.

21 Section 38. No person is excused from attending and testifying or from producing any
22 document or record before the director, in obedience to a subpoena of the director or any person
23 designated by the director in any proceeding instituted by the director, on the grounds that the
24 testimony or evidence required of the director may tend to incriminate the person or subject the

1 person to a penalty or forfeiture. No person may be prosecuted or subjected to any penalty or
2 forfeiture on account of any transaction, matter, or thing concerning which the person is
3 compelled, after claiming the privilege against self-incrimination, to testify or produce evidence.
4 However, the person testifying is not exempt from prosecution and punishment for perjury or
5 contempt committed in testifying.

6 Section 39. It is a Class 2 misdemeanor for the director or any of the director's officers or
7 employees to use for personal benefit any information which is filed with or obtained by the
8 director and which is not generally available to the public. Nothing in this Act authorizes the
9 director or any of the director's officers or employees to disclose any confidential information
10 except among themselves or to other administrators or regulatory authorities or if necessary or
11 appropriate in a proceeding or investigation under this Act.

12 Section 40. To encourage uniformity in franchise matters among the federal government,
13 self-regulatory organizations, states and foreign governments, the director may cooperate with
14 federal, state or foreign agencies or administrators and law enforcement agencies, including:

- 15 (1) Conducting joint examinations and investigations;
- 16 (2) Holding joint administrative hearings;
- 17 (3) Filing and prosecuting joint civil or administrative proceedings;
- 18 (4) Sharing and exchanging information and documents;
- 19 (5) Sharing and exchanging personnel;
- 20 (6) Formulating statutes, rules, regulations, statements of policy, guidelines, proposed
21 statutory changes and interpretive opinions and releases; and
- 22 (7) Issuing and enforcing subpoenas at the request of the Federal Trade Commission or
23 an agency administering franchise statutes in another jurisdiction if the information
24 sought would also be subject to lawful subpoena for conduct occurring in this state.

1 Section 41. The director, with or without prior notice or hearing, may issue a cease and
2 desist order and may issue an order denying, suspending, or revoking any notice filing,
3 amendment, or exemption if the director finds:

4 (1) That the applicant, or franchisor or any officer, director, agent, or employee thereof
5 or any other person has violated or failed to comply with any provision of this Act
6 or any rule or order of the director;

7 (2) That the offer, sale, or purchase of the franchise would constitute misrepresentation
8 to, or deceit or fraud upon, purchasers thereof, or has worked or tended to work a
9 fraud upon purchasers or would so operate;

10 (3) That the applicant, or franchisor or any officer, director, agent, or employee thereof
11 or any other person is engaging or is about to engage in false, fraudulent, or deceptive
12 practices in connection with the offer and sale of a franchise;

13 (4) That any person identified in the disclosure document has been convicted of or had
14 a civil judgment entered against him or her for fraud, theft, fraudulent conversion,
15 restraint of trade, unfair or deceptive practices or misappropriation of property, or is
16 subject to an order issued, after notice and opportunity for hearing, by a state or
17 federal regulatory agency and the involvement of the person in the business of the
18 applicant or franchisor creates a substantial risk to prospective franchisees;

19 (5) That the financial condition of the franchisor adversely affects or would adversely
20 affect the ability of the franchisor to fulfill its obligations under the franchise
21 agreement; or

22 (6) That the franchisor's enterprise or method of business includes or would include
23 activities which are illegal where performed.

24 Section 42. As an alternative to the procedure prescribed in section 41 of this Act, the

1 director may issue an order to show cause setting a hearing and requiring an applicant, notice
2 filer, franchisor, or other person to appear and show cause why a cease and desist order should
3 not be issued, or why an order denying, suspending, or revoking a notice filing, amendment, or
4 exemption should not be issued. The order shall give reasonable notice of the time and place for
5 hearing, and shall state the reasons for the entry of the order. The hearing shall be conducted in
6 accordance with chapter 1-26. After the hearing, the director shall enter an order making such
7 disposition of the matter as the facts require.

8 Section 43. The director may impose a civil penalty against a person named in an order
9 issued pursuant to subdivisions (1) to (3), inclusive, and subdivision (6) of section 41 of this Act.
10 The amount of the civil penalty may not exceed five thousand dollars for each act or omission
11 that constitutes the basis for issuing the order. The civil penalty may only be imposed:

- 12 (1) Following an opportunity for a hearing pursuant to section 44 of this Act if the notice
13 delivered to all named persons includes notice of the director's authority to impose
14 a civil penalty under this section; or
- 15 (2) As part of an order issued pursuant to subdivisions (1) to (3), inclusive and
16 subdivision (6) of section 41 of this Act, if the order is stipulated to by each person
17 subject to the civil penalty.

18 Any civil penalty collected pursuant to this section shall be deposited into the state general
19 fund.

20 Section 44. Upon the entry of an order pursuant to section 41 of this Act without a hearing,
21 the director of the Division of Securities shall promptly serve a copy of the order upon the
22 subject applicant, franchisor, or other person. The order shall state the reasons for its issuance
23 and shall either order a hearing, which shall be set for no later than twenty days from the date
24 of the order, or specify that upon the written request of the applicant, franchisor, or other person,

1 the matter will be set for hearing within fifteen days after receipt of the request. With the
2 consent of the applicant, franchisor, or other person a hearing may be held subsequent to the
3 expiration of either period specified in this section. On all orders of the director which do not
4 fix the date for hearing, the interested person may within thirty days demand a hearing on the
5 order.

6 Section 45. If no hearing is requested and none is ordered by the director, an order entered
7 pursuant to section 41 of this Act without a hearing shall remain in effect until it is modified or
8 vacated by the director.

9 Section 46. If a hearing is requested or ordered, the director, after notice and hearing held
10 in accordance with chapter 1-26 shall affirm, modify, or vacate the order.

11 Section 47. If the director has reasonable cause to believe that any person has engaged or is
12 about to engage in any act or practice constituting a violation of any provision of this Act or any
13 rule or order thereunder, the director may, in addition to all other remedies, through the attorney
14 general, with such assistance as the attorney general may request of the state's attorneys in the
15 several counties, institute a civil action pursuant to section 49 of this Act.

16 Section 48. In addition to all other penalties and remedies provided by this Act, whether
17 administrative or judicial in nature, the courts of this state have jurisdiction to grant such
18 temporary or permanent injunctive relief as is necessary to prevent and restrain violations of this
19 Act, and may upon a proper showing appoint a receiver for the property, assets, business, and
20 affairs of a franchisor.

21 Section 49. A person who violates any provision of this Act or any rule or order thereunder
22 is liable to the franchisee for actual damages, costs, and attorneys and experts fees. In the case
23 of a violation of section 4, sections 7 to 9, inclusive, or section 17 of this Act, the franchisee
24 may also sue for rescission. No person is liable under this section if the defendant proves that

1 the plaintiff affirmed the transaction with knowledge of the facts concerning the violation.

2 Each person who directly or indirectly controls a person liable under this section, each
3 principal executive officer or director of a person so liable, each person occupying a similar
4 status or performing similar functions, and each agent, employee of a person so liable, who
5 materially aids in the act or transaction constituting the violation, is also liable jointly and
6 severally with and to the same extent as such person, unless the person liable proves that he or
7 she did not know, and in the exercise of reasonable care could not have known, of the existence
8 of the facts by reason of which the liability is alleged to exist.

9 In any suit authorized by this section, other relief may be awarded as the court deems
10 appropriate and the court may in its discretion, if the circumstances are sufficiently egregious,
11 increase the award of damages to an amount not to exceed three times the actual damage
12 sustained.

13 Except as explicitly provided in this section, no civil liability in favor of any private party
14 may arise against any person by implication from or as a result of the violation of any provision
15 of this Act or any rule or order thereunder. Nothing in this section limits any liability which
16 would exist by virtue of any other statute or under common law if this Act were not in effect.

17 Section 50. No person may obtain relief for an action pursuant to section 49 of this Act:

18 (1) In an action for rescission pursuant to section 4, sections 7 to 9, inclusive, or section
19 17 of this Act unless the action is instituted within one year after the violation
20 occurred;

21 (2) In an action for actual damages, costs, and attorneys and experts fees unless instituted
22 within the earlier of two years after discovery of the facts constituting the violation
23 or three years after the violation; or

24 (3) Upon receipt by the franchisee of a rescission offer in a form approved by the director

1 unless the action is instituted within ninety days after the receipt by the franchisee of
2 a rescission.

3 Section 51. That §§ 37-5A-1 to 37-5A-87, inclusive, be repealed.

4 Section 52. Any action or proceeding that is pending on July 1, 2008 or may be instituted on
5 the basis of conduct occurring before July 1, 2008, is still subject to the provisions of chapter 37-
6 5A as of June 30, 2008. However, no civil action may be maintained to enforce any liability
7 under chapter 37-5A unless instituted within any period of limitation that applied when the cause
8 of action accrued or within three years after July 1, 2008, whichever is earlier.

9 Section 53. Any effective registration and administrative order relating to the registrations,
10 rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations,
11 and conditions imposed on the registrations prior to July 1, 2008 remain in effect while they
12 would have remained in effect if this Act had not been enacted. They are considered to have been
13 filed, issued, or imposed under this Act, but are exclusively governed by chapter 37-5A as of
14 June 30, 2008.

15 Section 54. Chapter 37-5A as of June 30, 2008, exclusively applies to an offer or sale made
16 within one year after the effective date of this Act pursuant to an offering made in good faith
17 before the effective date of this Act on the basis of an exemption available under chapter 37-5A.

18 Section 55. That § 37-25A-1 be amended to read as follows:

19 37-25A-1. Terms used in this chapter, unless the context otherwise requires, mean:

20 (1) "Advertising," any circular, prospectus, advertisement, or other material or any
21 communication by radio, television, pictures, or similar means used in connection
22 with an offer or sale of any business opportunity;

23 (2) "Business opportunity," a contract or agreement, between a seller and purchaser,
24 express or implied, orally or in writing, wherein it is agreed that the seller shall

1 provide to the purchaser any products, equipment, supplies, or services enabling the
2 purchaser to start a business and the seller represents that:

3 (a) The seller shall provide or assist the purchaser in finding locations for the use
4 or operation of vending machines, racks, display cases, or other similar devices,
5 on premises neither owned nor leased by the purchaser or seller;

6 (b) The seller shall provide or assist the purchaser in finding outlets or accounts for
7 the purchaser's products or services;

8 (c) The seller shall purchase any products made, produced, fabricated, grown,
9 bred, or modified by the purchaser;

10 (d) The seller guarantees that the purchaser shall derive income from the business
11 which exceeds the price paid to the seller;

12 (e) The seller shall refund all or part of the price paid to the seller, or repurchase
13 any of the products, equipment, or supplies provided by the seller, if the
14 purchaser is dissatisfied with the business; or

15 (f) The seller shall provide a marketing plan;

16 (3) "Director," the director of the division of securities;

17 (4) "Franchise," a contract or agreement as defined in ~~§ 37-5A-1~~ section 1 of this Act;

18 (5) "Franchisee," a person to whom a franchise is granted;

19 (6) "Franchisor," a ~~person who grants a franchise or an area franchise~~ franchisor as
20 defined in section 1 of this Act;

21 (7) "Marketing plan," advice or training provided to the purchaser by the seller pertaining
22 to the sale of any products, equipment, supplies, or services and the advice or training
23 includes, but is not limited to, preparing or providing:

24 (a) Promotional literature, brochures, pamphlets, or advertising materials;

1 (b) Training regarding the promotion, operation, or management of the business
2 opportunity; or

3 (c) Operational, managerial, technical, or financial guidelines or assistance;

4 (8) "Offer" or "offer to sell," includes every attempt to dispose of a business opportunity
5 for value or solicitation of an offer to purchase a business opportunity;

6 (9) "On-going business," an existing business that, for at least six months prior to the
7 offer, has been operated from a specific location, has been open for business to the
8 general public and has substantially all of the equipment and supplies necessary for
9 operating the business;

10 (10) "Person," an individual, corporation, trust, partnership, incorporated or unincorporated
11 association or any other entity;

12 (11) "Purchaser," a person who enters into a contract or agreement for the acquisition of
13 a business opportunity or a person to whom an offer to sell a business opportunity is
14 directed;

15 (12) "Sale" or "sell," includes every contract or agreement of sale, contract to sell,
16 disposition of a business opportunity or interest in a business opportunity for value;

17 (13) "Seller," a person who sells or offers to sell a business opportunity or any agent or
18 person who directly or indirectly acts on behalf of such person or a person
19 recommended by the seller.

20 Section 56. That § 37-25A-2 be amended to read as follows:

21 37-25A-2. For the purposes of this chapter, the term—^m business opportunity,^m does not
22 include:

23 (1) Any offer or sale of an on-going business operated by the seller and sold in its
24 entirety;

1 (2) Any offer or sale of a business opportunity to an on-going business if the seller
2 provides products, equipment, supplies, or services which are substantially similar to
3 the products, equipment, supplies or services sold by the purchaser in connection with
4 the purchaser's on-going business;

5 (3) Any offer or sale of a business opportunity which ~~is registered~~ has notice filed or is
6 exempt from registration notice filing pursuant to chapter 37-5A sections 1 to 50,
7 inclusive, of this Act or any offer or sale of a business opportunity that is excluded
8 from the definition of business opportunity as set forth in 16 C.F.R. Part 437 as of
9 January 1, 2008;

10 (4) Any offer or sale of a business opportunity registered pursuant to chapter 47-31B;

11 (5) Any offer or sale of a business opportunity involving a marketing plan made in
12 conjunction with the licensing of a federally registered trademark or federally
13 registered service mark if the seller had a minimum net worth of one million dollars
14 as determined by the seller's most recent audited financial statement, prepared within
15 thirteen months of the first offer in this state. Net worth may be determined on a
16 consolidated basis if the seller is at least eighty percent owned by one person and that
17 person expressly guarantees the obligations of the seller with regard to the offer or
18 sale of any business opportunity claimed to be excluded under this subdivision;

19 (6) Any offer or sale of a business opportunity by an executor, administrator, sheriff,
20 marshal, receiver, trustee in bankruptcy, guardian, or conservator or a judicial offer
21 or sale of a business opportunity.

22 Section 57. That § 37-25A-3 be amended to read as follows:

23 37-25A-3. The following business opportunities are exempt from §§ 37-25A-7 to 37-25A-24,
24 inclusive:

1 (1) Any offer or sale of a business opportunity for which the immediate cash payment
2 made by the purchaser for any business opportunity is at least twenty-five thousand
3 dollars if the immediate cash payment does not exceed twenty percent of the
4 purchaser's net worth as determined exclusive of principal residence, furnishings
5 therein, and automobiles. However, the director of the Division of Securities may, by
6 rules adopted pursuant to chapter 1-26, withdraw or further condition the availability
7 of this exemption;

8 (2) Any offer or sale of a business opportunity for which the purchaser is required to
9 make a payment to the seller or a person recommended by the seller ~~not to exceed two~~
10 that is less than five hundred fifty dollars during the period from any time before
11 commencing operation to within six months after commencing operation of the
12 business opportunity;

13 (3) Any offer or sale of a business opportunity if the seller has a net worth of not less than
14 one million dollars as determined by the seller's most recent audited financial
15 statement, prepared within thirteen months of the first offering in this state. Net worth
16 may be determined on a consolidated basis if the seller is at least eighty percent
17 owned by one person and that person expressly guarantees the obligations of the seller
18 with regard to the offer or sale of any business opportunity claimed to be exempt
19 under this subdivision. The director may, by rules adopted pursuant to chapter 1-26,
20 withdraw or further condition the availability of this exemption;

21 (4) Any offer or sale of a business opportunity if the purchaser is a bank, savings and loan
22 association, trust company, insurance company, credit union, or investment company
23 as defined by the Investment Company Act of 1940, pension or profit sharing trust,
24 or other financial institution or institutional buyer or a dealer registered pursuant to

1 chapter 47-31B, if the purchaser is acting for itself or in a fiduciary capacity;

2 (5) Any offer or sale of a business opportunity which is defined as a franchise in
3 subdivision 37-25A-1(4) if the seller delivers to each purchaser at ~~the earlier of the~~
4 ~~first personal meeting, or ten business~~ least fourteen calendar days prior to the earlier
5 of the execution by a purchaser of any contract or agreement imposing a binding legal
6 obligation on the purchaser or the payment by a purchaser of any consideration in
7 connection with the offer or sale of the business opportunity, a ~~uniform franchise~~
8 ~~offering circular prepared in accordance with the guidelines adopted by the North~~
9 ~~American Securities Administrators Association, Inc., as amended through September~~
10 ~~21, 1983, disclosure document as defined in section 1 of this Act and registered notice~~
11 ~~filed with the division of securities~~ Division of Securities pursuant to ~~chapter 37-5A~~
12 sections 1 to 50, inclusive, of this Act, or any offer or sale of a business opportunity
13 that is exempt from the disclosure requirements as set forth in 16 C.F.R. Part 437 as
14 of January 1, 2008;

15 (6) Any offer or sale of a business opportunity for which the cash payment made by a
16 purchaser for any business opportunity does not exceed five hundred dollars and the
17 payment is made for the not-for-profit sale of sales demonstration equipment,
18 material, or samples, or the payment is made for product inventory sold to the
19 purchaser at a bona fide wholesale price;

20 (7) Any offer or sale of a business opportunity which the director exempts by order or a
21 class of business opportunities which the director exempts by rule upon the finding
22 that such exemption is not contrary to public interest and that registration is not
23 necessary or appropriate for the protection of purchasers.

24 Section 58. That § 37-25A-8 be amended to read as follows:

1 37-25A-8. In order to register a business opportunity, the seller shall file with the director of
2 the Division of Securities one of the following disclosure documents with the appropriate cover
3 sheet as required by § 37-25A-15, a consent to service of process as specified in § 37-25A-9 and
4 the appropriate fee as required by § 37-25A-10:

5 (1) ~~A uniform franchise offering circular prepared in accordance with the guidelines~~
6 ~~adopted by the North American Securities Administrators Association, Inc. and~~
7 ~~registered with the division of securities pursuant to chapter 37-5A~~ disclosure
8 document prepared pursuant to § 37-25A-15; or

9 (2) A disclosure document prepared pursuant to ~~§ 37-25A-15~~ 16 C.F.R. Part 437 as of
10 January 1, 2008.

11 Section 59. That chapter 37-25A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The director may impose a civil penalty against a person named in an order issued under
14 § 37-25A-30 for violation of §§ 37-25A-7, and 37-25A-43 to 37-25A-46, inclusive. The amount
15 of the civil penalty may not exceed five thousand dollars for each act or omission that constitutes
16 the basis for issuing the order. Any civil penalty collected pursuant to this section shall be
17 deposited into the state general fund. The civil penalty may only be imposed:

18 (1) Following an opportunity for a hearing under § 37-25A-30 if notice delivered to all
19 named persons includes notice of the director's authority to impose a civil penalty
20 under this section; or

21 (2) As part of an order issued pursuant to § 37-25A-30(1) if the order is stipulated to by
22 each person subject to the civil penalty.

23 Section 60. That § 4-4-4.3 be amended to read as follows:

24 4-4-4.3. There is established within the state treasury the securities operating fund and the

1 insurance operating fund, into which shall be deposited all fees received by each division. All
2 moneys in the funds created by this section shall be budgeted and expended in accordance with
3 the provisions of Title 4 on warrants drawn by the state auditor on vouchers approved by the
4 secretary of the Department of Revenue and Regulation. Expenditures from these funds may be
5 made only to pay the necessary expenses of purposes specified in sections 1 to 50, inclusive, of
6 this Act, and chapters ~~37-5A~~, 37-25A, 47-31B, 47-33, and Title 58.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0385

HOUSE STATE AFFAIRS ENGROSSED NO. **SB 53** - 2/20/2008

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to capital punishment.

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

3 Section 1. That § 23A-27A-7 be amended to read as follows:

4 23A-27A-7. Upon a verdict or judgment of death made by a jury or a judge, ~~it shall be the~~
5 ~~duty of the judge presiding at the trial to~~ shall sentence ~~such the~~ convicted person to death and
6 ~~to make such the~~ sentence in writing, ~~which.~~ The judgment of death shall be filed with the papers
7 in the case against ~~such the~~ convicted person. ~~A certified copy thereof shall be sent by the clerk~~
8 ~~of the court in which the sentence is pronounced to the warden of the state penitentiary, not less~~
9 ~~than ten days prior to the time fixed in the sentence of the court for the execution of the sentence~~
10 and certified copies provided to the Governor, the secretary of corrections, the sheriff of the
11 county where the crime was committed, and the warden.

12 Section 2. That § 23A-27A-15 be amended to read as follows:

13 23A-27A-15. ~~When~~ Whenever judgment of death is rendered, the judge ~~must forthwith~~ shall
14 also sign and deliver to provide to the Governor, the secretary of corrections, the sheriff of the



1 county where the crime was committed, and the warden a warrant of death sentence and
2 execution, along with a brief statement of the facts and circumstances of the case, duly attested
3 by the clerk under the seal of the court ~~stating~~. The warrant of death sentence and execution shall
4 describe the conviction and sentence and ~~appointing~~ appoint the week within which the sentence
5 ~~must~~ shall be executed. The warrant ~~must~~ of death sentence and execution shall be directed to
6 the warden of the state penitentiary at Sioux Falls, commanding the warden to execute the
7 sentence on some day within the week appointed.

8 Section 3. That § 23A-27A-16 be amended to read as follows:

9 23A-27A-16. Within ten days after the issuing of a warrant of death sentence and execution
10 under § 23A-27A-15, the sheriff ~~must~~ shall deliver the defendant together with certified copies
11 of the warrant of death sentence and execution and the judgment of conviction to the ~~warden or~~
12 ~~his deputies at the state penitentiary. From the time of delivery to the warden until the infliction~~
13 ~~of the punishment of death upon him, unless he is lawfully discharged from such imprisonment,~~
14 ~~the defendant shall be kept in solitary confinement at the penitentiary and no person shall be~~
15 ~~allowed access to him without an order of the trial court except the officers of the prison, his~~
16 ~~counsel, his physician, a priest or minister if he shall desire one, and the members of his family.~~

17 Section 4. That § 23A-27A-17 be amended to read as follows:

18 23A-27A-17. The week so appointed shall be not less than six months nor more than eight
19 months after the date of judgment of death. The time of execution within ~~such~~ the week shall be
20 left to the discretion of the warden to whom the warrant is directed, ~~who~~. The warden shall cause
21 the execution to be performed on some day of such week. Not less than forty-eight hours prior
22 to the execution, the warden shall make a public announcement of the scheduled day and hour
23 of the execution.

24 Section 5. That § 23A-27A-18 be repealed.

1 ~~23A-27A-18. The judge of any court imposing sentence of death shall immediately thereafter~~
2 ~~transmit by registered or certified mail to the Governor a certified copy of such judgment~~
3 ~~together with a brief statement of the facts and circumstances of the case over his signature.~~

4 Section 6. That § 23A-27A-19 be amended to read as follows:

5 23A-27A-19. The Governor may ~~thereupon~~ make such investigation of the case as ~~he~~ the
6 Governor may deem proper and may require the assistance of the attorney general.

7 Section 7. That § 23A-27A-20 be amended to read as follows:

8 23A-27A-20. The Governor ~~shall have power to~~ may reprieve or suspend the execution of
9 the sentence for such reasonable time as ~~he~~ the Governor may see fit for the purpose of
10 completing ~~his~~ an investigation or other like proper purpose but the period of reprieve or
11 suspension shall not in any event, exceed ninety days ~~except as provided in § 23A-27A-24 or~~
12 ~~23A-27A-28.~~

13 Section 8. That § 23A-27A-21 be amended to read as follows:

14 23A-27A-21. No judge, officer, commission, or board, other than the Governor, ~~can~~ may
15 reprieve or suspend the execution of a judgment of death ~~except where.~~ However, the warden
16 or deputy warden of the penitentiary is authorized so to do in a case and in the manner prescribed
17 in this chapter or as provided in sections 15 and 20 of this Act. This section does not apply to a
18 stay of proceedings upon appeal or to the issuance of a writ of habeas corpus, certiorari, or other
19 original remedial writ of the Supreme Court.

20 Section 9. That § 23A-27A-22 be amended to read as follows:

21 23A-27A-22. If a defendant confined under sentence of death ~~appears~~ does not appear to be
22 mentally ~~incompetent~~ competent to ~~proceed~~ be executed, the warden having custody of the
23 defendant shall ~~forthwith~~ notify the Governor, ~~who shall appoint a commission of not less than~~
24 ~~three nor more than five disinterested duly licensed physicians, one of whom shall be the medical~~

1 ~~director of the Human Services Center or the director's designee, to examine the defendant and~~
2 ~~report to the Governor as to the defendant's mental condition at the time of the examination the~~
3 ~~secretary of corrections, and the sentencing court.~~

4 Section 10. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If the warden notifies the sentencing court that a defendant under a sentence of death does
7 not appear to be mentally competent to be executed, or if the prosecuting attorney or the defense
8 attorney moves for a determination of whether the defendant is mentally competent to be
9 executed, and the sentencing court determines that there is a substantial threshold showing of
10 incompetence to be executed, the sentencing court shall conduct hearings and order mental
11 examinations pursuant to this section and sections 11, 12, 13, and 14 of this Act. Prior to the date
12 of the hearing, the court may order that a psychiatric examination of the defendant be conducted
13 pursuant to section 11 of this Act, and that a psychiatric report be filed with the court, pursuant
14 to section 12 of this Act. The state has the burden of proving the mental competence of the
15 defendant by a preponderance of the evidence. A defendant is mentally competent to be executed
16 if the defendant is aware of the impending execution and the reason for it. If the defendant has
17 previously been determined to be competent to be executed under this Act and there is a
18 subsequent motion to the sentencing court that the defendant no longer appears to be mentally
19 competent to be executed, there shall be a prima facie showing of a substantial change in
20 circumstances raising a significant question of the defendant's competence to be executed before
21 the sentencing court conducts any further hearing.

22 Section 11. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Any psychiatric examination ordered pursuant to section 10 of this Act shall be conducted

1 by a licensed or certified psychiatrist, or, if the court finds it appropriate, by more than one such
2 psychiatrist. Each psychiatrist shall be designated by the court. For the purposes of a psychiatric
3 examination ordered pursuant to section 10 of this Act, the defendant shall remain confined
4 under the physical custody of the Department of Corrections.

5 Section 12. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Any psychiatric report ordered pursuant to section 10 of this Act shall be prepared by the
8 psychiatrist designated to conduct the psychiatric examination, shall be filed with the court with
9 copies provided to the counsel for the defendant and to the prosecuting attorney, and shall
10 include:

- 11 (1) The defendant's history and present symptoms;
- 12 (2) A description of the psychiatric, psychological, and medical tests that were employed
13 and their results; and
- 14 (3) The psychiatrist's determination whether the defendant is mentally competent to be
15 executed as defined in section 10 of this Act.

16 Section 13. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Upon written request of defense counsel, the court may order a video tape record made of
19 the defendant's psychiatric examination conducted pursuant to section 10 of this Act. Either the
20 prosecuting attorney or the defendant's counsel may request a copy of the video tape record. The
21 video tape record shall be submitted to the court along with the psychiatric report, pursuant to
22 section 12 of this Act.

23 Section 14. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 At any hearing ordered pursuant to section 10 of this Act, the defendant shall be represented
2 by counsel and, if financially unable to obtain adequate representation, counsel shall be
3 appointed for the defendant. The defendant shall be afforded an opportunity to testify, to present
4 evidence, to subpoena witnesses on the defendant's behalf, and to confront and cross-examine
5 witnesses who appear at the hearing.

6 Section 15. That § 23A-27A-24 be amended to read as follows:

7 23A-27A-24. If the ~~commission~~ sentencing court finds the defendant is not mentally
8 ~~incompetent~~ competent to ~~proceed~~ be executed the ~~Governor~~ sentencing court shall suspend the
9 execution of sentence and ~~may in his discretion order the defendant removed to the Human~~
10 ~~Services Center, there to remain confined until he~~ the defendant is ~~no longer~~ mentally ~~ill~~
11 competent to be executed. The defendant shall remain confined under the physical custody of
12 the Department of Corrections. The ~~commission~~ sentencing court shall review the defendant's
13 mental condition at least once every six months during ~~his confinement~~ the period that the
14 execution of sentence is suspended.

15 Section 16. That § 23A-27A-26 be amended to read as follows:

16 23A-27A-26. ~~The Governor, upon receiving the certificate provided for in § 23A-27A-25,~~
17 ~~that states~~ If the sentencing court determines the defendant is mentally competent to be executed,
18 the sentencing court shall certify the fact to the Governor, the secretary of corrections, and the
19 warden having custody of the defendant. The sentencing court, upon determination the defendant
20 is ~~no longer~~ mentally ~~incompetent~~ competent to ~~proceed, must~~ be executed, shall issue ~~his a~~
21 warrant of death sentence and execution appointing a week beginning within a period of not less
22 than thirty nor more than ninety days from the date of the warrant, for the execution of the
23 defendant pursuant to ~~his~~ the defendant's sentence unless the sentence has been commuted or the
24 defendant pardoned. ~~The defendant shall continue in or be returned to the custody of the warden~~

1 of the state penitentiary accordingly. In no case may the appointed week of execution be sooner
2 than the week appointed by the sentencing court pursuant to § 23A-27A-15.

3 Section 17. That § 23A-27A-23 be repealed.

4 ~~—23A-27A-23. The commission appointed pursuant to § 23A-27A-22 must summarily proceed~~
5 ~~to make the examination. Before commencing they must take the oath required of referees as~~
6 ~~prescribed by the Supreme Court rule for trial courts of record. They shall give at least seven~~
7 ~~days' notice of the time of such examination to the attorney general and to the state's attorney~~
8 ~~who tried or participated in the trial of the defendant and to counsel for the defendant. Either the~~
9 ~~attorney general or one of his assistants or the state's attorney or a deputy shall, and counsel for~~
10 ~~defendant may, attend the examination and any of the attorneys may take part in the proceedings~~
11 ~~before the commission. The commission shall have power to call and examine witnesses,~~
12 ~~administer oaths, and compel the attendance of witnesses. When the commission has concluded~~
13 ~~its examination it must forthwith report in writing to the Governor, setting forth the facts found~~
14 ~~together with the opinion of the commission as to the mental condition of the defendant.~~

15 Section 18. That § 23A-27A-25 be repealed.

16 ~~—23A-27A-25. When the commission determines that the defendant is no longer mentally~~
17 ~~incompetent to proceed, it shall report the fact to the Governor and to the Chief Justice of the~~
18 ~~Supreme Court. The Chief Justice shall thereupon inquire into the truth of the report in such~~
19 ~~manner as he may deem proper and if the justice upholds the commission's report, he shall so~~
20 ~~certify to the Governor and to the clerk of the court in which the defendant was convicted.~~
21 ~~Thereupon the defendant shall be forthwith returned and delivered to the custody of the warden~~
22 ~~of the state penitentiary, there to be dealt with according to law.~~

23 Section 19. That § 23A-27A-27 be amended to read as follows:

24 23A-27A-27. If there is reasonable ground to believe that a female defendant sentenced to

1 death is pregnant, the warden having her in custody shall ~~summon three disinterested licensed~~
2 ~~physicians of this state to examine~~ arrange for an examination of the defendant and ~~inquire into~~
3 ~~to determine~~ her condition. ~~The physicians upon completing~~ Upon the completion of the
4 examination, ~~the warden~~ shall make a report in writing over ~~their signatures~~ the warden's
5 signature, stating the facts, and submit the ~~same~~ report to the ~~warden~~ secretary of corrections, the
6 sentencing court, and the Governor.

7 Section 20. That § 23A-27A-28 be amended to read as follows:

8 23A-27A-28. If the ~~physicians summoned~~ examination under § 23A-27A-27 ~~find~~ finds that
9 the defendant is pregnant the execution of the sentence ~~must~~ shall be suspended by the
10 sentencing court. The ~~warden shall forthwith transmit the report of the physicians to the~~
11 ~~Governor and the defendant shall~~ may not be executed until a new warrant of death sentence and
12 execution is received from the ~~Governor~~ sentencing court so directing.

13 Section 21. That § 23A-27A-29 be amended to read as follows:

14 23A-27A-29. ~~In case~~ If the execution of a sentence is suspended pursuant to § 23A-27A-28,
15 as soon as the ~~Governor, as soon as he~~ sentencing court is satisfied ~~that~~ the defendant is no longer
16 pregnant, the sentencing court shall forthwith issue ~~his~~ a warrant of death sentence and execution
17 appointing a week for her execution, pursuant to her sentence, beginning. The week for the
18 execution shall be within a period of not less than thirty nor more than ninety days from the date
19 of the warrant of death sentence and execution. In no case may the appointed week of execution
20 be sooner than the week appointed by the sentencing court pursuant to § 23A-27A-15.

21 Section 22. That § 23A-27A-30 be repealed.

22 ~~23A-27A-30. If the physicians summoned pursuant to § 23A-27A-27 report that the female~~
23 ~~defendant is not pregnant a copy of the report shall be transmitted by the warden to the Governor~~
24 ~~but the same shall not work a stay or suspension of the execution of the sentence.~~

1 Section 23. That § 23A-27A-31 be amended to read as follows:

2 23A-27A-31. If the time period for the execution of any ~~convicted person~~ defendant in a
3 capital case has passed by reason of a stay of proceedings incident to appellate review or by
4 reason of the issuance of a writ of habeas corpus, certiorari, or other original remedial writ of the
5 Supreme Court, or for any other reason, ~~a judge of the circuit~~ the sentencing court shall issue a
6 warrant of death sentence and execution in accordance with § 23A-27A-15 appointing a new ~~time~~
7 ~~period~~ week for the execution of the original sentence without requiring the ~~convicted person~~
8 defendant to be brought before the sentencing court. Upon its issuance, the clerk of the court in
9 which the sentence was pronounced shall immediately send a certified copy of the warrant of of
10 death sentence and execution to all attorneys of record, to the warden ~~of the state penitentiary~~
11 having custody of the defendant, to the secretary of corrections, and to the Governor. The warden
12 shall execute the warrant of death sentence and execution accordingly. This procedure applies to
13 any case in which the time period for carrying out the original warrant of death sentence and
14 execution has elapsed without regard to whether the original warrant was issued prior or
15 subsequent to July 1, 1998.

16 Section 24. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 From the time of delivery to the penitentiary until the infliction of the punishment of death
19 upon the defendant, unless lawfully discharged from such imprisonment, the defendant shall be
20 segregated from other inmates at the penitentiary. No other person may be allowed access to the
21 defendant without an order of the trial court except penitentiary staff, Department of Corrections
22 staff, the defendant's counsel, members of the clergy if requested by the defendant, and members
23 of the defendant's family. Members of the clergy and members of the defendant's family are
24 subject to approval by the warden before being allowed access to the defendant.

1 Section 25. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The name, address, qualifications, and other identifying information relating to the identity
4 of any person administering the intravenous injection under chapter 23A-27A are confidential.
5 Disclosure of the foregoing information may not be authorized or ordered. Disclosure of
6 confidential information pursuant to this section concerning the execution of an inmate under
7 chapter 23A-27A is a Class 2 misdemeanor.

8 Section 26. That § 23A-27A-32 be amended to read as follows:

9 23A-27A-32. The punishment of death shall be inflicted within the walls of some building
10 at the state penitentiary. The punishment of death shall be inflicted by the intravenous injection
11 of a substance or substances in a lethal quantity. The warden, subject to the approval of the
12 secretary of corrections, shall determine the substances and the quantity of substances used for
13 the punishment of death. An execution carried out by intravenous injection shall be performed
14 by ~~a person~~ persons trained to administer the injection who ~~is~~ are selected by the warden and
15 approved by the secretary of corrections. The ~~person~~ persons administering the intravenous
16 injection need not be ~~a physician~~ physicians, registered ~~nurse~~ nurses, licensed practical ~~nurse~~
17 nurses, or other medical ~~professional~~ professionals licensed or registered under the laws of this
18 or any other state. Any infliction of the punishment of death by intravenous injection of a
19 substance or substances in the manner required by this section may not be construed to be the
20 practice of medicine. Any pharmacist or pharmaceutical supplier is authorized to dispense to the
21 warden the substance or substances used to inflict the punishment of death ~~to the warden~~ without
22 prescription, for carrying out the provisions of this section, notwithstanding any other provision
23 of law.

24 Section 27. That § 23A-27A-34 be amended to read as follows:

1 23A-27A-34. The warden of the penitentiary shall request, by at least two days' previous
2 notice, the presence of the attorney general, the trial judge before whom the conviction was had
3 or the judge's successor in office, the state's attorney and sheriff of the county where the crime was
4 committed, ~~and not more than ten reputable adult citizens, including~~ representatives of the victim,
5 ~~at least one member of the news media, to be selected by the warden at the execution. The warden~~
6 ~~shall arrange for the attendance of any prison guards and law enforcement officers the warden~~
7 ~~deems proper~~ and a number of reputable adult citizens to be determined by the warden. All
8 witnesses and persons present at an execution are subject to approval by the warden.

9 Section 28. That § 23A-27A-35 be repealed.

10 ~~—23A-27A-35. The warden of the state penitentiary must also, at the request of the defendant,~~
11 ~~permit such ministers of the gospel, priests, or clergymen of any denomination as the defendant~~
12 ~~may desire, not exceeding two, to be present at the execution and any relatives or friends~~
13 ~~requested by the defendant not exceeding five.~~

14 Section 29. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The warden shall arrange for the attendance of a person trained to examine the defendant and
17 pronounce death and for the attendance of such penitentiary staff, Department of Corrections staff,
18 and law enforcement officers as deemed necessary to perform the execution and maintain security.

19 Section 30. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The defendant is permitted to have up to five witnesses present at the execution. Witnesses
22 for the defendant may include counsel, members of the clergy, relatives, or friends.

23 Section 31. That § 23A-27A-36 be amended to read as follows:

24 23A-27A-36. The warden ~~of the state penitentiary shall~~ may not permit no persons any person

1 to be present at ~~such~~ the execution other than those designated in §§ 23A-27A-32, 23A-27A-34
2 and ~~23A-27A-35~~ sections 29 and 30 of this Act and ~~shall~~ may not permit the presence of any
3 person under the age of eighteen years, ~~unless a relative, and no relatives of tender years shall be~~
4 ~~admitted.~~

5 Section 32. That § 23A-27A-37 be amended to read as follows:

6 ~~23A-27A-37. The~~ Prior to the announcement required in § 23A-27A-17, the scheduled day
7 and time fixed by the warden for the execution shall be kept secret and in no manner divulged
8 except privately to the persons by him invited or requested to be present as provided by §§ 23A-
9 27A-32, 23A-27A-34 and ~~23A-27A-35~~ sections 29 and 30 of this Act. It is a Class 2 misdemeanor
10 ~~for such persons so invited or requested to be present~~ any person to divulge such invitation to ~~any~~
11 ~~person or persons nor~~ anyone or in any manner disclose the scheduled day and time of the
12 execution prior to the announcement required in § 23A-27A-17.

13 Section 33. That § 23A-27A-41 be repealed.

14 ~~—23A-27A-41. In case of the disability from illness or other sufficient cause of the warden to~~
15 ~~whom the death warrant is directed to be present and execute the same, it shall be the duty of the~~
16 ~~principal deputy warden or such other officer of the prison as may be designated by the warden~~
17 ~~to execute the warrant and to perform all other duties imposed upon the warden by this chapter.~~

18 Section 34. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 In case of disability of the warden to whom the warrant of death sentence and execution is
21 directed, the secretary of corrections shall appoint the deputy warden or such other officer of the
22 Department of Corrections as may be necessary to carry out the warrant of death sentence and
23 execution and to perform all other duties imposed upon the warden by this chapter.

24 Section 35. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 After the execution, the county coroner shall conduct a postmortem examination of the body
3 of the defendant. The county coroner shall report in writing the result of the examination, stating
4 the nature thereof and the finding made. The report shall be annexed to the certificate of execution
5 mentioned in section 39 of this Act and filed therewith.

6 Section 36. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Following the death of the defendant by execution, the body may be subject to an autopsy
9 pursuant to § 24-1-27 and chapter 23-14. Any final autopsy report shall be annexed to and filed
10 with the certificate of execution mentioned in section 39 of this Act.

11 Section 37. That § 23A-27A-39 be amended to read as follows:

12 23A-27A-39. ~~The~~ After the postmortem examination and any autopsy, the body of the
13 defendant, unless claimed by some relative, shall be interred in a cemetery within the county
14 where the penitentiary is situated.

15 Section 38. That § 23A-27A-40 be repealed.

16 ~~23A-27A-40. The warden or prison officer attending the execution and in charge of the~~
17 ~~execution shall immediately prepare and sign a certificate and return setting forth the time, place,~~
18 ~~and manner of the execution, and that the defendant was executed in conformity to the judgment~~
19 ~~of the court and the provisions of this chapter. The warden or prison officer shall sign the~~
20 ~~certificate and return and shall also procure the same to be signed by all the persons present and~~
21 ~~witnessing the execution and shall file the certificate within ten days after the execution in the~~
22 ~~office of the clerk of the court where the trial and conviction of the defendant took place.~~

23 Section 39. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 The warden or corrections official attending and in charge of the execution shall prepare and
2 sign a certificate of execution setting forth the date, time, place, and manner of execution, and that
3 the defendant was executed in conformity to the judgment of the court and the provisions of this
4 chapter. The certificate of execution document shall be signed by each of the witnesses of the
5 execution attending as allowed in § 23A-27A-34 and section 30 of this Act. The warden or
6 corrections official shall cause the certificate of execution to be filed in the office of the clerk of
7 the sentencing court within ten days after the execution. The original or a certified copy of the
8 death certificate, postmortem examination, and any autopsy report shall be filed with the clerk of
9 the sentencing court within ten days of receipt by the warden or corrections official.

10 Section 40. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Any person or party participating in good faith in the execution of an inmate under this
13 chapter is immune from any liability, civil or criminal, that might otherwise be incurred or
14 imposed, and has the same immunity for participation in any judicial proceeding resulting from
15 the execution. Immunity also extends in the same manner to any persons who in good faith
16 cooperate in the execution of an inmate under this chapter.

17 Section 41. That chapter 19-13 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The secretary of corrections, the warden of the penitentiary, penitentiary staff, and Department
20 of Corrections staff may not be examined as to communications made to them concerning an
21 execution of an inmate under chapter 23A-27A. The privilege described in this section may be
22 claimed by the secretary of corrections, the warden of the penitentiary, penitentiary staff,
23 Department of Corrections staff, or by any representative of any of the foregoing to be examined
24 and is binding on all of them. However, the secretary of corrections and the warden of the

1 penitentiary may personally waive the privilege described in this section.

2 Section 42. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 As to any defendant who has been sentenced to death and who is awaiting execution prior to
5 July 1, 2008, the amendment and repeal of existing sections and enactment of new sections in this
6 Act do not impair or affect any act done, offense committed, or right accruing, accrued, or
7 acquired, or liability, penalty, forfeiture, or punishment incurred prior to July 1, 2008. However,
8 the provisions of existing statute may be asserted, enforced, prosecuted, or inflicted, as fully and
9 to the same extent as if the amendment and repeal of existing sections and enactment of new
10 sections in this Act had not been subsequently enacted.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0342

SENATE APPROPRIATIONS ENGROSSED NO. **SB** **57** - 1/25/2008

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a roadway on
2 the campus of the South Dakota School of Mines and Technology, to make an appropriation
3 therefor, and to declare an emergency.

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

5 Section 1. The Board of Regents may contract for the design, construction, completion, and
6 such other services and improvements as may be required to place a roadway on the campus of
7 the South Dakota School of Mines and Technology in Rapid City, Pennington County, and to
8 connect it to municipal street and utility systems for an estimated cost of two million five hundred
9 thousand dollars.

10 Section 2. There is hereby appropriated the sum of two million five hundred thousand dollars
11 (\$2,500,000), or so much thereof as may be necessary, of other fund expenditure authority,
12 payable from funds to be provided, in part, by the City of Rapid City, from federal sources, or
13 from parking fees assessed by the School of Mines and Technology, for the construction
14 authorized by this Act.



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

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

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

832P0162

SENATE STATE AFFAIRS ENGROSSED NO. **SB 80** - 2/4/2008

Introduced by: Senators Jerstad, Hoerth, Hundstad, Katus, Kloucek, Koetzle, and Peterson (Jim) and Representatives Vehle, Cutler, Lucas, Lust, Nygaard, Rounds, and Thompson

1 FOR AN ACT ENTITLED, An Act to restrict the release or use of social security numbers by the
2 state and its political subdivisions unless certain security measures are taken.

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

4 Section 1. No state agency or any of its political subdivisions or any official, agent, or
5 employee of any state agency or political subdivision may:

6 (1) Knowingly release or post any person's social security number on the internet; or

7 (2) Require any person to transmit the person's social security number over the internet,
8 unless the connection is secure or the social security number is encrypted; or

9 (3) Require any person to use the person's social security number to access an internet
10 website, unless a password or unique personal identification number or other
11 authentication device is also required to access the internet website.



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 THIS
 3 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 WRITTEN
 9 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 first
 21 mortgage; or have any materials or services been provided in the past one hundred twenty
 22 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 than

1 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, attach
7 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 accordance
13 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 ~~32-3-~~
22 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 yard

16 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, electrical,
5 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	_____	_____	_____

20

21

22

IV. HAZARDOUS CONDITIONS

23

Are you aware of any existing hazardous conditions of the property and are you aware of any tests

24

having been performed?

25

EXISTING CONDITIONS	TESTS PERFORMED
---------------------	-----------------

26

YES	NO	YES	NO
-----	----	-----	----

27

1. Methane Gas	_____	_____	_____	_____
----------------	-------	-------	-------	-------

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, mirrors,
16 swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines, swing
17 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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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

561P0142

SENATE ENGROSSED NO. **SB 107** - 1/31/2008

Introduced by: Senators Hunhoff, Abdallah, Albers, Dempster, Gant, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Katus, Kloucek, Koetzle, Maher, McNenny, Sutton, Turbak Berry, and Two Bulls and Representatives Gilson, Bradford, Cutler, DeVries, Elliott, Feinstein, Hargens, Jerke, Kirkeby, Krebs, Lucas, Moore, Olson (Betty), Olson (Russell), Olson (Ryan), Putnam, Rounds, Van Etten, and Weems

1 FOR AN ACT ENTITLED, An Act to authorize county special assessments for certain
2 improvements, maintenance, and repair to roadways in unorganized townships.

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

4 Section 1. That chapter 31-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The board of county commissioners of any county in which an unorganized township is
7 located may implement in the unorganized township any improvement, maintenance, or repair
8 to any street or roadway that is otherwise authorized for townships pursuant to §§ 31-13-32 to 31-
9 13-54, inclusive. In implementing the improvement, maintenance, or repair, the board of county
10 commissioners may exercise any applicable power and shall perform any applicable duty that is
11 available to or is required of a township board of supervisors under §§ 31-13-32 to 31-13-54,
12 inclusive.

13 Section 2. That § 31-13-51 be amended to read as follows:



1 31-13-51. The township board of supervisors ~~or, in the case of any township which is no~~
2 ~~longer organized, the board of county commissioners, prior to, before~~ the assessment of real
3 property within the township, ~~or unorganized township,~~ for the next fiscal year, may levy annually
4 for the purpose of maintaining or repairing street surfaces, whether of a permanent type or not,
5 a special front foot assessment ~~not to exceed eighty cents per front foot~~ not to exceed one dollar
6 and fifty cents per front foot upon the real property fronting and abutting the roadway. ~~Such~~ The
7 assessment shall be apportioned on a front foot basis and shall be levied pursuant to § 31-13-52.
8 ~~If the board of county commissioners is levying a special assessment on real property pursuant~~
9 ~~to this section, the board of county commissioners shall perform the duties, as applicable, that are~~
10 ~~required of the township board of supervisors pursuant to §§ 31-13-32 to 31-13-54, inclusive.~~

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

936P0694

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 162** - 2/19/2008

Introduced by: Senators Lintz, Hanson (Gary), and Heidepriem and Representatives
Pederson (Gordon), Brunner, Dykstra, Hargens, Howie, and Olson (Betty)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the confidentiality of
2 certain geological reports.

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

4 Section 1. That chapter 45-6C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any written geologic report, aquifer penetration report, map, test hole log, or other
7 information relative to the geologic data, size, extent, or economic value of a mineral deposit filed
8 with the state by a person who conducted a mineral exploration operation which was initiated or
9 permitted before July 1, 1982, is confidential for a period of six months following the effective
10 date of this Act. Any person who filed such reports or information may request the secretary of
11 environment and natural resources, in writing, to extend the six month confidentiality period by
12 up to five years. The information becomes public following the confidentiality period.

13 Section 2. That chapter 45-6D be amended by adding thereto a NEW SECTION to read as
14 follows:



1 Any written geologic report, aquifer penetration report, map, test hole log, or other
2 information relative to the geologic data, size, extent, or economic value of a mineral deposit filed
3 with the state by a person who conducted a mineral exploration operation which was initiated or
4 permitted before July 1, 1982, is confidential for a period of six months following the effective
5 date of this Act. Any person who filed such reports or information may request the secretary of
6 environment and natural resources, in writing, to extend the six month confidentiality period by
7 up to five years. The information becomes public following the confidentiality period.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

471P0676

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 173** - 1/29/2008

Introduced by: Senators Hansen (Tom) and Hanson (Gary) and Representatives Halverson, Deadrick, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to exempt certain dairies from the restrictions of the Family

2 Farm Act.

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

4 Section 1. That chapter 47-9A be amended by adding thereto a NEW SECTION to read as

5 follows:

6 The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural lands acquired by a

7 corporation solely for the purpose of operating a dairy.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

843P0591

SENATE ENGROSSED NO. **SB 174** - 2/12/2008

Introduced by: Senators Hansen (Tom), Abdallah, Albers, Bartling, Dempster, Duenwald, Gant, Garnos, Greenfield, Hanson (Gary), Hauge, Hunhoff, Koetzle, McCracken, Olson (Ed), Peterson (Jim), and Sutton and Representatives Rave, Boomgarden, Brunner, Burg, Cutler, Davis, Deadrick, Dennert, Dykstra, Faehn, Gassman, Gilson, Glenski, Halverson, Hargens, Haverly, Heineman, Juhnke, Kirkeby, Krebs, McLaughlin, Miles, Moore, Noem, Novstrup (Al), Novstrup (David), Olson (Russell), Pederson (Gordon), Peters, Steele, Street, Van Etten, Vanneman, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the exercise of eminent
2 domain by railroads.

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

4 Section 1. That § 49-16A-75 be amended to read as follows:

5 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way as
6 provided by statute, but only upon obtaining authority from the Governor or if directed by the
7 Governor, or the commission, based upon a determination by the Governor or the commission
8 that the railroad's exercise of the right of eminent domain would be for a public use consistent
9 with public necessity. The Governor or the commission shall consider the requirements of §§ 49-
10 16A-75.1 to 49-16A-75.3, inclusive, when granting or denying an application for authority to use
11 eminent domain. The decision to grant or deny an application shall be made after reasonable
12 notice and opportunity to be heard, pursuant to chapter 1-26. However, an impartial hearing



1 examiner may be appointed by the Governor or the commission to administer the proceedings or
2 make recommendations. Any parties who are united in interest or representation shall unite in the
3 filing of an affidavit for change of hearing examiner under the provisions of § 1-26D-10. The
4 filing of such affidavit by one party is deemed to be filed by all of the parties. No more than one
5 change of hearing examiner may be granted on request or affidavit made by or on behalf of the
6 same party or parties united in interest under the provisions of § 1-26D-10. However, the filing
7 of an affidavit and the first change of hearing examiner does not prevent any other party to the
8 action or any party's attorney from obtaining a change in hearing examiner upon a showing of an
9 unacceptable risk of actual bias or prejudice concerning a party. The Governor or the chair of the
10 commission shall replace the hearing examiner within five business days upon any recusal. A
11 hearing shall be held and a decision rendered on any application within ninety days following the
12 receipt of a new application and upon any application pending before the Governor or the
13 commission on the effective date of this Act.

14 The denial or withdrawal of an application does not prejudice the ability of a railroad to
15 resubmit an application. Any appeal, pursuant to chapter 1-26, taken from a decision of the
16 Governor or the commission shall be handled as an expedited appeal by the courts of this state.

17 Section 2. That § 49-16A-75.3 be amended to read as follows:

18 49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent
19 with public necessity only if the use of eminent domain is proposed by an applicant who has
20 negotiated in good faith to privately acquire sufficient property without the use of eminent
21 domain. No determination of public use or necessity or any other issue properly decided by the
22 Governor or the commission may be addressed by the circuit court in an action for condemnation.
23 Such a determination may only be challenged upon direct appeal of that determination.
24 Notwithstanding appeal of such determination, the railroad may proceed at any time by action in

1 circuit court for possession and determination of compensation for any real property taken or
2 damaged.

3 Section 3. That chapter 49-16A be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Upon a failure to reach agreement on compensation following a determination pursuant to
6 § 49-16A-75.3, either party may bring a proceeding in state court to establish compensation to be
7 paid for the property taken or damaged. The court shall expedite the proceedings. A railroad is
8 not entitled to physical possession of the property to be taken pursuant to the exercise of eminent
9 domain except upon the earlier to occur of either:

- 10 (1) Execution of a written agreement between the parties as to fair market value of
11 compensation;
- 12 (2) Entry of a judgment of condemnation in the circuit court; or
- 13 (3) Upon posting by the railroad of a bond to be established by the court as soon as
14 possible but no later than one hundred twenty days following petition by the railroad
15 for possession. The bond shall be in an amount the court determines to be a preliminary
16 estimate of compensation based on the best information available, but is not
17 determinative of final compensation or admissible as evidence thereon.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

795P0654

HOUSE STATE AFFAIRS ENGROSSED NO. **SB 176** - 2/15/2008

Introduced by: Senators Hunhoff, Abdallah, Albers, Bartling, Dempster, Duenwald, Gant, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Heidepriem, Hoerth, Hundstad, Jerstad, Katus, Kloucek, Knudson, Koetzle, Lintz, Maher, McCracken, McNenny, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schmidt (Dennis), Smidt (Orville), Sutton, Turbak Berry, and Two Bulls and Representatives Burg, Ahlers, Bradford, Brunner, Buckingham, Carson, Cutler, Davis, Dennert, DeVries, Dreyer, Dykstra, Elliott, Engels, Faehn, Feinstein, Gassman, Gillespie, Gilson, Glenski, Gosch, Hackl, Halverson, Hargens, Haverly, Heineman, Hills, Howie, Hunt, Jerke, Juhnke, Kirkeby, Koistinen, Krebs, Lust, McLaughlin, Miles, Moore, Nelson, Noem, Novstrup (Al), Novstrup (David), Nygaard, Olson (Betty), Olson (Russell), Olson (Ryan), Pederson (Gordon), Peters, Pitts, Putnam, Rausch, Rave, Rhoden, Rounds, Sigdestad, Steele, Street, Thompson, Tidemann, Turbiville, Van Etten, Van Norman, Vanneman, Vehle, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to authorize the Legislative Research Council to remodel,
2 renovate, and furnish certain facilities on the fourth floor of the State Capitol Building for use
3 by the Legislature, to make an appropriation therefor, and to declare an emergency.

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

5 Section 1. The Legislative Research Council may contract for the design, construction,
6 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
7 plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos
8 abatement, computer and presentation systems, video studio facilities, programming, and such



1 other services as may be required to remodel for legislative use available space on the fourth floor
2 of the Capitol building in a manner consistent with a twenty-first century society and the current
3 state of technology at an estimated cost of ninety-nine thousand nine hundred ninety-nine dollars
4 to complete.

5 Section 2. There is hereby appropriated from the public buildings fund the sum of ninety-nine
6 thousand nine hundred ninety-nine dollars (\$99,999), or so much thereof as may be necessary, to
7 the Legislative Research Council to complete renovation, construction, and completion of the
8 facilities described in section 1 of this Act.

9 Section 3. The design, renovation, and construction of the facilities approved by this Act shall
10 be under the general supervision of the Bureau of Administration as provided in § 5-14-2. The
11 commissioner of the Bureau of Administration and the executive director of the Legislative
12 Research Council shall approve vouchers and the state auditor shall draw warrants to pay
13 expenditures authorized by this Act.

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

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

808P0713

SENATE STATE AFFAIRS
ENGROSSED NO. **SB 186** - 2/6/2008

Introduced by: Senators Knudson, Albers, Dempster, Gant, Gray, and Hansen (Tom) and Representatives Rhoden, Brunner, Cutler, Deadrick, Dykstra, Faehn, Heineman, Krebs, Olson (Russell), Rave, Turbiville, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records.

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

3 Section 1. That § 1-26D-4 be amended to read as follows:

4 1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and
5 shall hear all contested cases that arise under Titles 10 and 58 and chapter 1-27.

6 Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The provisions of this Act do not apply to the Unified Judicial System or Public Utilities
9 Commission.

10 Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any informal request for disclosure of documents or records shall be made to the custodian
13 of the record. The custodian of the record may then provide the requestor with the document or
14 record upon payment of the actual cost of mailing or transmittal and a fee not to exceed one dollar



1 per page, the actual cost of reproduction if greater than one dollar per page, or other fee
2 established by statute or administrative rule. A requestor that makes an informal request requiring
3 the dedication of staff time in excess of one hour may be required to pay the cost of the staff time
4 necessary for the location, assembly, or reproduction of the public record.

5 Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 For any informal request reasonably likely to involve a fee in excess of fifty dollars, the
8 custodian shall provide an estimate of cost to the requestor prior to assembling the documents or
9 records and the requestor shall confirm in writing his or her acceptance of the cost estimate and
10 agreement to pay. The custodian may exercise discretion to waive or reduce any fee required
11 under this section if the waiver or reduction of the fee would be in the public interest.

12 Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If an informal request is denied in whole or in part by the custodian of a document or record,
15 a written request may be made by the requestor pursuant to this section:

16 (1) A written request may be made to the public record officer of the public entity
17 involved. The public record officer shall promptly respond to the written request but
18 in no event later than ten business days from receipt of the request. The public record
19 officer shall respond to the request by:

- 20 (a) Providing the record in whole or in part to the requestor upon payment of any
21 applicable fees pursuant to sections 3 and 4 of this Act;
- 22 (b) Denying the request for the record; or
- 23 (c) Acknowledging that the public record officer has received the request and
24 providing an estimate of the time reasonably required to further respond thereto;

1 (2) Additional time to respond to the written request under subsection (1)(c) of this section
2 may be based upon the need to clarify the nature and scope of the written request, to
3 locate and assemble the information requested, to notify any third persons or
4 government agencies affected by the written request, or to determine whether any of
5 the information requested is not subject to disclosure and whether a denial should be
6 made as to all or part of the written request;

7 (3) If a written request is unclear, the public record officer may require the requestor to
8 clarify which records are being sought. If the requestor fails to provide a written
9 response to the public record officer's request for clarification within ten business days,
10 the request shall be deemed withdrawn and no further action by the public records
11 officer is required;

12 (4) If the public record officer denies a written request in whole or in part, the denial shall
13 be accompanied by a written statement of the reasons for the denial;

14 (5) If the public record officer fails to respond to a written request within ten business
15 days, or fails to comply with the estimate provided under subsection (1)(3) of this
16 section without provision of a revised estimate, the request shall be deemed denied.

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

19 If a public record officer denies a written request in whole or in part, or if the requestor objects
20 to the public record officer's estimate of fees or time to respond to the request, a requestor may
21 within ninety days of the denial commence a civil action by summons or, in the alternative, file
22 a written notice of review with the Office of Hearing Examiners. The notice of review shall be
23 mailed, via registered or certified mail, to the Office of Hearing Examiners and shall contain:

24 (1) The name, address, and telephone number of the requestor;

- 1 (2) The name and business address of the public record officer denying the request;
- 2 (3) The name and business address of the agency, political subdivision, municipal
3 corporation, or other entity from which the request has been denied;
- 4 (4) A copy of the written request;
- 5 (5) A copy of any denial or response from the public record officer; and
- 6 (6) Any other information relevant to the request that the requestor desires to be
7 considered.

8 Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of
11 review filed pursuant to section 6 of this Act and all information submitted by the requestor to the
12 public record officer named in the notice of review. The entity denying the written request may
13 then file a written response to the Office of Hearing Examiners within ten business days. If the
14 entity does not file a written response within ten business days, the Office of Hearing Examiners
15 shall act on the information provided. The Office of Hearing Examiners shall provide a reasonable
16 extension of time to file a written response upon written request or agreement of parties.

17 Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners
20 shall make written findings of fact and conclusions of law, and a decision as to the issue
21 presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing
22 pursuant to chapter 1-26 if good cause is shown.

23 Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The aggrieved party may appeal the decision of the Office of Hearing Examiners to the circuit
2 court pursuant to chapter 1-26.

3 Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The public record officer for the state is the secretary, constitutional officer, elected official,
6 or commissioner of the department, office, or other division to which a request is directed. The
7 public record officer for a county is the county auditor or the custodian of the record for law
8 enforcement records. The public record officer for a first or second class municipality is the
9 finance officer or the clerk or the custodian of the record for law enforcement records. The public
10 record officer for a third class municipality is the president of the board of trustees or the
11 custodian of the record for law enforcement records. The public record officer for an organized
12 township is the township clerk. The public record officer for a school district is the district
13 superintendent or CEO. The public record officer for a special district is the chairperson of the
14 board of directors. The public record officer for any other entity not otherwise designated is the
15 person who acts in the capacity of the chief financial officer or individual as designated by the
16 entity.

17 Section 11. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The following forms are prescribed for use in the procedures provided for in sections 3 to 10,
20 inclusive, of this Act, but failure to use or fill out completely or accurately any of the forms does
21 not void acts done pursuant to those sections provided compliance with the information required
22 by those sections is provided in writing.

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

<p>NOTICE OF REVIEW</p> <p>REQUEST FOR DISCLOSURE OF PUBLIC RECORDS</p>

Date of Request:	_____
Name of Requestor:	_____
Address of Requestor:	_____
Telephone Number of Requestor:	_____

Type of Review Being Sought:	
___	Request for Specific Record
___	Estimate of Fees
___	Estimate of Time to Respond
Short Explanation of Review Being Sought Including Specific Records Requested:	

Name of Public Record Officer:	_____
Address of Public Record Officer:	_____
Name of Governmental Entity:	_____
Address of Governmental Entity:	_____

You must include with the submission of this Notice of Review - Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.

I hereby certify that the above information is true and correct to the best of my knowledge.

1 ***Signature of Requestor:*** _____

2 *The Notice of Review - Request for Disclosure of Public Records form shall be completed and*
3 *submitted, via registered or certified mail, return receipt, to the following address:*

4 Office of Hearing Examiners

5 500 E. Capitol Avenue

6 Pierre, South Dakota 57501

7 605-773-6811

8

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

SOUTH DAKOTA OFFICE OF HEARING EXAMINERS
NOTICE OF REQUEST FOR DISCLOSURE
OF PUBLIC RECORDS

TO: (Public Record Officer & Governmental Entity) _____

_____ has filed a Notice of Review - Request for Disclosure of Public Records. A copy of the Notice of Review - Request for Disclosure of Public Records is attached for your review.

You may file a written response to the Notice of Review - Request for Disclosure of Public Records within ten (10) business days of receiving this notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners
500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

The Office of Hearing Examiners may issue its written decision on the information provided and will only hold a hearing if it deems a hearing necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this ___ day of _____, 20__.

Office of Hearing Examiners

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0686

HOUSE STATE AFFAIRS ENGROSSED NO. **SB 188** - 2/20/2008

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to establish high performance building design and
2 construction standards for newly constructed or renovated state-owned buildings.

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

4 Section 1. Terms used in this Act mean:

5 (1) "High-performance green building standard," a building that is designed and
6 constructed in a manner that achieves at least:

7 (a) A silver standard rating under the United States Green Building Council's
8 Leadership in Energy and Environmental Design (LEED) rating system as of
9 January 1, 2008;

10 (b) A two globe rating under the Green Building Initiative's Green Globes rating
11 system as of January 1, 2008; or

12 (c) A comparable numeric rating under a nationally recognized and accepted
13 numeric sustainable building rating system as the commissioner of the Bureau
14 of Administration may designate by rules promulgated pursuant to section 7 of
15 this Act;



1 (2) "New construction," any new building constructed by any state agency, department,
2 or institution which has a cost of five hundred thousand dollars or more or that includes
3 five thousand square feet or more of space;

4 (3) "Renovation" or "renovated," any alteration of a state building with a cost of five
5 hundred thousand dollars or more or that includes five thousand square feet or more
6 of the building;

7 (4) "State building project," new construction or renovation of a building, which has
8 heating, ventilation, or air conditioning, by the Board of Regents or any state agency,
9 department, or institution.

10 Section 2. Any state building projects as defined in section 1 of this Act, shall meet or exceed
11 a high-performance green building standard.

12 Section 3. A waiver of the requirements of section 2 of this Act may be granted by the Office
13 of the State Engineer if:

14 (1) The building will have minimal human occupancy;

15 (2) The increased costs of achieving a high-performance green building standard cannot
16 be recouped from decreased operational costs within fifteen years;

17 (3) A building is on the national register of historic places and achieving a high-
18 performance green building standard would result in noncompliance with standards for
19 historic preservation as set forth in the secretary of the interior's Standards for the
20 Treatment of Historic Properties in effect as of January 1, 2008;

21 (4) The square footage of the renovation project is less than fifty percent of the total square
22 footage of the building being renovated. If the renovation project is being done in
23 phases, the total square footage of all intended phases combined shall be used in
24 making this calculation; or

1 (5) The Bureau of Administration determines that extenuating circumstances exist to make
2 impractical high-performance green building standard certification.

3 Section 4. No state building project may proceed to construction until the Bureau of
4 Administration has determined that the project is satisfactorily designed to achieve or exceed a
5 high-performance green building standard or that a waiver is granted pursuant to this Act.

6 Section 5. Upon completion of a state building project, the Bureau of Administration shall
7 certify:

8 (1) That the project achieved a high-performance green building standard;

9 (2) That a waiver was granted pursuant to this Act; or

10 (3) That the project failed to comply with the provisions of this Act.

11 Section 6. The Bureau of Administration shall annually report to the Legislature a listing of
12 any state building project which was granted a waiver or failed to comply with the provisions of
13 this Act.

14 Section 7. The Bureau of Administration shall promulgate rules pursuant to chapter 1-26
15 establishing the procedures and terms and conditions for certifying a project and granting waivers,
16 the method for calculating the initial costs and the decreased operational costs related to achieving
17 high-performance green building standards, and the procedure for selecting comparable rating
18 systems as provided by section 1 of this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

777P0633

SENATE APPROPRIATIONS

ENGROSSED NO. **SB 192** - 2/7/2008

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

Introduced by: Senators Gray, Garnos, and Olson (Ed) and Representatives Rounds, Ahlers, Boomgarden, Brunner, Faehn, Gilson, Gosch, Hackl, Hills, Juhnke, Lucas, Lust, McLaughlin, Olson (Ryan), and Van Norman

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to lease a site for delivery
2 of public higher education in Pierre and to use money appropriated by the Legislature from
3 the higher education facilities fund to make lease payments therefor.

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

5 Section 1. That § 13-51-1.1 be amended to read as follows:

6 13-51-1.1. Notwithstanding any other provisions of law, the Board of Regents may enter into
7 a lease agreement with the Sioux Falls public school district for the lease of a site to be used only
8 for the delivery of public higher education programs and a lease agreement with the Capital
9 University Center Foundation and Advisory Board for the lease of a site to be used for the
10 delivery of public higher education programs. All such academic programs shall be directly
11 provided by the following institutions:

- 12 (1) University of South Dakota;
13 (2) South Dakota State University;



- 1 (3) South Dakota School of Mines and Technology;
- 2 (4) Northern State University;
- 3 (5) Black Hills State University; or
- 4 (6) Dakota State University.

5 No postsecondary degrees may be awarded or conferred except by the above institutions.

6 The board may use funds annually appropriated by the Legislature from the higher education
7 facilities fund, created in § 13-51-2, to make payments therefor.