



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

495R0080

## HOUSE COMMERCE ENGROSSED NO. **HB 1002** 1/27/2010

Introduced by: Representatives Turbiville and Lederman and Senators Nelson, Maher, Olson (Russell), and Tieszen at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the days and hours  
2 that alcoholic beverages may be sold on a licensed premise and who may sell, serve, or  
3 dispense alcoholic beverages on a licensed premise and to revise certain provisions  
4 concerning the power of municipalities and counties to regulate the sale and use of alcoholic  
5 beverages.

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

7 Section 1. That § 35-4-81 be amended to read as follows:

8 35-4-81. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6),  
9 (9), (11), ~~and (12)~~, (13), (16), (17), (17A), (18), and (19), may sell, serve, or allow to be  
10 consumed on the premises covered by the license, alcoholic beverages between the hours of two  
11 a.m. and seven a.m. ~~or on Sunday after two a.m., on Memorial Day after two a.m., or at any time~~  
12 ~~on Christmas Day~~. A violation of this section is a Class 2 misdemeanor.

13 Section 2. That § 35-4-81.1 be repealed.

14 ~~35-4-81.1. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may~~



1 ~~sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven~~  
2 ~~a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day~~  
3 ~~or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic~~  
4 ~~beverages on Sunday unless the municipality or the county by ordinance allows such sales on~~  
5 ~~Sunday.~~

6 Section 3. That § 35-4-81.2 be repealed.

7 ~~— 35-4-81.2. No licensee licensed under subdivisions 35-4-2(16) and (17) may sell, serve, or~~  
8 ~~allow to be consumed on the premises covered by the license, any malt beverage between the~~  
9 ~~hours of two a.m. and seven a.m. No licensee licensed under subdivision 35-4-2(12) may sell,~~  
10 ~~serve, or allow to be consumed on the premises covered by the license, any wine between the~~  
11 ~~hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.~~

12 Section 4. That § 35-4-79 be amended to read as follows:

13 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter  
14 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such  
15 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),  
16 (12), (13), or (16) may permit persons eighteen years old or older to sell and serve or dispense  
17 alcoholic beverages if ~~not~~ less than fifty percent of the gross business transacted by that  
18 establishment is from the sale of ~~food~~ alcoholic beverages and the licensee or an employee that  
19 is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or  
20 dispensed. For the purposes of this section, the term, "to sell and serve alcoholic beverages,"  
21 means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers  
22 as a normal adjunct of waiting tables. The term does not include tending bar or drawing or  
23 mixing alcoholic beverages.

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

1 Section 5. That § 35-4-79.1 be amended to read as follows:

2 35-4-79.1. No off-sale licensee licensed under subdivision 35-4-2(3), (5), (17), or (17A) may  
3 permit any person less than twenty-one years old to sell, serve, or dispense alcoholic beverages  
4 on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty  
5 percent of the gross business transacted by that establishment. If alcoholic beverage sales  
6 constitute less than fifty percent of the gross business transacted by the establishment, the  
7 licensee may permit persons less than twenty-one years old to sell, serve, or dispense alcoholic  
8 beverages if the licensee or an employee that is at least twenty-one years of age is on the  
9 premises when the alcoholic beverage is sold or dispensed.

10 Section 6. That § 35-4-79.3 be repealed.

11 ~~35-4-79.3. No off-sale licensee licensed under subdivision 35-4-2(3) or (5) may permit any~~  
12 ~~person less than twenty-one years old to sell, serve, or dispense alcoholic beverages on the~~  
13 ~~licensed premises.~~

14 Section 7. That § 35-4-2.8 be amended to read as follows:

15 35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be  
16 licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses  
17 pursuant to this section may exercise the privileges granted under the license issued pursuant  
18 to subdivision 35-4-2(12) or subdivision 35-4-2(16) ~~during the time specified in § 35-4-81.2.~~

19 Section 8. That § 9-29-7 be amended to read as follows:

20 9-29-7. ~~Every~~ Each municipality ~~shall have power to~~ may prohibit or regulate the transaction  
21 of business in alcoholic beverages; and the use and consumption ~~thereof, and to~~ of alcoholic  
22 beverages, establish the number of on- and off-sale licenses which may be issued; and the fees  
23 to be charged ~~therefor, for the licenses, and~~ provide for reasonable classifications of on-sale and  
24 off-sale licenses ~~and for the issuance of high-point beer on- and off-sale licenses to licensees~~

1 ~~holding high-point beer licenses on December 31, 1979, for which the fees to be charged for the~~  
2 ~~various classifications shall be uniform within each class, consistent with the provisions of Title~~  
3 35. ~~The secretary of revenue shall be promptly furnished certified copies of all ordinances and~~  
4 ~~resolutions or amendments thereto adopted relating to the exercise of these powers.~~

5 ~~— No high-point beer license provided for in this section may be transferred as to site.~~

6 Section 9. That subdivision (8) of § 7-8-20 be amended to read as follows:

7 (8) To regulate the transaction of business in alcoholic beverages; and the use and  
8 consumption ~~thereof~~ of alcoholic beverages, to establish the number of on-sale  
9 licenses which may be issued, to provide for reasonable classification of on-sale  
10 licenses and ~~to fix the fees to be charged for the various classifications which shall~~  
11 ~~be uniform within each class, all~~ licenses consistent with the provisions of Title 35:  
12 ~~The secretary of revenue shall be promptly furnished certified copies of all~~  
13 ~~ordinances and resolutions or amendments thereto adopted relating to the exercise~~  
14 ~~of these powers;~~

15

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0264

## HOUSE JUDICIARY ENGROSSED NO. **HB 1047** - 1/27/2010

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

- 1 FOR AN ACT ENTITLED, An Act to revise certain powers of a conservator.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. That § 29A-5-507 be amended to read as follows:
- 4 29A-5-507. A guardianship or conservatorship of a protected person shall terminate ~~upon~~
- 5 ~~the death of the protected person~~, if jurisdiction is transferred to another state, or if ordered by
- 6 the court following a hearing. A guardianship or conservatorship of a protected person shall also
- 7 terminate upon the death of the protected person unless the assets of the conservatorship are less
- 8 than two thousand dollars and the conservator elects to provide notice pursuant to § 29A-5-410
- 9 and obtains court approval to pay the debts and distribute the assets of the protected person to
- 10 the heirs of the protected person pursuant to chapter 29A-2.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0398

## HOUSE JUDICIARY ENGROSSED NO. **HB 1062** - 1/27/2010

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney  
General

1 FOR AN ACT ENTITLED, An Act to provide for certain mandatory training for county  
2 coroners.

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

4 Section 1. That § 23-3-35 be amended to read as follows:

5 23-3-35. In addition to powers conferred upon the law enforcement officers standards  
6 commission elsewhere in this chapter, the commission may:

- 7 (1) Promulgate rules for the administration of §§ 23-3-26 to 23-3-47, inclusive, including  
8 the authority to require the submission of reports and information by law enforcement  
9 agencies within this state;
- 10 (2) Establish minimum educational and training standards for admission to employment  
11 as a law enforcement officer:
- 12 (a) In permanent positions; and  
13 (b) In temporary or probationary status;
- 14 (3) Certify persons as being qualified under the provisions of §§ 23-3-26 to 23-3-47,



1 inclusive, to be law enforcement officers, and by rule to establish criteria and  
2 procedure for the revocation or suspension of the certification of officers who have  
3 been convicted of a felony or misdemeanor involving moral turpitude, have  
4 intentionally falsified any application or document to achieve certification, or have  
5 been discharged from employment for cause, or have engaged in conduct  
6 unbecoming of a law enforcement officer;

7 (4) Establish minimum curriculum requirements for preparatory, in- service, and  
8 advanced courses and programs for schools operated by or for the state or any  
9 political subdivisions of the state for the specific purpose of training recruits or other  
10 law enforcement officers;

11 (5) Consult and cooperate with counties, municipalities, agencies of this state, other  
12 governmental agencies, and with universities, colleges, junior colleges, and other  
13 institutions concerning the development of law enforcement training schools and  
14 programs or courses of instruction;

15 (6) Approve institutions and facilities for school operation by or for the state or any  
16 political subdivision of the state for the specific purpose of training law enforcement  
17 officers and recruits;

18 (7) Make or encourage studies of any aspect of police administration;

19 (8) Conduct and stimulate research by public and private agencies which is designed to  
20 improve police administration and law enforcement;

21 (9) Make recommendations concerning any matter within its purview pursuant to §§ 23-  
22 3-26 to 23-3-47, inclusive;

23 (10) Make such evaluations as may be necessary to determine if governmental units are  
24 complying with the provisions of §§ 23-3-26 to 23-3-47, inclusive;

- 1 (11) Adopt and amend bylaws, consistent with law, for its internal management and  
2 control;
- 3 (12) Enter into contracts or do such things as may be necessary and incidental to the  
4 administration of its authority pursuant to §§ 23-3-26 to 23-3-47, inclusive;
- 5 (13) License and regulate the activities of private or law enforcement polygraph and  
6 computer voice stress analyzer examiners;
- 7 (14) Certify canine teams; and
- 8 (15) Establish minimum educational and training standards, in consultation with the  
9 county coroners, for newly selected county coroners and advanced training standards  
10 for incumbent county coroners.

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

13 The Law Enforcement Officers Standards Commission shall establish a training program  
14 for county coroners. The county coroner training shall include training programs concerning  
15 scene investigation and death registration. The commission shall establish and maintain a county  
16 coroner training program in consultation with the Department of Health and through such  
17 agencies and institutions as the commission may deem appropriate.

18 Section 3. That chapter 7-14 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 Each newly selected county coroner shall participate in the training program established by  
21 the Law Enforcement Officers Standards Commission within one year of taking office. Each  
22 county coroner shall participate in and successfully complete an advanced or refresher training  
23 established by the commission at least every two years.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

178R0416

## HOUSE COMMERCE ENGROSSED NO. **HB 1069** 1/27/2010

Introduced by: Representatives Engels, Cutler, Feinstein, Gibson, Hamiel, Hoffman, Killer, Lederman, Moser, Nygaard, Olson (Betty), and Sorenson and Senators Adelstein, Bradford, Gant, Hanson (Gary), Jerstad, Miles, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the transportation of  
2 alcoholic beverages and to authorize transportation by religious organizations under certain  
3 circumstances.

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

5 Section 1. That § 35-4-66 be amended to read as follows:

6 35-4-66. Alcoholic beverages, except malt beverages, may be transported only:

- 7 (1) By transporter licensees in the course of delivery to persons authorized under this  
8 title to receive such alcoholic beverages;
- 9 (2) By distillers or wholesale licensees in ~~their~~ the distiller's or wholesale licensee's own  
10 vehicles, carrying ~~their~~ the distiller's or wholesale licensee's own merchandise;
- 11 (3) By solicitor licensees, such transportation being ~~confined~~ limited to samples, sealed  
12 or unsealed, of products for which orders are solicited;
- 13 (4) By individuals, interstate transportation being ~~confined~~ limited to alcoholic beverages  
14 in quantities of one gallon or less, intrastate transportation not being restricted as to



1 quantity, but in either case the alcoholic beverages ~~must~~ shall have been purchased  
2 by the individuals for personal use only;

3 (5) By common carriers in interstate commerce ~~where~~ if the shipment originates outside  
4 the state and is destined for a point outside the state;

5 (6) By carrier licensees, as to that included in the stock in trade of the licensees;

6 (7) By established religious organizations, interstate transportation being limited to  
7 alcoholic beverages in quantities of four gallons or less, intrastate transportation not  
8 being restricted as to quantity, but in either case such alcoholic beverages shall have  
9 been purchased by such established religious organizations for sacramental use only.

10 Section 2. That § 35-4-67 be amended to read as follows:

11 35-4-67. Except as provided in subdivisions 35-4-66(4), (5), ~~and~~ (6), and 7, no person other  
12 than a transporter may bring into the state alcoholic beverages.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

961R0423

HOUSE JUDICIARY ENGROSSED NO. **HB 1070**  
1/27/2010

Introduced by: Representatives Engels, Cutler, Feinstein, Gibson, Hamiel, Hoffman, Killer, Moser, Nygaard, Olson (Betty), Schlekeway, Sorenson, and Turbiville and Senators Vehle, Abdallah, Bradford, Fryslie, Gant, Gillespie, Hanson (Gary), Jerstad, Merchant, Miles, Schmidt, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the voidability of  
2 gambling contracts.

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

4 Section 1. That § 53-9-2 be amended to read as follows:

5 53-9-2. ~~Any note, bond, or other contract made and entered into, where the whole or any part~~  
6 ~~of the consideration thereof shall be for money or other valuable thing, won or lost, laid, staked,~~  
7 ~~or betted at or upon any game of any kind, under any name or by any means, or for the~~  
8 ~~repayment of money or other thing of value, lent or advanced, at the time and for the purpose~~  
9 ~~of any game, play, bet, or wager, or being laid, staked, betted, or wagered thereon shall be~~  
10 ~~absolutely void.~~

11 Any contract:

12 (1) In which the whole or any part of the contractual consideration is money or other  
13 valuable consideration, won or lost as a result of the outcome of any game of any



1           kind, under any name or by any means; or

2           (2) In which the contract is for the repayment of money or other valuable consideration,

3           lent or advanced, for the purpose of gambling in connection with any game, play, bet,

4           or wager;

5 is void to the extent that the consideration constitutes a gambling win or loss or is a loan or

6 advance for the purpose of gambling. However, any contract where the creditor is a regulated

7 lender as defined in § 54-3-14, or any other good faith lender, is not subject to this section.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

906R0216

## HOUSE COMMERCE ENGROSSED NO. **HB 1086** - 1/27/2010

Introduced by: Representatives Verchio, Brunner, Jensen, Kirkeby, Olson (Betty), and Sly  
and Senator Maher

1 FOR AN ACT ENTITLED, An Act to permit certain municipalities to issue an additional off-  
2 sale alcoholic beverage license.

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

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

6 Notwithstanding the provisions of § 35-4-10, a municipality may issue an additional off-sale  
7 license only if one of the existing off-sale licenses issued by the municipality is open and  
8 remains open to the public for less than one hundred eighty days in a calendar year.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

491R0472

## HOUSE STATE AFFAIRS ENGROSSED NO. **HB 1088** - 1/27/2010

Introduced by: Representatives Gosch, Brunner, Dennert, Engels, Faehn, Feickert, Hunhoff (Bernie), Hunt, Kirschman, Kopp, Lucas, Lust, Noem, Rausch, Rave, Sly, Steele, and Turbiville and Senators Abdallah, Ahlers, Hanson (Gary), Heidepriem, Hundstad, Hunhoff (Jean), Kloucek, Knudson, Miles, Nelson, Novstrup (Al), Peterson, Rhoden, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the rights of certain  
2 new vehicle dealers and to declare an emergency.

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

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

5 32-6B-1. Terms as used in this chapter mean:

- 6 (1) "Administrator," the administrator of the dealer licensing and inspection program of  
7 the Department of Revenue and Regulation;
- 8 (2) "Auctioneer," a person who presides over a public auction where following an initial  
9 starting price, bids are taken from two or more people until a final bid or price is  
10 established for a motor vehicle;
- 11 (2A) "Authorized emergency vehicle," any vehicle of a fire department and any ambulance  
12 and emergency vehicle of a municipal department or public service corporation that  
13 are designated or authorized by the Department of Public Safety;



- 1 (3) "Broker," a person who, for a fee, commission, or other valuable consideration,  
2 arranges or offers to arrange a transaction involving the sale or exchange of vehicles,  
3 and who is not:
- 4 (a) A dealer or a bona fide agent or employee of a dealer;
  - 5 (b) A representative or a bona fide agent or employee of a manufacturer; or
  - 6 (c) At any point in the transaction the bona fide owner of the vehicle involved in  
7 the transactions;
- 8 (4) "Community," the franchisee's area of responsibility as stipulated in the franchise. A  
9 community has a minimum radius of ten miles around an existing dealership;
- 10 (5) "Converter," a person who modifies or installs on previously assembled chassis  
11 special bodies or equipment which, when completed, form an integral part of the  
12 vehicle and which constitutes a major manufacturing alteration and who may issue  
13 a supplemental or secondary statement of origin;
- 14 (6) "Demonstration," the noncommercial use of a dealer owned vehicle by any employee  
15 of the dealership for any purpose in the ordinary course of business relating to the  
16 sale of the vehicle within the trade or market area of the dealership or demonstration  
17 by any prospective buyer for a period of three days. The term includes vehicles  
18 donated by a dealership to a community or organization and used for a one-day  
19 parade or event;
- 20 (6A) "Department," the Department of Revenue and Regulation;
- 21 (6B) "Emergency vehicle dealer," any person who converts or manufacturers authorized  
22 emergency vehicles and who, for commission or with intent to make a profit or gain,  
23 sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale  
24 or exchange of new, or new and used authorized emergency vehicles, or who is

1 engaged wholly or in part in the business of selling new, or new and used authorized  
2 emergency vehicles;

3 (7) "Franchise," a written or oral agreement or contract between a franchisor and  
4 franchisee which fixes the legal rights and liabilities of the parties to such agreement  
5 or contract;

6 (8) "Franchisee," person who receives vehicles from a franchisor under a franchise and  
7 who offers and sells the vehicles to the general public;

8 (9) "Franchisor," any person engaged in the manufacturing or distribution of vehicles  
9 including any person who acts for the franchisor;

10 (9A) "Good faith, honesty in fact and the observance of reasonable, nondiscriminatory  
11 commercial standards of fair dealing in the trade, as defined and interpreted in the  
12 Uniform Commercial Code as amended to January 1, 2010;

13 (10) "In-transit," the noncommercial use of a dealer owned vehicle by any employee of the  
14 dealership for travel to and from any service facility, detail shop, repair shop, gas  
15 station, car wash, dealer auction, another lot owned by the dealer, a supplemental lot,  
16 temporary special events lot, temporary supplemental lot, or any other location to  
17 facilitate a dealer trade;

18 (10A) "Manufacturer," a person who manufactures or assembles vehicles, including motor  
19 homes, and who issues the original or first manufacturer's statement of origin. The  
20 term, manufacturer, includes a central or principal sales corporation through which  
21 it distributes its products to franchised dealers;

22 (11) "Motor home," a motor vehicle designed as an integral unit to be used as a  
23 conveyance upon the public highways and for use as a temporary or recreational  
24 dwelling and having at least four of the following permanently installed systems:

- 1 (a) Cooking facilities;
- 2 (b) Ice box or mechanical refrigerator;
- 3 (c) Potable water supply including plumbing and a sink with faucet either self-  
4 contained or with connections for an external source, or both;
- 5 (d) Self-contained toilet connected to a plumbing system with connection for  
6 external water disposal;
- 7 (e) Heating or air conditioning system, or both, separate from the vehicle engine  
8 or the vehicle electrical system;
- 9 (f) A one hundred ten--one hundred fifteen volt alternating current electrical  
10 system separate from the vehicle engine electrical system either with its own  
11 power supply or with a connection for an external source, or both, or a  
12 liquified petroleum system and supply;
- 13 (12) "Public auction," a business that is open to the public where South Dakota titled  
14 motor vehicles are consigned, displayed, and auctioned to the highest bidder by an  
15 auctioneer;
- 16 (12A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary  
17 living quarters for recreational, camping, or seasonal use and which:
  - 18 (a) Is built on a single chassis mounted on wheels;
  - 19 (b) Has a gross trailer area not exceeding four hundred square feet in the setup  
20 mode;
  - 21 (c) Is certified by the manufacturer as complying with American National  
22 Standards Institute Standard No. A119.5 in effect on January 1, 2008; and
  - 23 (d) Has at least a seventeen digit identification number and the manufacturer has  
24 designated the vehicle as a recreational park model on the manufacturer

1 statement of origin;

2 (13) "Sell-it-yourself lot," any space provided to a person for a fee to display that person's  
3 boat or vehicle for sale;

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

8 (15) "Supplemental lot," a physically separate location owned and maintained by a  
9 licensed dealer within the same county as the principal place of business;

10 (16) "Temporary special events lot," a location other than the principal place of business,  
11 supplemental lot, or temporary supplemental lot where a licensed trailer dealer, a  
12 licensed used car dealer selling only truck tractors, travel trailers, or motor homes,  
13 or any combination thereof, or a licensed vehicle dealer selling only truck tractors,  
14 travel trailers, or motor homes, or any combination thereof, may conduct business for  
15 a period of time not to exceed ten consecutive days for a specific purpose such as  
16 fairs, auctions, shopping center sales, or tent sales. A temporary special events lot  
17 shall meet all local zoning and building codes for the type of business being  
18 conducted;

19 (17) "Temporary supplemental lot," a location other than the principal place of business  
20 or supplemental lot but within the same county as the principal place of business, or  
21 within the corporate limits of a municipality which overlaps boundaries of a county,  
22 or in an adjoining county, if the adjoining county has no licensed vehicle dealer  
23 selling automobiles, pick-ups, or passenger vans and the temporary supplemental lot  
24 is no more than ten miles from the principal place of business, where a licensed

1 vehicle dealer or a licensed used vehicle dealer may conduct business for a period of  
2 time not to exceed ten consecutive days for a specific purpose such as fairs, auto  
3 shows, auctions, shopping center promotions, or tent sales. A temporary  
4 supplemental lot shall meet all local zoning and building codes for the type of  
5 business being conducted. If a licensed vehicle dealer establishes a temporary  
6 supplemental lot in a county with a licensed used vehicle dealer, a licensed used  
7 vehicle dealer may establish a temporary supplemental lot in a county with a licensed  
8 vehicle dealer. A licensed vehicle dealer may establish, for manufacturer sponsored  
9 events, a temporary supplemental lot in an adjoining county that has no like  
10 franchised licensed dealer;

11 (18) "Trailer," any vehicle without motive power designed to be coupled to or drawn by  
12 a motor vehicle and constructed so that no part of its weight or that of its load rests  
13 upon the towing vehicle;

14 (19) "Trailer dealer," any person who, for commission or with intent to make a profit or  
15 gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate  
16 a sale or exchange of new or used trailers, semitrailers or travel trailers or who is  
17 engaged in the business of selling new or used trailers, semitrailers or travel trailers  
18 whether or not such vehicles are owned by such person;

19 (20) "Travel trailer," any trailer or semitrailer which provides as its primary purpose  
20 adequate, comfortable, temporary living quarters while on pleasure excursions or  
21 while touring for business, professional, educational or recreational purposes;

22 (21) "Used vehicle dealer," any person who, for commission or with intent to make a  
23 profit or gain sells, exchanges, rents with option to purchase, offers or attempts to  
24 negotiate a sale or exchange of used vehicles or who is engaged in the business of

1 selling used vehicles; or any person who sells five or more used vehicles or offers for  
2 sale five or more used vehicles at the same address or telephone number in any one  
3 calendar year;

4 (22) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, motor home,  
5 trailer, semitrailer or travel trailer of the type and kind required to be titled and  
6 registered under chapters 32-3 and 32-5, except manufactured homes, mobile homes,  
7 mopeds or snowmobiles;

8 (23) "Vehicle dealer," any person who, for commission or with intent to make a profit or  
9 gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate  
10 a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in  
11 part in the business of selling new, or new and used vehicles.

12 Section 2. That § 32-6B-7 be amended to read as follows:

13 32-6B-7. Before any license is issued, the applicant shall deliver to the department a good  
14 and sufficient surety bond, executed by the applicant as principal and by a surety company  
15 qualified to do business in the state as surety. The bond shall be for an amount based upon the  
16 type of license applied for, as follows:

- 17 (1) Vehicle dealer's license --\$25,000;
- 18 (2) Used vehicle dealer's license --\$25,000;
- 19 (3) Motorcycle dealer's license --\$5,000;
- 20 (4) Trailer dealer's license --\$10,000 for trailers weighing ~~2,000~~ more than 3,000 pounds  
21 ~~or more~~; or
- 22 (5) Emergency vehicle dealer's license --\$10,000.

23 The bond shall be to the department and in favor of any customer who suffers any loss that  
24 may be occasioned by reason of the failure of title or by reason of any fraudulent

1 misrepresentation or breaches of warranty as to freedom from liens. The bond shall be for the  
2 license period;~~and a.~~ A new bond or a proper continuation certificate shall be delivered to the  
3 department at the beginning of each license period. Any surety company that pays a claim  
4 against the bond of a licensee shall notify the department, in writing, that it has paid such a  
5 claim. Any surety company that cancels the bond of a licensee shall notify the department, in  
6 writing, of the cancellation, giving the reason for that cancellation. If a claim is made to the  
7 department against the bond, which claim is based upon a final judgment of a court of record  
8 of this state, the dealer shall execute an additional bond for the amount necessary to maintain  
9 the security at the original level.

10 Section 3. That § 32-6B-10 be amended to read as follows:

11 32-6B-10. No dealer's license may be issued to a person who desires to sell or offer for sale  
12 new vehicles; until the applicant furnishes written proof, satisfactory to the department, ~~that he~~  
13 the person has a bona fide contract or franchise in effect in this state with the manufacturer of  
14 the vehicle;~~or vehicles, he~~ the person proposes to deal in. For the purposes of this section,  
15 written proof which does not adequately capture the intent of both the applicant and the  
16 manufacturer to be bound by the subject franchise or bona fide contract may be deemed  
17 insufficient by the department.

18 Section 4. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 The provisions of §§ 32-6B-45 to 32-6B-56, inclusive, do not apply to any trailer franchisee  
21 dealing in trailers with a weight of three thousand pounds or less. This section may not be  
22 construed to exclude such a franchisee from the licensing and other requirements contained in  
23 this chapter.

24 Section 5. That § 32-6B-45 be amended to read as follows:

1       32-6B-45. ~~No franchisor may terminate or refuse to continue any franchise unless the~~  
2 ~~franchisor has first established in a hearing held under the provisions of chapter 1-26, that:~~

3 ~~—(1)— The franchisor has cause for termination or noncontinuance; and~~

4 ~~—(2)— Upon termination or noncontinuance, another franchise in the same line-make will~~  
5 ~~become effective in the same community without diminution of the vehicle service~~  
6 ~~formerly provided or that the community cannot be reasonably expected to support~~  
7 ~~such a dealership. No franchisor may, directly or through an officer, agent, or~~  
8 ~~employee, terminate, cancel, fail to renew, or substantially change the competitive~~  
9 ~~circumstances of a vehicle dealership agreement without good cause. For the~~  
10 ~~purposes of this section, good cause means failure by a vehicle dealer to substantially~~  
11 ~~comply with essential and reasonable requirements imposed upon the vehicle dealer~~  
12 ~~by the vehicle dealership agreement, if the requirements are not different from those~~  
13 ~~requirements imposed on other similarly situated vehicle dealers by their terms. In~~  
14 ~~addition, good cause exists if:~~

15       (1) Without the consent of the vehicle manufacturer, the vehicle dealer has transferred  
16 an interest in the vehicle dealership, there has been a withdrawal from the dealership  
17 of an individual proprietor, partner, major shareholder, or the manager of the  
18 dealership, or there has been a substantial reduction in interest of a partner or major  
19 stockholder;

20       (2) The vehicle dealer has filed a voluntary petition in bankruptcy or has had an  
21 involuntary petition in bankruptcy filed against it which has not been discharged  
22 within thirty days after the filing, there has been a closeout or sale of a substantial  
23 part of the dealer's assets related to the vehicle business, or there has been a  
24 commencement of dissolution or liquidation of the dealer;

1       (3)   There has been a change, without the prior written approval of the manufacturer, in  
2       the location of the dealer's principal place of business under the dealership  
3       agreement;

4       (4)   The vehicle dealer has defaulted under a security agreement between the dealer and  
5       the vehicle manufacturer or there has been a revocation or discontinuance of a  
6       guarantee of the dealer's present or future obligations to the vehicle manufacturer;

7       (5)   The vehicle dealer has failed to operate in the normal course of business for seven  
8       consecutive days or has otherwise abandoned the business;

9       (6)   The vehicle dealer has pleaded guilty to or has been convicted of a felony affecting  
10      the relationship between the dealer and the manufacturer;

11      (7)   The dealer has engaged in conduct which is injurious or detrimental to the dealer's  
12      customers or to the public welfare; or

13      (8)   The vehicle dealer, after receiving notice from the manufacturer of its requirements  
14      for reasonable market penetration based on the manufacturer's experience in other  
15      comparable marketing areas, consistently fails to meet the manufacturer's market  
16      penetration requirements.

17      A vehicle manufacturer shall provide a vehicle dealer at least ninety days prior written notice  
18      of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state  
19      all reasons constituting good cause for the action and shall provide that the dealer has sixty days  
20      in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the  
21      notice is void. The notice and right to cure provisions under this section do not apply if the  
22      reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivisions  
23      (1) to (7), inclusive.

24      Section 6. That § 32-6B-46 be repealed.

1 ~~32-6B-46. In determining whether cause is established for terminating or not continuing a~~  
2 ~~franchise, the department shall consider the existing circumstances, including, but not limited~~  
3 ~~to:~~

4 ~~(1) Failure by the franchisee to comply with requirements imposed upon him by the~~  
5 ~~franchise, which requirements are both essential and reasonable;~~

6 ~~(2) Use of bad faith by the franchisee in carrying out the terms of the franchise;~~

7 ~~(3) Whether the franchisee has adequate new vehicle facilities, equipment, parts, and~~  
8 ~~qualified management, sales, and service personnel to reasonably provide consumer~~  
9 ~~care for the new vehicles sold at retail by the franchisee;~~

10 ~~(4) Whether the franchisee refuses to honor warranties of the franchisor to be performed~~  
11 ~~by the franchisee if the franchisor reimburses the franchisee for such warranty work~~  
12 ~~performed by the franchisee; or~~

13 ~~(5) Whether it is injurious to the public welfare for the business of the franchisee to be~~  
14 ~~discontinued.~~

15 Section 7. That § 32-6B-49.1 be amended to read as follows:

16 32-6B-49.1. No franchise agreement may include any term or condition in a franchise that:

17 (1) Requires the franchisee to waive trial by jury involving the franchisor;

18 (2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect  
19 to the franchise, lease or agreement shall or may not be submitted for resolution or  
20 otherwise prevents a franchisee from bringing an action in a particular forum  
21 otherwise available under the law;

22 (3) Requires that disputes between the franchisor and franchisee be submitted to  
23 arbitration or to any other binding alternate dispute resolution procedure. However,  
24 any franchise, lease or agreement may authorize the submission of a dispute to

1 arbitration or to binding alternate dispute resolution if the franchisor and franchisee  
2 voluntarily agree to submit the dispute to arbitration or binding alternate dispute  
3 resolution at the time the dispute arises;

4 (4) Requires a franchisee to pay the attorney fees of a franchisor;

5 (5) Prohibits the holder of an existing franchise from being dualled with another  
6 franchisor's line that does not substantially affect the current franchisor or  
7 community;

8 (6) Prohibits the holder of an existing franchise from moving to another facility within  
9 the franchisee's community that is equal to or superior to the franchisee's former  
10 facility; ~~or~~

11 (7) Prohibits the holder of an existing franchise from making improvements to the  
12 franchisee's current facility within the franchisee's community; or

13 (8) Permits a franchisor or the franchisor's assignee to exercise a right of first refusal to  
14 acquire a franchisee's franchise or a franchisee's assets in connection with the sale by  
15 a franchisee of that franchisee's franchise or assets.

16 An existing franchisee shall give the franchisor prior written notice of the proposed dual  
17 arrangement, relocation, or improvement described in subdivisions (5), (6), and (7). The notice  
18 shall contain sufficient information for the franchisor to evaluate the proposal. Within sixty days  
19 of receiving said notice, the franchisor shall send a letter to the franchisee either approving or  
20 disapproving the proposal. If the franchisor does not notify the franchisee of its approval or  
21 denial of the dual arrangement, relocation, or improvement within the sixty-day period, the  
22 franchisee's proposal shall be deemed to have been approved. No franchisor may unreasonably  
23 withhold its approval. Denial of a proposed dual arrangement or facility improvement shall be  
24 supported by credible evidence that it will substantially affect in an adverse way the current

1 franchisor or community. Denial of a proposed relocation shall be supported by credible  
2 evidence that the new location is not at least equal to the franchisee's former facility.

3 This section does not apply to agreements pertaining to the lease or sale of real property.

4 Section 8. That § 32-6B-50 be amended to read as follows:

5 32-6B-50. If a franchisor seeks to ~~terminate or not continue a franchise or seeks to enter into~~  
6 an additional franchise of the same line-make, the franchisor shall file a notice with the  
7 department of ~~his~~ the franchisor's intention to ~~terminate or not continue the franchise or to enter~~  
8 into a franchise for additional representation of the same line-make. ~~This section does not apply~~  
9 ~~to any intended termination or noncontinuance of a franchise which the franchisee elects~~  
10 ~~voluntarily.~~

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

12 32-6B-51. Upon receiving a notice of intention, ~~the department shall, within five days, send~~  
13 ~~by first class mail, a copy of the notice to the franchisee whose franchise the franchisor seeks~~  
14 ~~to terminate or not continue. If the notice seeks~~ seeking to establish an additional franchise of  
15 the same line-make in a particular community, a copy of the notice shall be sent within five days  
16 of receipt to all franchisees in the community who are engaged in the business of offering to sell  
17 or selling the same line-make. The department may also give a copy of the franchisor's notice  
18 to any other party which it considers interested persons.

19 Section 10. That § 32-6B-54 be amended to read as follows:

20 32-6B-54. Upon a hearing conducted under the provisions of chapter 1-26, the franchisor  
21 has the burden of proof to establish that cause exists to ~~terminate or not continue the franchise,~~  
22 ~~or to enter into a franchise establishing an additional dealership.~~

23 Section 11. That § 32-6B-55 be amended to read as follows:

24 32-6B-55. If a franchisor is not permitted to ~~terminate or not to continue a franchise and is~~

1 ~~further permitted not to~~ enter into a franchise for the line-make in the community, no such  
2 franchise may thereafter be entered into for the sale of such vehicles ~~of that line-make~~ in the  
3 community; unless the franchisor ~~has first established~~ thereafter establishes, in a subsequent  
4 hearing held under the provisions of chapter 1-26, that there has been a change of circumstances  
5 so that the community at that time can be reasonably expected to support ~~the~~ such a dealership.

6 Section 12. That § 32-6B-56 be amended to read as follows:

7 32-6B-56. If a franchisor enters into or attempts to enter into a franchise, ~~whether upon~~  
8 ~~termination or refusal to continue another franchise or upon the establishment of~~ for an  
9 additional new vehicle dealership in a community where the same line-make is already  
10 represented, without first complying with the provisions of this chapter, no dealer's license may  
11 be issued to that franchisee or proposed franchisee to engage in the business of selling new  
12 vehicles, manufactured or distributed by that franchisor.

13 Section 13. That § 32-6B-58 be amended to read as follows:

14 32-6B-58. Every franchisor or manufacturer shall properly fulfill any warranty agreement  
15 and compensate, as set forth in § 32-6B-61, each of its vehicle dealers for labor and parts. The  
16 franchisor or manufacturer shall pay all claims made by a vehicle dealer for the labor and parts  
17 within thirty days following their approval. The franchisor or manufacturer shall either approve  
18 or disapprove the claim within thirty days after its receipt. If a claim is disapproved, the vehicle  
19 dealer who submitted the claim shall be notified in writing of ~~its~~ the claim's disapproval within  
20 the thirty-day period. Any claim rejected for technical reasons may be put into proper form by  
21 the vehicle dealer. Any claim resubmitted by the vehicle dealer within thirty days after the  
22 receipt of the claim shall be considered to be approved and payment shall be made within thirty  
23 days. The franchisor or manufacturer has the right to audit any vehicle dealer ~~claims~~ claim for  
24 ~~one year after payment~~ a period of one year after the claim is paid to the dealer and to charge

1 back to the new vehicle dealer the amount of any unsubstantiated claim. If there is evidence of  
2 fraud by the vehicle dealer, the audit period is two years from the actual or constructive notice  
3 of facts constituting the alleged fraud.

4 Section 14. That § 32-6B-61 be amended to read as follows:

5 32-6B-61. The schedule of compensation for warranty work shall include reasonable  
6 compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances  
7 for diagnosis and performance of warranty work and service shall be adequate for the work to  
8 be performed. The hourly labor rate paid to the dealer for warranty services may not be less than  
9 the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service.  
10 Reimbursement for parts used in the performance of warranty repair may not be less than the  
11 ~~amount paid by the dealer to acquire the parts plus a reasonable allowance for handling, which~~  
12 ~~may not be less than thirty percent current retail rate customarily charged by the vehicle dealer~~  
13 ~~for such parts. Each manufacturer, in establishing a schedule of compensation for warranty~~  
14 ~~work, shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and may~~  
15 ~~not obligate any vehicle dealer to engage in unduly burdensome documentation thereof,~~  
16 ~~including, without limitation, obligating vehicle dealers to engage in transaction by transaction~~  
17 ~~calculations.~~

18 Section 15. That § 32-6B-69.1 be amended to read as follows:

19 32-6B-69.1. A franchisor may reasonably and periodically audit a franchisee to determine  
20 the validity of paid claims or chargebacks for customer or dealer incentives. An audit of  
21 incentive payments may apply only to the two-year period immediately preceding the date on  
22 ~~which the dealer was notified of an impending audit~~ for a period of one year after the claims are  
23 paid to the dealer. The limitations of this section do not apply if the franchisor can prove fraud.

24 Section 16. That § 32-6B-77 be amended to read as follows:

1       32-6B-77. A dealer whose application to transfer is rejected may file an objection ~~with the~~  
2 ~~department~~ as provided for in § 32-6B-53, or the dealer may file a civil proceeding to challenge  
3 the denial of the transfer. In an action brought under §§ 32-6B-73 to 32-6B-78, inclusive, the  
4 burden is on the manufacturer or franchisor to prove that the prospective transferee is not  
5 qualified. An objection filed under §§ 32-6B-73 to 32-6B-78, inclusive, is a contested case.

6       Section 17. That § 32-6B-84 be repealed.

7       ~~32-6B-84. Notwithstanding the terms of any franchise, the manufacturer or franchisor may~~  
8 ~~exercise a right of first refusal to acquire the vehicle dealer's assets or ownership if all of the~~  
9 ~~following conditions are met:~~

10       ~~(1) The manufacturer or franchisor notifies the vehicle dealer in writing within sixty days~~  
11               ~~of its receipt of the completed proposal for the sale or transfer and all related~~  
12               ~~agreements of its exercise of the right of first refusal along with a concise statement~~  
13               ~~of its reasons for doing so;~~

14       ~~(2) The exercise of the right of first refusal results in the vehicle dealer receiving the~~  
15               ~~same or greater consideration as the vehicle dealer has contracted to receive in~~  
16               ~~connection with the proposed change of ownership or transfer;~~

17       ~~(3) The proposed sale or transfer does not involve the transfer or sale to a member or~~  
18               ~~members of the family of one or more vehicle dealers, or to a qualified manager with~~  
19               ~~at least two years management experience at the dealership of one or more of such~~  
20               ~~vehicle dealers, or to an entity controlled by such persons;~~

21       ~~(4) The manufacturer or franchisor agrees to pay the reasonable expenses, including~~  
22               ~~attorney fees not to exceed the usual, customary, and reasonable fees charged for~~  
23               ~~similar work done for other clients, incurred by the proposed owner or transferee~~  
24               ~~prior to the manufacturer's or franchisor's exercise of its right of first refusal in~~

1 ~~negotiating and implementing the contract for the proposed sale or transfer. The~~  
2 ~~expenses and attorney fees shall be paid to the proposed new owner or transferee at~~  
3 ~~the time of closing of the sale or transfer for which the manufacturer or franchisor~~  
4 ~~exercised its right of first refusal. No payment of expenses and attorney fees is~~  
5 ~~required if the proposed new owner or transferee has not submitted an accounting of~~  
6 ~~those expenses within thirty days of the vehicle dealer's receipt of the manufacturer's~~  
7 ~~or franchisor's written request for such an accounting. A manufacturer or franchisor~~  
8 ~~may request an accounting before exercising a right of first refusal;~~

9 ~~— (5) — The vehicle dealer has no liability to any person or entity as to any disclosed term,~~  
10 ~~condition, or issue as a result of a manufacturer or franchisor exercising a right of~~  
11 ~~first refusal; and~~

12 ~~— (6) — Regardless of any express terms, provisions, or conditions of the franchise, the~~  
13 ~~exercise of the right of first refusal is not unreasonable.~~

14 Section 18. That § 32-6B-78 be amended to read as follows:

15 32-6B-78. The issue in an objection filed under §§ 32-6B-73 to 32-6B-78, inclusive, either  
16 with the department or in a separate civil proceeding, is whether or not the prospective  
17 transferee is qualified. The department, or a court in a separate civil proceeding, shall enter an  
18 order holding that the prospective transferee either is qualified or is not qualified. If the  
19 department's or a court's order is that the prospective transferee is qualified, the dealer's  
20 franchise agreement is amended to reflect the change in franchisee and the manufacturer or  
21 franchisor shall accept the transfer for all purposes. If the department's or a court's order is that  
22 the prospective transferee is not qualified, the department or a court may include specific  
23 reasons why the prospective transferee is not qualified and may include specific conditions  
24 under which the prospective transferee would be qualified. If the department's or a court's order

1 that a prospective transferee is not qualified includes specific conditions under which the  
2 prospective transferee would be qualified, the department or a court may retain jurisdiction of  
3 the dispute for a time certain to allow the dealer and prospective transferee to meet the  
4 conditions set forth.

5 Section 19. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The provisions of this chapter as amended on the effective date of this Act apply to each  
8 vehicle dealer in any written or oral vehicle dealership agreement existing between a dealer and  
9 a manufacturer or distributor on the effective date of this Act which has no expiration date and  
10 to any subsequent written or oral vehicle dealership agreement entered into, amended, or  
11 renewed between a vehicle dealer and a manufacturer or distributor.

12 Section 20. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Notwithstanding the terms of any vehicle dealer agreement or waiver to the contrary, any  
15 vehicle dealer whose business or property is injured, or is about to be injured, by any violation  
16 of § 32-6B-45 to 32-6B-84, inclusive, may bring a civil action to enjoin any such violation,  
17 without having to prove irreparable injury, and to recover actual damages sustained, together  
18 with costs, disbursements, and reasonable attorney fees.

19 Section 21. That § 37-5-12.2 be amended to read as follows:

20 37-5-12.2. For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, merchandise,  
21 means:

- 22 (1) Automobiles, trucks, motorcycles, motor homes or travel trailers of the type and kind  
23 required to be titled and registered pursuant to chapters 32-3 and 32-5, and  
24 accessories;

- 1       (2)   Farm tractors, farm implements, farm machinery, and attachments;
- 2       (3)   Industrial and construction equipment and attachments;
- 3       (4)   Boats and personal watercraft;
- 4       (5)   Snowmobiles and all-terrain vehicles, including multipurpose utility vehicles, side  
5       by sides, and similar type vehicles whether powered by electricity or by combustion  
6       engine;
- 7       (6)   Office furniture, equipment, supplies, and attachments;
- 8       (7)   Outdoor power equipment and attachments;
- 9       (8)   A temperature control unit; and
- 10      (9)   An auxiliary idle reduction and temperature management system or auxiliary power  
11      unit.

12       For the purposes of this section, the term, temperature control unit, means a piece of  
13      equipment that is mounted on a titled vehicle (trailer, rail car, or container) for the temperature  
14      management of temperature sensitive cargo.

15       For the purposes of this section, the term, auxiliary idle reduction and temperature  
16      management system, means a piece of equipment that is mounted on a titled vehicle, usually a  
17      semi-tractor, to enable the driver to turn off the engine yet have access to air conditioning, heat,  
18      and electric power inside the vehicle's cab.

19       Section 22. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as  
20      follows:

21       Any manufacturer or supplier of merchandise as defined in subdivision 37-5-12.2(5) that  
22      authorizes a dealer of such merchandise to perform the warranty work is obligated to provide  
23      that dealer reasonable compensation for diagnostic work, as well as repair service, parts, and  
24      labor to the dealer. Time allowances for diagnostic and performance of warranty work and

1 service shall be adequate for the work to be performed. The hourly labor rate paid to the dealer  
2 for warranty services may not be less than the rate charged by the dealer for like service to  
3 nonwarranty customers for nonwarranty service. Reimbursement for parts used in the  
4 performance of warranty repair may not be less than the current retail rate customarily charged  
5 by the dealer for the part or parts.

6 Section 23. Whereas, this Act is necessary for the immediate preservation of the public  
7 peace, health, or safety, 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-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

537R0319

## SENATE ENGROSSED NO. **SB 13** - 1/21/2010

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning petitions and  
2 elections.

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

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate a  
6 constitutional amendment or other measure or to refer legislation to the electors, shall sign a  
7 verification before filing the petition with the officer in whose office it is by law required to be  
8 filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best  
9 of the circulator's knowledge, each person signing the petition is a qualified voter of the state  
10 in the county indicated on the signature line and that no state statute regarding the circulation  
11 of petitions was knowingly violated. The State Board of Elections shall prescribe the form for  
12 the verification. The verification shall be complete and the affixing of the circulator's signature  
13 shall be witnessed and notarized by a notary public commissioned in South Dakota or other  
14 officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely swears to  
15 the verification provided for in this section is guilty of a Class 1 misdemeanor.



1 Section 2. That § 6-16-5 be amended to read as follows:

2 6-16-5. If the proposed district contains less than one thousand eligible voters as defined in  
3 § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within  
4 the district to conduct an election on the question of formation of the special district. The date  
5 may not be more than sixty days after the appropriate board declares that the application for  
6 incorporation is valid. The auditor shall appoint three judges of election, one of whom shall  
7 serve as the superintendent, to conduct the election. The vote upon the question of incorporation  
8 shall be by ballot which conforms to a ballot for a statewide question except that the statement  
9 required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast  
10 and counted, the judges shall prepare a certification showing the whole number of ballots cast,  
11 together with the number voting for and the number voting against incorporation, and shall  
12 return the certification to the county auditor. If a majority, or if it is a water project district at  
13 least sixty percent, of the votes cast on the question of formation is in favor, an election shall  
14 be conducted by those present at the same meeting to elect the initial board of directors or  
15 trustees.

16 Section 3. That § 6-16-5.2 be amended to read as follows:

17 6-16-5.2. If a majority, or if it is a water project district at least sixty percent, of the votes  
18 cast in an election conducted pursuant to § 6-16-5.1 is in favor on the question of formation of  
19 the special district, an election shall be conducted by the county auditor within sixty days after  
20 the official canvass to elect the initial board of directors or trustees. The election shall be  
21 conducted pursuant to Title 12. The county auditor shall publish a notice of vacancy no later  
22 than fifty days prior to the election. Circulation of nominating petitions may begin upon  
23 completion of the official canvass of the election to form the district. Nominating petitions shall  
24 be filed with the county auditor by 5:00 p.m. at least thirty days before the election. The

1 nominating petitions shall contain signatures of at least twenty-five registered voters in the  
2 district. Absentee ballots shall be made available to the voters no later than twenty days before  
3 the date of election. The election shall be canvassed by the county commission.

4 Section 4. That § 7-18A-11 be amended to read as follows:

5 7-18A-11. The right to propose an ordinance or resolution shall be exercised by filing with  
6 the auditor a petition in proper form containing the proposed ordinance or resolution, signed by  
7 the required number of qualified voters of the county. The signer or circulator of the petition  
8 shall add the signer's place of residence and the ~~date~~ month and day of signing. The signer's post  
9 office box number may be given in lieu of a street address if the signer lives within a  
10 municipality of the second or third class. ~~A date may be written in full or may be written using~~  
11 ~~standard abbreviations, including numerals.~~

12 Section 5. That § 9-13-14.1 be amended to read as follows:

13 9-13-14.1. If a vacancy exists on a municipal governing body, the remaining members shall  
14 appoint a replacement to serve until the next annual municipal election, or the vacancy may be  
15 filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In  
16 the aldermanic form of municipal government, the appointment ~~must~~ shall be a person from the  
17 same ward of the ~~first or second~~ class municipality. If electing a person to fill the remainder of  
18 the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the  
19 publication required by § 9-13-6.

20 Section 6. That § 9-13-14.2 be amended to read as follows:

21 9-13-14.2. The governing body of any municipality may, by ordinance enacted prior to the  
22 vacancy, require that any vacancy on the governing body or in the office of the mayor is to be  
23 filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and  
24 this section. No such special election may be held less than ninety days before the annual

1 municipal election. The finance officer of the municipality shall publish a notice in the official  
2 newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by  
3 special election, the date of the election, and the time and place where nominating petitions may  
4 be filed for the office. The notice shall be published once each week for two consecutive weeks  
5 beginning at least sixty days before the date of the special election. Nominating petitions for the  
6 vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than  
7 sixty days before the date of the special election, and shall be filed at least thirty days before the  
8 date of the special election. A notice of the special election shall be published as provided in  
9 §§ 9-13-13 and 9-13-14.

10 Section 7. That § 9-13-25 be amended to read as follows:

11 9-13-25. In any municipality, the person having the highest number of votes for any office  
12 shall be declared elected. However, the governing board of any municipality may, on or before  
13 the first of October in the year preceding, approve an ordinance ~~prescribing the~~ requiring a  
14 secondary election procedures as found in to be conducted pursuant to § 9-13-27.1 and section  
15 8 of this Act.

16 Section 8. That chapter 9-13 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 If a municipality has passed an ordinance requiring a secondary election and no candidate  
19 in a race involving three or more candidates receives a majority of the votes cast in the race, a  
20 secondary election shall be held three weeks from the date of the first election. At the secondary  
21 election, the only persons voted for shall be the two candidates receiving the highest number of  
22 votes at the first election. However, if there is a tie for second place in the first election and  
23 there is no tie for first place, all tying second place candidates shall be placed along with the first  
24 place candidate on the ballot for the secondary election. The secondary election shall be held

1 at the same polling places and shall be conducted, returned, and canvassed in the same manner  
2 as the first election. The result shall be declared and entered in the minutes of the municipality  
3 in the same manner as the first election. The person receiving the highest number of votes at the  
4 secondary election is elected.

5 Section 9. That § 12-4-34 be amended to read as follows:

6 12-4-34. If a statute refers to registered voters, it does not include those in the inactive  
7 registration file unless specifically included. However, any voter in the inactive registration file  
8 may sign a petition.

9 Section 10. That § 12-4-37 be amended to read as follows:

10 12-4-37. The secretary of state shall establish a computerized system for maintaining and  
11 utilizing the voter registration file and transmitting voter registration information from each  
12 county auditor to the Office of the Secretary of State. ~~Each county auditor shall furnish the~~  
13 ~~current master registration file of voters as provided in § 12-4-9 in computer format to the~~  
14 ~~secretary of state by January 1, 2002.~~ Each county auditor shall transmit any changes thereafter  
15 to the master registration file or the absentee voter log to the secretary of state on a daily basis.

16 Section 11. That § 12-6-51.1 be amended to read as follows:

17 12-6-51.1. If no candidate for United States Senate, United States House of Representatives,  
18 or Governor in a race involving three or more candidates receives thirty-five percent of the votes  
19 of the candidate's party, a secondary election shall be held three weeks from the date of the first  
20 primary election. At the secondary election the only persons voted for shall be the two  
21 candidates receiving the highest number of votes at the first election. However, if there is a tie  
22 for second place in the first primary election and there is no tie for first place, all tying second  
23 place candidates shall be placed along with the first place candidate on the ballot for the  
24 secondary election. The secondary election shall be held at the same polling places, be

1 conducted, returned, and canvassed and the results declared in the same manner as the first  
2 election. However, if the secondary election does not have a federal race, the electronic ballot  
3 marking system is not required and hand-counted ballots may be used. The person receiving the  
4 highest number of votes at the secondary election is nominated as the candidate for the party.

5 Section 12. That § 12-14-1.1 be amended to read as follows:

6 12-14-1.1. ~~It shall be the duty of officials~~ The official in charge of ~~a local elections to~~  
7 election shall notify the county auditor at least ~~thirty~~ forty-five days preceding ~~their a local~~  
8 ~~elections~~ election, of the precinct, ward, representation area, or external boundary changes if any  
9 have been made.

10 Section 13. That § 12-16-1 be amended to read as follows:

11 12-16-1. The county auditor shall provide printed ballots for ~~every~~ each election in which  
12 the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a  
13 primary election shall contain the name of ~~every~~ each candidate who has filed for nomination  
14 and is approved. The printed ballots for the election of officers shall contain the name of ~~every~~  
15 each candidate whose nomination has been certified or filed with the county auditor in the  
16 manner provided by law unless ~~they are~~ the candidate is deemed elected by having no  
17 opposition. The names of the candidates shall appear on the ballot exactly as listed in the  
18 declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed  
19 on paper of a different color from the official ballot but in the same form. The sample ballots  
20 and official ballots shall be printed and in the possession of the county auditor not later than ~~six~~  
21 ~~weeks~~ forty-five days prior to a primary or general election. The county auditor shall also  
22 prepare the necessary ballots if any question is required to be submitted to the voters of the  
23 county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to  
24 12-16-11, inclusive.

1 Section 14. That § 12-19-2 be amended to read as follows:

2 12-19-2. An absentee voter desiring to vote by mail may apply to the person in charge of the  
3 election for an absentee ballot. The application or request shall be made in writing and be signed  
4 by the applicant and shall state the applicant's voter registration address. The application or  
5 request shall contain an oath verifying the validity of the information contained in the  
6 application or request. The oath shall be administered by a notary public or other officer  
7 authorized by statute to administer an oath. If the application or request does not contain an  
8 oath, the application or request shall be accompanied by a copy of the voter's identification card  
9 as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the  
10 person in charge of the election. However, the voter's identification card is not available for  
11 public inspection. The application or request may be used to obtain an absentee ballot for all  
12 elections in that calendar year conducted by the jurisdiction receiving the application or request  
13 if so indicated. ~~If the application or request is from a voter identified as being covered by the~~  
14 ~~Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1,~~  
15 ~~2006, an absentee ballot shall be provided to the voter for each federal election through the next~~  
16 ~~two general elections.~~ The ballot shall be sent to the voter's residence, as shown in the voter  
17 registration file or any temporary residence address designated in writing by the voter, at the  
18 time of applying for the absentee ballot. If the application or request is for a primary, general,  
19 or other statewide election from a voter identified as being covered by the Uniformed and  
20 Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter  
21 may designate on the application for the ballot to be sent electronically. The person in charge  
22 of the election shall stamp the application with the date it was received. The person in charge  
23 of the election shall preserve a record of the name, mailing address, and voting precinct of each  
24 applicant and, except as provided by § 12-19-45, deliver a copy of the record to the

1 superintendent of the election board of the home precinct of the applicant.

2 Section 15. That § 12-19-10 be amended to read as follows:

3 12-19-10. Upon receipt of the sealed return envelope containing the voted ballots, the person  
4 in charge of the election shall keep it in a safe place without opening the envelope or breaking  
5 the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct  
6 superintendent of election of the voter's home precinct. The person in charge of the election  
7 shall have the absentee ballots delivered with the election supplies, or if received later, then  
8 prior to the close of the polls. If the election board is not otherwise engaged in official duties,  
9 or if there are absentee ballots not processed when the polls close, immediately thereafter, the  
10 board shall carefully compare the statement on the reverse side of the official return envelope  
11 with the written application received from the officer in charge of the election without opening  
12 or breaking the seal of the return envelope. If the ballot is contained in a combined absentee  
13 ballot application/return envelope, the comparison of the statement and the application shall be  
14 omitted. The board shall enter the voter's name on the election pollbook and mark the  
15 registration list if:

- 16 (1) The ballots received were voted by the voter whose name appears on the statement;  
17 (2) The voter is registered in such precinct and has not previously voted in that precinct  
18 at the election; and  
19 (3) The written application and statement were both signed by the voter.

20 The board shall then open the envelope without opening, unfolding or examining the ballots  
21 the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with  
22 the other ballots cast at the election. If the board determines that an absentee ballot envelope  
23 cannot be opened because the envelope does not meet the requirements for opening, the reason  
24 shall be written on the envelope, signed by a member of the board, and the envelope placed in

1 a larger envelope for unopened absentee ballots. No person may, prior to the counting of the  
2 votes, open, unfold or examine any ballot, or make any communication to any person  
3 concerning the markings or contents of the ballot. A violation of the preceding sentence is a  
4 Class 2 misdemeanor.

5 Section 16. That § 12-19-12 be amended to read as follows:

6 12-19-12. If an absentee ballot is delivered to a polling place after the polls are closed, the  
7 absentee ballot may not be counted or opened, ~~but a member of the precinct election board shall~~  
8 ~~immediately endorse on the envelope the following: Received after closing of polls, and sign~~  
9 ~~the person's signature thereto and return the absentee ballot with the other ballots to the officer~~  
10 ~~in charge of the conduct of the election.~~

11 Section 17. That § 12-19-14 be amended to read as follows:

12 12-19-14. Any voter who, having procured an official ballot or ballots or Uniformed and  
13 Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to  
14 12-19-12, inclusive, intentionally disposes ~~them~~ of a ballot in any manner other than as provided  
15 in ~~said~~ such sections or provides the UOCAVA ballot link to any other person is guilty of a  
16 Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an  
17 electronically provided absentee ballot.

18 Section 18. That § 12-19-47 be amended to read as follows:

19 12-19-47. The Absentee Ballot Counting Board, during the time prescribed in § 12-19-46,  
20 shall ~~carefully compare the statement on the reverse side of the official return envelope with the~~  
21 ~~written application received from the officer in charge of the election without opening or~~  
22 ~~breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot~~  
23 ~~application/return envelope, the comparison of the statement and the application shall be~~  
24 ~~omitted. If the board is satisfied that the ballots received were voted by the voter whose name~~

1 ~~appears on the statement and that the voter is registered in such precinct and has not previously~~  
2 ~~voted in that precinct at the election, the board shall enter the voter's name on the election~~  
3 ~~pollbook. After opening the envelope without opening, unfolding, or examining the ballots~~  
4 ~~contained in the envelope, the board shall affix to the ballots the official stamp and deposit the~~  
5 ~~ballots in the proper ballot box and count the ballots in the manner prescribed by the State Board~~  
6 ~~of Elections. No person, prior to the counting of the votes, may open, unfold, or examine any~~  
7 ~~ballot, or make any communication to any person concerning the markings or contents of the~~  
8 ~~ballot. A violation of the preceding sentence is a Class 2 misdemeanor process each absentee~~  
9 ~~ballot as required by § 12-19-10.~~

10 Section 19. That § 12-19-48 be amended to read as follows:

11 12-19-48. If an absentee ballot is delivered to an absentee ballot counting board after the  
12 polls are closed the absentee ballot may not be counted or opened, ~~but a member of the absentee~~  
13 ~~ballot counting board shall immediately endorse on the envelope the following: Received after~~  
14 ~~closing of polls, and sign the person's name on the envelope and return the absentee ballot with~~  
15 ~~the other ballots to the officer in charge of the election.~~

16 Section 20. That § 12-20-2.1 be amended to read as follows:

17 12-20-2.1. If the ballot box ~~for any precinct~~ is opened ~~prior to~~ for ballot counting at the  
18 precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed,  
19 placed, and sealed in the provisional or unopened absentee ballot return envelope and returned  
20 ~~unopened~~ to the person in charge of the election with the other election supplies.

21 Section 21. That § 12-20-7 be amended to read as follows:

22 12-20-7. Any ballot or part of a ballot from which it is impossible to determine the voter's  
23 choice by using standards defined by the State Board of Elections shall be void and may not be  
24 counted. ~~If the voter's marks on a ballot are sufficiently plain to determine the voter's intention~~

1 ~~it is the duty of the precinct deputies to count such vote.~~ The State Board of Elections shall  
2 promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

3 Section 22. That § 12-21-24 be amended to read as follows:

4 12-21-24. ~~It shall be the duty of any person or official having custody of ballot boxes~~  
5 ~~containing the ballots to be recounted to produce the same before such board for the purposes~~  
6 ~~of such recount upon notice so to do from the county auditor~~ The county auditor shall provide  
7 the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any  
8 provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted  
9 provisional ballots, and any unopened absentee ballot envelopes to the recount board. The  
10 recount board is authorized to make a determination whether any provisional ballots or absentee  
11 ballots which were determined not to be countable, shall be counted, and those votes shall be  
12 added to the recount tally.

13 Section 23. That § 12-22-2 be amended to read as follows:

14 12-22-2. ~~Such~~ A contest may be instituted by any candidate for a public office, other than  
15 a candidate for ~~United States Senator, Representative in Congress, member of the Legislature,~~  
16 ~~or delegate to, or representative in any other body, convention, committee, or tribunal, which~~  
17 ~~has the final right to determine the qualifications of its members. Legislative contests.~~ A  
18 legislative contest shall be instituted as provided in § 12-22-26.

19 Section 24. That § 13-7-6 be amended to read as follows:

20 13-7-6. No candidate for elective school board membership may be nominated unless such  
21 person is a resident voter of the school district and unless a nominating petition has been filed  
22 on such person's behalf with the business manager of the school district. The nominating  
23 petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the  
24 election. ~~However, if the nominating petition is from a candidate for a vacancy on a new school~~

1 ~~board within a newly created school district entity pursuant to § 13-6-62, the nominating petition~~  
2 ~~shall be filed no later than thirty days prior to the date of the election.~~ The petition is considered  
3 filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the  
4 election. A formal declaration of a candidate shall be signed by the candidate before the  
5 circulation of the petition. The petition shall be signed by not less than twenty voters of the  
6 school district or if the school district is divided into school board representation areas, the  
7 petition shall be signed by not less than twenty voters who reside within the school board  
8 representation area. No petition may be circulated until ten weeks prior to the election. There  
9 shall be added by either the signer or the circulator the signer's place of residence and date of  
10 signing. The petition shall be verified under oath by the person circulating it. The filing of the  
11 nominating petition shall constitute nomination and will entitle the candidate to have the  
12 candidate's name placed on the ballot for the term the candidate specifies on the petition only  
13 upon verification signed by the business manager that the nominating petition contains the  
14 minimum number of signatures and that the candidate is a resident voter.

15 Section 25. That chapter 13-7 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 If the nominating petition is from a candidate for a vacancy on a new school board within  
18 a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be  
19 circulated no more than sixty days prior to the date of the election and filed no later than thirty  
20 days prior to the date of the election.

21 Section 26. That § 31-12A-15 be amended to read as follows:

22 31-12A-15. In each road district an annual election of officers shall be held on the first  
23 Tuesday in May at a place in the district as the board of trustees shall designate. ~~The~~ Unless  
24 otherwise specified, the election shall be conducted according to chapter 8-3, at a meeting of the

1 registered voters who reside in the road district.

2 Section 27. That § 34-47-2 be amended to read as follows:

3 34-47-2. If the voters of both the rural fire protection district and ambulance district approve  
4 a consolidation pursuant to § 34-47-1, the districts shall be consolidated into an emergency  
5 services district on the following January first. After the voters of each district approve the  
6 consolidation and before the consolidation takes effect, the voters of both districts shall meet  
7 together and elect a five-member board of emergency services. Board members shall serve until  
8 their successors are elected and qualified. Three members of the first board shall serve two-year  
9 terms and two members shall serve one-year terms, to be determined by lot at the first board  
10 meeting. Subsequent members of the board shall be elected by the voters at the annual meeting  
11 to serve two-year terms. Unless otherwise specified, an emergency services district board  
12 member election shall be conducted pursuant to chapter 8-3. At its first meeting each year the  
13 board shall elect a president, vice president, and secretary-treasurer.