

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

158P0072

## HOUSE BILL NO. 1002

Introduced by: Representatives Rounds, Ahlers, Dreyer, Engels, Gilson, Krebs, and Steele  
and Senators Hauge and Kloucek at the request of the Department of Labor  
Agency Review Committee

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions and to  
2 delete certain obsolete provisions regarding labor and employment and the Department of  
3 Labor.

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

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

6 1-37-1. ~~The Department of Manpower Affairs is hereby continued but shall be known as the~~  
7 ~~State~~ There is created a Department of Labor.

8 Section 2. That § 1-37-3 be amended to read as follows:

9 1-37-3. The Department of Labor shall, under the direction and control of the secretary of  
10 labor, ~~perform all the functions of the former Department of Employment Security, created by~~  
11 ~~chapter 61-2~~ administer the provisions of Titles 60, 61, and 62.

12 Section 3. That § 1-37-4 be amended to read as follows:

13 1-37-4. The Department of Labor shall, under the direction and control of the secretary of  
14 labor, perform all administrative functions except special budgetary functions (as defined in § 1-



1 32-1) of the following advisory councils ~~created by chapter 61-2:~~

2 (1) The ~~manpower~~ state workers' compensation advisory council;

3 (2) The unemployment insurance advisory council.

4 Section 4. That § 1-37-5 be repealed.

5 ~~1-37-5. The Department of Labor shall, under the direction and control of the secretary of~~  
6 ~~labor, perform all the functions of the former Department of Labor and Management Relations.~~

7 Section 5. That § 60-1-1 be amended to read as follows:

8 60-1-1. An employee is ~~one~~ a person who is employed to render personal service to ~~his~~ an  
9 employer otherwise than in the pursuit of an independent calling, and who in such service  
10 remains entirely under the control and direction of the ~~latter who is called~~ his employer.

11 Section 6. That § 60-2-1 be amended to read as follows:

12 60-2-1. An employer ~~must~~ shall indemnify ~~his~~ an employee, except as provided in § 60-2-2  
13 for all that ~~he~~ the employee necessarily expends or loses in direct consequence of the discharge  
14 of ~~his~~ the employee's duties ~~as such~~, or of ~~his~~ the employee's obedience to the direction of the  
15 employer, even though unlawful, unless the employee at the time of obeying such directions  
16 believed ~~them~~ such directions to be unlawful.

17 Section 7. That § 60-2-2 be amended to read as follows:

18 60-2-2. An employer, except as otherwise specially provided, is not bound to indemnify ~~his~~  
19 an employee for losses suffered by the ~~latter~~ employee in consequence of the ordinary risks of  
20 the business in which ~~he~~ is employed, nor in consequence of the negligence of another person  
21 employed by the same employer in the same general business, unless ~~he~~ the employer has  
22 neglected to use ordinary care in the selection of the culpable employee.

23 Section 8. That § 60-2-3 be amended to read as follows:

24 60-2-3. An employer ~~must~~ shall in all cases indemnify ~~his~~ an employee for losses caused by

1 the former's employer's want of ordinary care.

2 Section 9. That § 60-2-4 be amended to read as follows:

3 60-2-4. ~~One~~ Any person who agrees to serve another for a good consideration ~~must~~ shall  
4 perform the service with ordinary care and diligence so long as ~~he is thus~~ employed.

5 Section 10. That § 60-2-5 be amended to read as follows:

6 60-2-5. ~~One employed~~ Any person at ~~his~~ the person's own request to do that which is more  
7 for ~~his~~ the person's advantage than for ~~his~~ an employer ~~must~~ shall use great care and diligence  
8 to protect the interest of the ~~latter~~ employer.

9 Section 11. That § 60-2-6 be amended to read as follows:

10 60-2-6. ~~A~~ No contract to render personal service ~~cannot~~ may be enforced against the  
11 employee beyond the term of two years from the commencement of service under ~~it~~ the contract,  
12 but if the employee voluntarily continues ~~his~~ services under ~~it~~ the contract beyond that time, the  
13 contract may be referred to as affording a presumptive measure of the consideration.

14 Section 12. That § 60-2-7 be amended to read as follows:

15 60-2-7. An employee ~~must~~ shall substantially comply with all the directions of ~~his~~ the  
16 employer concerning the service on which ~~he~~ the employee is engaged, even though contrary  
17 to the provisions of law on the subject of employer and employee, ~~except where such~~ unless  
18 obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the  
19 employee, or in case of an emergency, which according to the best information which the  
20 employee can with reasonable diligence obtain, the employer did not contemplate, and in which  
21 ~~he~~ the employer cannot with reasonable diligence be consulted, and in which noncompliance  
22 is judged by the employee, in good faith, and in the exercise of reasonable discretion, to be  
23 absolutely necessary for the protection of the employer's interests. In all such cases, the  
24 employee ~~must~~ shall conform as nearly to the directions of ~~his~~ the employer as may be

1 reasonably practicable and most for the interest of the ~~latter~~ employer.

2 Section 13. That § 60-2-8 be amended to read as follows:

3 60-2-8. An employee ~~must~~ shall perform ~~his~~ a service in conformity to the usage of the place  
4 of performance unless otherwise directed by ~~his~~ the employer, or unless it is impracticable, or  
5 manifestly injurious to ~~his~~ the employer to do so.

6 Section 14. That § 60-2-9 be amended to read as follows:

7 60-2-9. An employee ~~must~~ shall use reasonable skill unless ~~his~~ the employer has notice of  
8 ~~his~~ the employee's want of skill before employing ~~him~~ the employee. The employee ~~must~~ shall  
9 always use all skill ~~he~~ that the employee possesses, as far as required, for the service specified.

10 Section 15. That § 60-2-10 be amended to read as follows:

11 60-2-10. ~~Everything which~~ Anything that an employee acquires by virtue of ~~his~~ employment,  
12 lawfully or unlawfully, during or after the term of employment belongs to the employer,  
13 excepting any compensation due the employee.

14 Section 16. That § 60-2-11 be amended to read as follows:

15 60-2-11. An employee ~~must~~ shall, on demand, render to ~~his~~ the employer just accounts of  
16 all ~~his~~ the employee's transactions in the course of ~~his~~ the employee's service as often as may  
17 be reasonable, and ~~must~~ shall, without demand, give prompt notice to ~~his~~ the employer of  
18 everything which ~~he~~ the employee receives ~~for his~~ on account.

19 Section 17. That § 60-2-12 be amended to read as follows:

20 60-2-12. An employee who receives anything on account of ~~his~~ an employer in any capacity  
21 other than that of a mere employee, is not bound to deliver it to ~~him~~ the employer until  
22 demanded, and is not at liberty to send it to ~~him~~ the employer from a distance without demand,  
23 in any mode involving greater risk than its retention by the employee ~~himself~~.

24 Section 18. That § 60-2-13 be amended to read as follows:

1       60-2-13. An employee who has any business to transact on ~~his~~ the employee's own account,  
2 similar to that entrusted to ~~him~~ the employee by ~~his~~ the employer, ~~must~~ shall always give the  
3 ~~latter~~ employer the preference.

4       Section 19. That § 60-2-14 be amended to read as follows:

5       60-2-14. If an employee is entrusted with similar affairs by different employers, ~~he~~ must the  
6 employee shall give ~~them~~ the different employers preference according to their relative urgency,  
7 or other things being equal, according to the order in which ~~they~~ the different employers were  
8 committed to ~~him~~ the employee.

9       Section 20. That § 60-2-15 be amended to read as follows:

10       60-2-15. An employee who is expressly authorized to employ a substitute is liable to ~~his~~ the  
11 employee's principal only for want of ordinary care in ~~his~~ the employee's selection. The  
12 substitute is directly responsible to the principal.

13       Section 21. That § 60-2-16 be amended to read as follows:

14       60-2-16. An employee who is guilty of willful and wanton misconduct is liable to ~~his~~ the  
15 employer for the damage thereby caused to the ~~latter~~, ~~and the~~ employer. ~~The~~ employer is liable  
16 to ~~him~~ the employee if the service is not gratuitous, for the value of ~~such~~ the service only as is  
17 properly rendered.

18       Section 22. That § 60-2-17 be amended to read as follows:

19       60-2-17. ~~Where~~ If service is ~~to be~~ rendered by two or more persons jointly, and one of them  
20 dies, the survivor ~~must~~ shall act alone if the service to be rendered is such ~~as he~~ that the survivor  
21 can rightfully perform without the aid of the deceased person, but not otherwise.

22       Section 23. That § 60-2-19 be amended to read as follows:

23       60-2-19. An employee ~~must~~ shall deliver to ~~his~~ the employer as soon as with reasonable  
24 diligence ~~he~~ the employee can find ~~him~~, ~~everything~~ the employer, anything that ~~he~~ the employee

1 receives for ~~his~~ the employer's account, without demand, ~~but he~~. However, the employee is not  
2 bound, without orders from ~~his~~ the employer, to send anything to ~~him~~ the employer through  
3 another person.

4 Section 24. That § 60-3-1 be amended to read as follows:

5 60-3-1. ~~One~~ Any person who undertakes to do a service for another without consideration  
6 is not bound to perform the ~~same~~ service unless it is entrusted to ~~him~~ the person at ~~his~~ the  
7 person's own request in which case ~~he must~~ the person shall perform fully. If ~~he~~ the person  
8 commences performance ~~he must~~, the person shall use slight diligence and care at least. In other  
9 cases, a gratuitous employee may relinquish the employment at any time.

10 Section 25. That § 60-3-2 be amended to read as follows:

11 60-3-2. A gratuitous employee who accepts a written power of attorney ~~must~~ shall act under  
12 it so long as it remains in force, or until ~~he~~ the employee gives notice to ~~his~~ the employer that  
13 ~~he~~ the employee will no longer do so.

14 Section 26. That § 60-4-1 be amended to read as follows:

15 60-4-1. ~~Every~~ An employment in which the power of the employee is not coupled with an  
16 interest in its subject is terminated by notice to ~~him~~ the employee of:

- 17 (1) Death of the employer; or  
18 (2) Legal incapacity of the employer to contract.

19 Section 27. That § 60-4-2 be amended to read as follows:

20 60-4-2. ~~Every~~ An employment is terminated:

- 21 (1) By expiration of its appointed term;  
22 (2) By extinction of its subject;  
23 (3) By death of the employee; or  
24 (4) By legal incapacity of the employee to act as ~~such~~ an employee.

1 Section 28. That § 60-4-3 be amended to read as follows:

2 60-4-3. An employee, unless the term of ~~his~~ the employee's service has expired, or unless  
3 ~~he~~ the employee has a right to discontinue it at any time without notice, ~~must~~ shall continue ~~his~~  
4 service after notice of the death or incapacity of the employer so far as is necessary to protect  
5 from serious injury the interests of the employer's successor in interest, until a reasonable time  
6 after notice of the facts has been communicated to ~~such~~ the successor. The successor ~~must~~ shall  
7 compensate the employee for ~~such~~ the service according to the terms of the contract of  
8 employment.

9 Section 29. That § 60-4-5 be amended to read as follows:

10 60-4-5. An employment even for a specified term may be terminated at any time by the  
11 employer for habitual neglect of duty ~~or,~~ continued incapacity to perform, ~~or~~ any willful breach  
12 of duty by the employee in the course of ~~his~~ employment.

13 Section 30. That § 60-4-9 be amended to read as follows:

14 60-4-9. An employer may discharge any employee, whether engaged for a fixed term or not,  
15 if ~~he~~ the employee is guilty of misconduct in the course of ~~his~~ service or of gross immorality,  
16 though unconnected with the ~~same~~ misconduct.

17 Section 31. That § 60-4-10 be amended to read as follows:

18 60-4-10. An employer may discharge any employee, whether engaged for a fixed term or  
19 not, if, being employed about the person of the employer or in a confidential position, the  
20 employer discovers that ~~he~~ the employee has been guilty of misconduct before or after the  
21 commencement of ~~his~~ service of such a nature that, if the employer had known or contemplated  
22 it, ~~he~~ the employer would not have ~~so~~ employed ~~him~~ the employee.

23 Section 32. That § 60-5-4.1 be repealed.

24 ~~60-5-4.1. The Department of Labor and management relations is abolished and all its~~

1 ~~functions shall be administered by the Department of Labor as provided by § 1-37-5.~~

2 Section 33. That § 60-5-11 be amended to read as follows:

3 60-5-11. ~~All duties heretofore assigned to or performed by the commissioner of labor are~~  
4 ~~hereby transferred to the Department of Labor. The department shall be responsible for the~~  
5 ~~enforcement of~~ Department of Labor shall enforce all labor laws as found in chapters 60-1 to  
6 60-5, chapters 60-8 to 60-13, and §§ 3-18-4 to 3-18-6.

7 Section 34. That § 60-5-12 be repealed.

8 ~~60-5-12. All duties heretofore assigned to the industrial commissioner are hereby transferred~~  
9 ~~to the Department of Labor.~~

10 Section 35. That § 60-5-14 be amended to read as follows:

11 60-5-14. ~~The Department of Labor is hereby charged with the responsibility of administering~~  
12 ~~and enforcing~~ shall enforce all the laws of this state pertaining to the employment of minors, ~~and~~  
13 ~~it.~~ The department may establish within the department a separate division or other  
14 organizational unit ~~thereof~~ to administer and enforce all such laws.

15 Section 36. That § 60-6-1 be amended to read as follows:

16 60-6-1. ~~The South Dakota State Employment Service is a division of the Department of~~  
17 ~~Labor and the secretary, through such division shall establish and maintain free public~~  
18 ~~employment offices in such number and in such places as may be necessary for the proper~~  
19 ~~administration of this chapter and for the purpose of performing such duties as are within the~~  
20 ~~purview of the act of Congress entitled, "An Act to provide for the establishment of a national~~  
21 ~~employment system and for cooperation with the states in the promotion of such system, and~~  
22 ~~for other purposes," approved June 6, 1933 (48 Stat. 113; provided by 29 U.S.C. paragraph 49~~  
23 ~~(c)), as amended through December 31, 1987~~ July 1, 1999. ~~The~~ These provisions of the act of  
24 ~~Congress, as amended, federal law~~ are hereby accepted by this state, ~~in conformity with section~~

1 ~~4 of the act. The state shall observe and comply with the requirements thereof. The secretary is~~  
2 ~~hereby designated and constituted the agency of this state for the purposes of the act. The~~  
3 Department of Labor is designated as the agency of this state that is to cooperate with the federal  
4 government pursuant to this federal law.

5 Section 37. That § 60-6-2 be repealed.

6 ~~—60-6-2. The State Employment Service division of the State of South Dakota is continued~~  
7 ~~under the direction and control of the secretary of the Department of Labor of South Dakota.~~

8 Section 38. That § 60-6-2.1 be repealed.

9 ~~—60-6-2.1. The South Dakota State Employment Service shall continue within the Department~~  
10 ~~of Labor, and its functions shall be allocated between the service and the department as they~~  
11 ~~were formerly allocated between the service and the Employment Security Department.~~

12 Section 39. That § 60-6-3 be amended to read as follows:

13 ~~60-6-3. Wherever the~~ The term, department, as used in this chapter, means the Department  
14 of Labor. The term, secretary is ,as used in this chapter it shall mean, means the secretary of the  
15 Department of Labor ~~and shall include the division and the director provided in this chapter for~~  
16 ~~administration of the State Employment Service; and wherever the term director is used it shall~~  
17 ~~mean the director of this division of State Employment Service appointed by said secretary.~~

18 Section 40. That § 60-6-4 be amended to read as follows:

19 ~~60-6-4. It shall be the duty of the~~ The secretary to shall cooperate with any official or agency  
20 of the United States having powers or duties under the ~~provisions of the act of Congress~~ federal  
21 law referred to in § 60-6-1, ~~as amended~~, and to do and perform all things necessary to secure to  
22 this state the benefits of ~~the said act of Congress, as amended~~, that federal law in the promotion  
23 and maintenance of a system of public employment offices.

24 Section 41. That § 60-6-5 be repealed.

1 ~~60-6-5. The secretary may co-operate with or enter into agreements with the railroad~~  
2 ~~retirement board with respect to the establishment, maintenance, and use of free employment~~  
3 ~~service facilities.~~

4 Section 42. That § 60-6-6 be repealed.

5 ~~60-6-6. The secretary is directed to appoint the director, other officers, and employees of the~~  
6 ~~South Dakota State Employment Service division. Such appointments shall be made in~~  
7 ~~accordance with regulations prescribed by the director of the United States employment service.~~

8 Section 43. That § 60-6-7 be amended to read as follows:

9 60-6-7. ~~All moneys~~ Any money received by this state under the ~~act of Congress~~ federal law  
10 referred to in § 60-6-1, ~~as amended~~, shall be paid into the special "employment service account"  
11 in the employment security administration fund, ~~and said moneys are hereby made.~~ Such money  
12 is available to the secretary to be expended as provided by §§ ~~60-6-4 to 60-6-8, inclusive, and~~  
13 ~~by said act of Congress~~ this chapter and the federal law.

14 Section 44. That § 60-6-8 be amended to read as follows:

15 60-6-8. For the purpose of establishing and maintaining free public employment offices, the  
16 secretary ~~is authorized to~~ may enter into agreements with the railroad retirement board, or any  
17 other agency of the United States charged with the administration of an unemployment  
18 compensation law, or with any political subdivision of this state, or with any private, nonprofit  
19 organization, and as a part of any such agreement the secretary may accept moneys, services,  
20 or quarters as a contribution to the employment service account.

21 Section 45. That § 60-6-9 be repealed.

22 ~~60-6-9. The county commissioners of any county may appropriate money to aid in~~  
23 ~~maintaining free employment agents in connection with the state employment service not to~~  
24 ~~exceed the sum of five hundred dollars in any one year.~~

1 Section 46. That § 60-6-10 be repealed.

2 ~~60-6-10. The director shall also be the executive officer of the State Employment Service~~  
3 ~~division and the management of such division shall be under his supervision.~~

4 Section 47. That § 60-6-11 be repealed.

5 ~~60-6-11. The director in charge has power to enter into agreements with governing bodies~~  
6 ~~of municipalities or counties which desire free employment service to use a portion of the fund~~  
7 ~~provided by the state to assist in maintenance of any such service put into effect by such~~  
8 ~~governing bodies, or he may establish offices at points where he deems it to be to the best~~  
9 ~~interest of employment and maintain the same.~~

10 Section 48. That § 60-6-12 be repealed.

11 ~~60-6-12. The secretary is empowered to employ such clerical assistance as is necessary to~~  
12 ~~carry out the provisions of this chapter, and to fix their compensation.~~

13 Section 49. That § 60-6-13 be repealed.

14 ~~60-6-13. The director in his capacity of head of the State Employment Service division is~~  
15 ~~empowered to secure and distribute the necessary books and forms for keeping a record of the~~  
16 ~~movements of labor, and those placed in positions through such division, and all reports~~  
17 ~~required to be made to that end.~~

18 Section 50. That § 60-6-14 be amended to read as follows:

19 60-6-14. The secretary shall have authority to may appoint agents who shall be under the  
20 direction of the director as may be required in carrying employees to carry out the provisions  
21 of this chapter. Such agents shall be located at convenient points in the state for the handling  
22 of the movements of labor of all classes, with the view that labor will not be congested at any  
23 one point to an extent as to disturb the best interests of the state, and shall use their endeavors  
24 to keep the supply of labor filled at the places where it is desired and in seasonable time. Such

1 ~~agents~~ The employees may be located at points in the state which will best serve to carry out  
2 the provisions and intent of this chapter.

3 Section 51. That § 60-6-15 be repealed.

4 ~~— 60-6-15. The agents in charge of any of the employment offices established under the~~  
5 ~~provisions of this chapter and under the direction of the director, shall receive applications from~~  
6 ~~those seeking employment and from those seeking employees and shall register every applicant~~  
7 ~~on properly arranged cards or forms provided by the director.~~

8 Section 52. That § 60-6-16 be repealed.

9 ~~— 60-6-16. Each agent shall make to the director such periodic reports of applications for labor~~  
10 ~~or employment and all other details of the office work of each office and the expense of~~  
11 ~~maintaining the same as the director may require.~~

12 Section 53. That § 60-6-17 be repealed.

13 ~~— 60-6-17. For the purposes specified in this chapter every employment officer or agency~~  
14 ~~established under this chapter shall keep a register of applicants for work and applicants for help~~  
15 ~~in such form as may be required by the director in order to afford the same information as that~~  
16 ~~supplied by state offices. Such register shall be open to inspection by the director and~~  
17 ~~information therefrom shall be furnished to him at such times and in such form as he may~~  
18 ~~require.~~

19 Section 54. That § 60-6-18 be amended to read as follows:

20 60-6-18. The ~~director~~ secretary shall render all aid and assistance necessary for the  
21 enforcement of any claim by an employee against his an employer which the ~~director~~ secretary  
22 finds reasonable and just, and for the protection of the employee from frauds, extortions,  
23 exploitations, or other improper practices on the part of persons, public or private, ~~and~~ The  
24 secretary shall investigate such claims for the purpose of presenting the facts to the proper

1 authorities and of inducing action thereon by the various agencies of the state possessing the  
2 requisite jurisdiction.

3 Section 55. That § 60-6-22 be amended to read as follows:

4 60-6-22. The ~~director shall have power to~~ secretary may solicit business for the public  
5 employment offices established under this chapter by advertising in newspapers and in any other  
6 way ~~he may deem~~ the secretary deems expedient and take other steps that ~~he may deem~~ the  
7 secretary deems necessary to ensure the success and efficiency of such offices. ~~The~~ No  
8 expenditure under ~~the~~ these provisions ~~shall not~~ may exceed five percent of the total expenditure  
9 for the purpose of this chapter.

10 Section 56. That § 60-6-24 be amended to read as follows:

11 60-6-24. No fees direct or indirect ~~shall in any case~~ may be charged or received from ~~those~~  
12 any person seeking the benefits of this chapter. ~~Whoever shall violate~~ Any person that violates  
13 the provisions of this section commits a Class 2 misdemeanor and ~~shall~~ is thereafter ~~be~~  
14 disqualified from holding any office or position in ~~such State Employment Service division~~ the  
15 department.

16 Section 57. That § 60-6B-1 be repealed.

17 ~~60-6B-1. Terms used in this chapter, unless the context plainly otherwise requires, mean:~~

18 ~~(1) "Grantee," a nonprofit agency or organization designated to administer a~~  
19 ~~multi-purpose service center;~~

20 ~~(2) "Secretary," the secretary of the Department of Labor.~~

21 Section 58. That § 60-6B-2 be repealed.

22 ~~60-6B-2. For the purposes of this chapter, a displaced homemaker is a person who has~~  
23 ~~worked in a home for at least seven years providing unpaid household services for family~~  
24 ~~members, is not otherwise employed for wages on a full-time basis, and has been dependent on~~

1 ~~the income of another family member but is no longer supported by that income or has been~~  
2 ~~dependent on federal assistance but is no longer eligible for that assistance.~~

3 Section 59. That § 60-6B-3 be repealed.

4 ~~— 60-6B-3. The secretary of labor shall establish one pilot multi-purpose service center for~~  
5 ~~displaced homemakers serving urban and rural areas. To the greatest extent possible, the~~  
6 ~~secretary shall make the grant funding this center to a nonprofit agency or organization operating~~  
7 ~~on July 1, 1979.~~

8 Section 60. That § 60-6B-4 be repealed.

9 ~~— 60-6B-4. The secretary of labor shall:~~

10 ~~— (1) — Not later than August 1, 1979, begin a search for a grantee to carry out the programs~~  
11 ~~described in this chapter;~~

12 ~~— (2) — Not later than November 1, 1979, designate the grantee who will establish the~~  
13 ~~multi-purpose service center;~~

14 ~~— (3) — Not later than January 1, 1980, contract with the grantee to provide the necessary~~  
15 ~~funds to begin the operation of the multi-purpose service center; and~~

16 ~~— (4) — When the center is in operation, provide the remaining funds to the grantee to~~  
17 ~~continue the operation of the center.~~

18 Section 61. That § 60-6B-5 be repealed.

19 ~~— 60-6B-5. The center shall develop job counseling and placement services by cooperating~~  
20 ~~with federal, state and local governmental agencies and private employers in order to avoid~~  
21 ~~unnecessary duplication of services.~~

22 Section 62. That § 60-6B-6 be repealed.

23 ~~— 60-6B-6. The services provided by the center shall include the following:~~

24 ~~— (1) — Counsel displaced homemakers with respect to job opportunities specifically~~

- 1           designed for displaced homemakers;
- 2   ~~— (2) — Identify community needs and seek funding for new public sector jobs;~~
- 3   ~~— (3) — Assist displaced homemakers in gaining admission to existing public job training~~
- 4           ~~programs and opportunities;~~
- 5   ~~— (4) — Provide displaced homemakers with the necessary health education and counseling~~
- 6           ~~services, including but not limited to, family health care and nutrition, alcohol and~~
- 7           ~~drug addiction and health care consumer education;~~
- 8   ~~— (5) — Refer displaced homemakers to agencies which may provide information and~~
- 9           ~~assistance with respect to financial management, including insurance, taxes, estate~~
- 10          ~~and probate problems, mortgages, and loans;~~
- 11   ~~— (6) — Provide the displaced homemaker with information about education services~~
- 12          ~~including courses offering credit through secondary or postsecondary education~~
- 13          ~~programs;~~
- 14   ~~— (7) — Provide the displaced homemaker with legal counseling and referral services;~~
- 15   ~~— (8) — Take into account and build upon the skills and experiences of the displaced~~
- 16          ~~homemaker.~~

17       Section 63. That § 60-6B-7 be repealed.

18   ~~— 60-6B-7. To the extent possible, positions in the multi-purpose service programs within the~~

19   ~~center shall be filled by displaced homemakers.~~

20       Section 64. That § 60-6B-8 be repealed.

21   ~~— 60-6B-8. The South Dakota state employment service shall specifically work with the center~~

22   ~~to secure employment for displaced homemakers.~~

23       Section 65. That § 60-6B-9 be repealed.

24   ~~— 60-6B-9. The secretary of labor, with the advice of the staff at the center, shall adopt rules~~

1 pursuant to chapter 1-26 concerning the eligibility of persons for job training and other programs  
2 of the multi-purpose service center, the level of subsistence provided by the job training  
3 programs, and a sliding fee scale for the service programs.

4 Section 66. That § 60-6B-10 be repealed.

5 ~~60-6B-10. The administrator of the center shall report to the secretary of labor as prescribed~~  
6 ~~by rule. The administrator shall evaluate the effectiveness of the job training, placement and~~  
7 ~~service to displaced homemakers, including the number of persons trained, the number of~~  
8 ~~persons placed in employment, follow-up data on such persons, the number of persons served~~  
9 ~~by the various service programs, and the cost effectiveness of the various components of the~~  
10 ~~center. The administrator of the center shall provide the secretary with a monthly accounting of~~  
11 ~~all expenditures.~~

12 Section 67. The code counsel shall transfer the provisions of §§ 60-7-1, 60-7-2, and 60-7-7  
13 to chapter 28-9.

14 Section 68. That § 60-8-1 be amended to read as follows:

15 60-8-1. ~~Every~~ Any person who by any use of force, threats, or intimidation, prevents or  
16 endeavors to prevent any hired foreman, journeyman, workman, laborer, servant, or other person  
17 employed by another person from continuing or performing ~~his~~ work or from accepting any new  
18 work or employment, or induces ~~such~~ the hired person to relinquish ~~his~~ work or employment,  
19 or to return any work ~~he~~ the person has in hand before it is finished, is guilty of a Class 2  
20 misdemeanor.

21 Section 69. That § 60-8-2 be amended to read as follows:

22 60-8-2. ~~Every~~ Any person who by any use of force, threats, or intimidation prevents or  
23 endeavors to prevent another person from employing any person, or compels another person to  
24 employ any person, or forces or induces another to alter ~~his~~ the mode of carrying on business,

1 or to limit or increase the number of ~~his~~ hired foremen, journeymen, workmen, laborers,  
2 servants, or other persons employed by ~~him~~ the person, or their rate of wages or time of service,  
3 is guilty of a Class 2 misdemeanor.

4 Section 70. That § 60-8-3 be amended to read as follows:

5 60-8-3. No person ~~shall~~ may be deprived of life, liberty, or property without due process of  
6 law. The right of ~~persons~~ any person to work ~~shall~~ may not be denied or abridged on account  
7 of membership or nonmembership in any labor union; or labor organization. Violation of this  
8 section is a Class 2 misdemeanor.

9 Section 71. That § 60-8-6 be amended to read as follows:

10 60-8-6. Any solicitation or request to join a labor organization made by any person to any  
11 employee, accompanied by threats of injury to ~~such~~ the employee or members of ~~his~~ the  
12 employee's family, or damage to property, or loss or impairment of present or future  
13 employment of ~~such~~ the employee, is a Class 2 misdemeanor.

14 Section 72. That § 60-8-8 be amended to read as follows:

15 60-8-8. ~~It shall be the duty of the~~ The state's attorney of every ~~each~~ county to shall prosecute  
16 ~~all persons~~ any person violating any of the provisions of §§ 60-8-3 to 60-8-6, inclusive, in ~~his~~  
17 that county, ~~and he~~. The state's attorney shall be responsible for the proper enforcement of such  
18 enforce these sections, ~~and whenever he shall have~~. If the state's attorney has any information  
19 or knowledge or ~~have~~ has any reason to believe that any of the provisions of ~~such~~ these sections  
20 are being violated in ~~his~~ the county, ~~he~~ the state's attorney shall investigate ~~the same~~ and use  
21 every legitimate means ~~at his command~~ to secure the necessary and proper evidence of ~~such~~ the  
22 violation, ~~and immediately~~. Immediately upon securing ~~such~~ the evidence, ~~he~~ the state's attorney  
23 shall file a complaint or preliminary information against any person against whom ~~he shall have~~  
24 the state's attorney has any evidence of any such violation, ~~and he~~. The state's attorney shall have

1 ~~such~~ the person arrested and shall vigorously prosecute such charges to final judgment.

2 Section 73. That § 60-9-2 be amended to read as follows:

3 60-9-2. Any money judgment against a labor union, association or organization shall be  
4 enforced only against ~~such~~ the union, association or organization as an entity, and against its  
5 assets, property and funds and ~~shall~~ may not be ~~enforceable~~ enforced against the property of ~~an~~  
6 ~~individual~~ any member ~~or members~~ thereof.

7 Section 74. That § 60-9-7 be amended to read as follows:

8 60-9-7. No officer, agent, or employee of any labor union ~~shall~~ may enter, without the  
9 consent of the owner or operator, in or upon any ranch, farm, feed yard, shearing plant, or other  
10 agricultural premise, for the purpose of collecting dues, fines or assessments, or to solicit  
11 membership in any union, order or promote any strike, or in any other way interfere with the  
12 activities of any person employed on such premises. Violation of this section is a Class 2  
13 misdemeanor.

14 Section 75. That § 60-9-8 be amended to read as follows:

15 60-9-8. No person ~~shall~~ may solicit or accept any money, or other thing of value, for services  
16 rendered, claimed to have been rendered, or promised, to any employer of the class mentioned  
17 in § 60-9-7, by reason of the labor union connection or association of ~~such~~ the person ~~or~~  
18 ~~persons~~. Violation of this section is a Class 2 misdemeanor.

19 Section 76. That § 60-9A-15 be repealed.

20 ~~—60-9A-15. This chapter may be cited as the South Dakota Labor Relations Act.~~

21 Section 77. That § 60-11-1 be amended to read as follows:

22 60-11-1. A day's labor in any manufacturing or mechanical occupation shall consist of eight  
23 hours unless there is an express agreement to the contrary. This ~~shall~~ does not apply ~~when~~ if the  
24 agreement is for employment by the week, month, or year.

1 Section 78. That § 60-11-2 be amended to read as follows:

2 60-11-2. It is a Class 2 misdemeanor for any employer, ~~as defined herein~~ to require any  
3 employee to pay the cost of a medical examination or the cost of furnishing any records required  
4 by the employer as a condition of continued employment.

5 The term "employer", as used in this section ~~shall mean and include~~ means an individual,  
6 a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in  
7 bankruptcy, and any common carrier by rail, motor, water, air or express company doing  
8 business in or operating within the state.

9 The term "employee" ~~shall mean and include every,~~ means any person who may be  
10 permitted, required, or directed by any employer, ~~as defined herein~~ in consideration of direct or  
11 indirect gain or profit, to engage in any employment.

12 Section 79. That § 60-11-5 be amended to read as follows:

13 60-11-5. The provisions of §§ 60-11-3 and 60-11-4 ~~shall do not apply to apprentices any~~  
14 apprentice, nor to ~~persons~~ any person learning the business or work in which employed, nor to  
15 ~~a any person mentally or physically deficient provided with a developmental disability, if the~~  
16 Department of Labor of ~~South Dakota shall issue~~ issues a permit for ~~their~~ the person's  
17 employment fixing the wage or compensation of such person.

18 Section 80. That § 60-11-7 be amended to read as follows:

19 60-11-7. In any action for the breach of an obligation to pay wages, ~~where~~ if a private  
20 employer has been oppressive, fraudulent, or malicious, in ~~his~~ the employer's refusal to pay  
21 wages due to the employee, the measure of damages is double the amount of wages for which  
22 the employer is liable.

23 Section 81. That § 60-11-8 be amended to read as follows:

24 60-11-8. ~~Whenever used in~~ In §§ 60-11-9 to 60-11-23, inclusive, "the term, employer",

1 includes any person, firm, partnership, limited liability company, association, corporation,  
2 receiver, or other officer of a court of the state, and any agent or officer of any kind of the above  
3 mentioned classes and subject to the provisions of ~~the above~~ these sections, employing any  
4 person of this state.

5 Section 82. That § 60-11-13 be amended to read as follows:

6 60-11-13. In case of a dispute over wages, the employer shall give written notice to the  
7 employee of the amount of wages less whatever the employee owes the employer which ~~he~~ the  
8 employee concedes to be due ~~and~~. The employer shall pay such amount without condition  
9 within the time set by §§ 60-11-9 to 60-11-12, inclusive, ~~provided that acceptance~~. Acceptance  
10 by the employee of any payment made ~~hereunder shall~~ pursuant to this section does not  
11 constitute a release as to the balance of the claim.

12 Section 83. That § 60-11-14 be amended to read as follows:

13 60-11-14. Sections 60-11-8 to 60-11-23, inclusive, ~~shall do~~ do not apply to any form of  
14 compensation other than cash wages owing to any employee by or on behalf of any employer.

15 Section 84. That § 60-11-15 be amended to read as follows:

16 60-11-15. Any employer who ~~shall~~ intentionally ~~refuse~~ refuses to pay the wages due and  
17 payable when demanded as in §§ 60-11-9 to 60-11-13, inclusive, or who ~~shall~~ falsely ~~deny~~  
18 denies the amount thereof, or that the same is due with the intent to secure for ~~himself~~ the  
19 employer or any other person any discount upon such indebtedness, or with any intent to annoy,  
20 harass, ~~or~~ oppress, ~~or~~ hinder, ~~or~~ delay, or defraud the person to whom such indebtedness is due,  
21 commits a Class 2 misdemeanor.

22 Section 85. That § 60-11-16 be amended to read as follows:

23 60-11-16. Any employee who ~~shall falsify~~ falsifies the amount due ~~himself~~ to the employee  
24 or who intentionally attempts to defraud the employer commits a Class 2 misdemeanor.

1 Section 86. That § 60-11-17 be amended to read as follows:

2 60-11-17. ~~It shall be the duty of the~~ The Department of Labor ~~to~~ shall ensure compliance  
3 with the provisions of this chapter, ~~to~~ investigate ~~as to~~ any violations of §§ 60-11-8 to 60-11-23,  
4 inclusive, and ~~to~~ institute or cause to be instituted actions for penalties and forfeitures provided  
5 thereunder. The department may hold hearings to satisfy itself as to the justice of any claim, and  
6 ~~it~~ the department shall cooperate with any employee in the enforcement of a claim against ~~his~~  
7 the employer in any case whenever, in its opinion, the claim is valid. The department ~~and its~~  
8 ~~authorized representatives shall have the right to~~ may enter places of employment for the  
9 purpose of inspecting records and seeing that all provisions of §§ 60-11-8 to 60-11-23,  
10 inclusive, are complied with.

11 Section 87. That § 60-11-17.1 be amended to read as follows:

12 60-11-17.1. No employer ~~shall~~ may discharge, discriminate, or engage in or threaten to  
13 engage in any reprisal, economic or otherwise, against any employee because ~~such~~ the employee  
14 has made any complaint to ~~his~~ the employer, or to the ~~director~~ Department of Labor, that ~~he~~ the  
15 employee has not been paid wages in accordance with this chapter or because ~~such~~ the employee  
16 has made any complaint or is about to institute any proceedings, or because ~~such~~ the employee  
17 has testified or is about to testify in any such proceedings.

18 Section 88. That § 60-11-18 be amended to read as follows:

19 60-11-18. The Department of Labor ~~shall have power and authority to~~ may take assignments  
20 of wage claims, rights of action for penalties, provided by §§ 60-11-8 to 60-11-23, inclusive,  
21 not to exceed five hundred dollars in any case of any one claim without being bound by any of  
22 the technical rules with reference to the validity of such assignments; ~~and shall have the power~~  
23 ~~and authority to.~~ The department may prosecute actions for the collection of such claims of  
24 persons who, in the judgment of the department are entitled to the services of the department

1 and who, in its judgment, have claims that are valid and enforceable in the courts. The  
2 department ~~shall have the power to~~ may join various claimants in one preferred claim or lien,  
3 and in case of suit to join them in one cause of action.

4 Section 89. That § 60-11-19 be amended to read as follows:

5 60-11-19. ~~Whenever~~ If the Department of Labor determines that wages have not been paid,  
6 and that ~~such~~ the unpaid wages constitute an enforceable claim, the department shall upon the  
7 request of the employee take an assignment in trust for ~~such~~ the wages or any claim for  
8 liquidated damages, without being bound by any of the technical rules respecting the validity  
9 of any such assignments and may bring any legal action necessary to collect ~~such~~ the claim.  
10 With the consent of the assigning employee at the time of the assignment, the department ~~shall~~  
11 ~~have the power to~~ may settle and adjust any such claim to the same extent as might the assigning  
12 employee.

13 Section 90. That § 60-12-2 be amended to read as follows:

14 60-12-2. No child under fourteen years of age ~~shall~~ may be employed at any time in any  
15 factory or workshop or about any mine, nor be employed in any mercantile establishment except  
16 during hours when public schools are not in session and in no case after seven o'clock p.m.  
17 Violation of this section is a Class 2 misdemeanor.

18 Section 91. That § 60-12-9 be amended to read as follows:

19 60-12-9. In ~~every~~ any mercantile or manufacturing establishment, hotel, or restaurant where  
20 children are employed, suitable seats ~~must~~ shall be maintained in the room where such  
21 employees work and such use thereof permitted as may be necessary for preservation of the  
22 health of such employees. Violation of this section is a Class 2 misdemeanor.

23 Section 92. That § 60-12-11 be amended to read as follows:

24 60-12-11. The Department of Labor ~~is directed to~~ shall enforce all the laws of this state

1 relative to employment of children. ~~It shall require all the directors, inspectors, agents, and~~  
2 ~~employees of the department to assist it in execution of the duty and authority hereby placed~~  
3 ~~upon it.~~

4 Section 93. That § 60-12-12 be amended to read as follows:

5 60-12-12. The Department of Labor shall investigate any complaint made to it the  
6 department as to violation of any of the laws of this state relative to employment of children,  
7 and independently without complaint shall at all times endeavor to ascertain violations of ~~any~~  
8 ~~of said~~ these laws. The department shall file criminal complaints against any violator of any law  
9 relating to employment of children ~~and it shall.~~ The department need not be required to furnish  
10 security for costs as complainant in any action or proceeding ~~so~~ instituted by it the department.

11 Section 94. That § 60-12-15 be amended to read as follows:

12 60-12-15. No employer ~~shall~~ may discriminate between employees on the basis of sex, by  
13 paying wages to any employee in any occupation in this state at a rate less than the rate at which  
14 ~~he~~ the employer pays any employee of the opposite sex for comparable work on jobs which have  
15 comparable requirements relating to skill, effort, and responsibility, but not to physical strength.

16 Section 95. That § 60-12-17 be amended to read as follows:

17 60-12-17. ~~Every~~ Each employer of more than twenty-five persons shall make, keep, and  
18 maintain the records of the wage and wage rates, job classifications, and other terms and  
19 conditions of employment of ~~the persons employed by him~~ each person employed, and shall  
20 preserve the records for a reasonable period of time.

21 Section 96. That § 60-12-18 be amended to read as follows:

22 60-12-18. An employer who violates the provisions of § 60-12-15 is liable to an employee  
23 affected in the amount of ~~his~~ the employee's unpaid wages.

24 Action to recover the liability may be maintained in a court of competent jurisdiction by one

1 or more employees for themselves and other employees similarly situated. The court in the  
2 action may in addition to a judgment awarded to the plaintiff, allow a reasonable attorney fee  
3 to be paid by the defendant and costs. This section ~~shall~~ does not be construed to limit a cause  
4 of action under chapter 20-13.

5 Section 97. That § 60-12-21 be amended to read as follows:

6 60-12-21. No employer ~~shall~~ may, for the purpose of dissuading an employee from  
7 preferring charges or giving information against ~~him~~ the employer or testifying against ~~him~~ the  
8 employer in an action brought under § 60-12-18, threaten termination of the employ of the  
9 employee or other retaliatory action, or terminate the employ of the employee or take other  
10 retaliatory action.

11 Section 98. That § 60-13-1 be amended to read as follows:

12 60-13-1. A trust of real or personal property, or real and personal property combined, created  
13 by an employer as part of a stock bonus pension, disability, death benefit, insurance,  
14 endowment, annuity or profit sharing plan for the benefit of some or all of ~~his~~ the employer's  
15 employees, to which contributions are made by the employer or employees, or both, for the  
16 purpose of distributing to the employees the earnings or the principal, or both earnings and  
17 principal, of the fund held in trust, may continue in perpetuity or for such time as may be  
18 necessary to accomplish the purpose for which it is created, ~~and shall not be~~. No such trust is  
19 invalid as for violating any rule of law against perpetuities or suspension of the power of  
20 alienation of the title to property.

21 Section 99. That § 60-13-2 be amended to read as follows:

22 60-13-2. No rule of law against perpetuities or suspension of the power of alienation of the  
23 title to property ~~shall~~ may operate to invalidate any trust created or attempted to be created, prior  
24 to July 1, 1955, by an employer as part of a stock bonus, pension, disability, death benefit,

1 insurance, endowment, annuity or profit sharing plan for the benefit of some or all of ~~his~~ the  
2 employer's employees to which contributions are made by the employer or employees, or both,  
3 for the purpose of distributing to the employees earnings or principal, or both earnings and  
4 principal of the fund held in trust.