

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0155

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1033** - 2/14/2011

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

1 FOR AN ACT ENTITLED, An Act to provide for the registration and regulation of appraisal
2 management companies.

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

4 Section 1. Any person or entity acting as an appraisal management company or performing
5 appraisal management services in this state, except an appraisal management company that is
6 a subsidiary owned and controlled by a financial institution regulated by a federal financial
7 institution regulatory agency, shall register with the Department of Revenue and Regulation.
8 Any person or entity who violates this section may be restrained by permanent injunction in any
9 court of competent jurisdiction, at the suit of the attorney general or any citizen of the state.

10 Section 2. For the purposes of this Act, the term, appraisal management company, means,
11 in connection with valuing properties and collateralizing mortgage loans or mortgages
12 incorporated into a securitization, any external third party authorized either by a creditor of a
13 consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of
14 or other principal in the secondary mortgage markets, that oversees a network or panel of more



1 than fifteen certified or licensed appraisers in a state or twenty-five or more nationally within
2 a given year to:

- 3 (1) Recruit, select, and retain appraisers;
- 4 (2) Contract with licensed or certified appraisers to perform appraisal assignments;
- 5 (3) Manage the process of having an appraisal performed, including providing
6 administrative duties including:
 - 7 (a) Receiving appraisal orders and appraisal reports;
 - 8 (b) Submitting completed appraisal reports to creditors and underwriters;
 - 9 (c) Collecting fees from creditors and underwriters for services provided; or
 - 10 (d) Reimbursing appraisers for services performed; or
- 11 (4) Review and verify the work of appraisers for compliance with the Uniform Standards
12 of Professional Appraisal Practice.

13 Section 3. For the purposes of this chapter, an appraisal is the act or process of estimating
14 value of real estate for another and for compensation.

15 Section 4. The secretary of the Department of Revenue and Regulation may promulgate
16 rules pursuant to chapter 1-26 relating to appraisal management companies and appraisal
17 management services as follows:

- 18 (1) Registration of appraisal management companies;
- 19 (2) Definition of terms;
- 20 (3) Responsibilities and duties;
- 21 (4) Application for and issuance of certificate of registration;
- 22 (5) Renewal and late renewal procedures;
- 23 (6) Investigation and contracting for investigations;
- 24 (7) Complaints and grounds for disciplinary actions, including denial, revocation,

- 1 suspension, censure, and reprimand;
- 2 (8) Retention and inspection of records;
- 3 (9) Roster;
- 4 (10) Review of appraisal related records;
- 5 (11) Inspection, examination, and photocopy of records; and
- 6 (12) National registry fee collection and remittance.

7 Section 5. The secretary of the Department of Revenue and Regulation may promulgate
8 rules pursuant to chapter 1-26 to establish fees for registration of appraisal management
9 companies as follows:

- 10 (1) Application fees not to exceed one thousand dollars;
- 11 (2) Renewal fees not to exceed one thousand dollars; and
- 12 (3) An additional late renewal fee not to exceed six hundred dollars.

13 Section 6. All moneys received by the Department of Revenue and Regulation pursuant to
14 this Act shall be deposited by the department with the state treasurer. The state treasurer shall
15 credit the moneys to the South Dakota appraisal management companies fund. Expenditure
16 from this fund shall only be paid on warrants drawn by the state auditor and approved by the
17 department.

18 Section 7. Any expenditure of money from the South Dakota appraisal management
19 companies fund shall be made only upon appropriation by the Legislature through either the
20 general appropriations act or a special appropriations bill.

21 Section 8. The secretary of the Department of Revenue and Regulation may impose a
22 monetary penalty not to exceed two thousand dollars on an appraisal management company
23 registered pursuant to this Act or on an unregistered appraisal management company performing
24 appraisal management services in this state, upon proof of a violation of the rules relating to

1 appraisal management companies as adopted by the department pursuant to chapter 1-26 or a
2 violation of this Act.

3 Section 9. The secretary of the Department of Revenue and Regulation may assess to a
4 registered appraisal management company, an applicant for registration as an appraisal
5 management company, or an unregistered appraisal management company performing appraisal
6 management services in this state, all or part of the actual expenses of a contested case
7 proceeding resulting in the discipline or censure of the registrant, suspension or revocation of
8 the registrant's certificate of registration, the denial of a certificate of registration to the
9 applicant, or the discipline or censure of an unregistered appraisal management company
10 performing appraisal management services in this state.

11 Section 10. No employee, director, officer, agent, independent contractor or other third party
12 acting on behalf of an appraisal management company may:

- 13 (1) Improperly influence or attempt to improperly influence the development, reporting,
14 result, or review of a real estate appraisal;
- 15 (2) Intimidate, coerce, extort, bribe, blackmail, withhold payment for appraisal services,
16 or threaten to exclude the real estate appraiser from future work in order to
17 improperly obtain a desired result;
- 18 (3) Condition payment of an appraisal fee upon the opinion, conclusion, or valuation to
19 be reached;
- 20 (4) Request a real estate appraiser to report a predetermined opinion, conclusion, or
21 valuation or the desired valuation of any person or entity;
- 22 (5) Engage in any other act or practice that impairs or attempts to impair a real estate
23 appraiser's independence, objectivity, and impartiality;
- 24 (6) Require a real estate appraiser to provide the appraisal management company with

1 the appraiser's digital signature or seal;

2 (7) Alter, amend, or change an appraisal report submitted by a real estate appraiser;

3 (8) Remove an appraiser from a real estate appraiser panel without prior written notice
4 to the appraiser, with the prior written notice including evidence of the following:

5 (a) The appraiser's illegal conduct;

6 (b) A violation of the appraisal standards adopted by the Department of Revenue
7 and Regulation pursuant to this Act; or

8 (c) Improper or unprofessional conduct; or

9 (9) Require an appraiser to sign any indemnification agreement that would require the
10 appraiser to defend and hold harmless the appraisal management company or any of
11 its agents or employees for any liability, damage, losses, or claims arising out of the
12 services performed by the appraisal management company or its agents, employees,
13 or independent contractors and not the services performed by the appraiser.

14 A violation of this section may constitute grounds for discipline against an appraisal
15 management company who is registered pursuant to the laws of the State of South Dakota.

16 Section 11. No appraisal management company violates section 10 of this Act solely by
17 asking a real estate appraiser to:

18 (1) Consider additional, appropriate property information;

19 (2) Provide further detail, substantiation, or explanation for the appraiser's value
20 conclusion; or

21 (3) Correct errors in the appraisal report.

22 An appraisal management company may retain a real estate appraiser from panels or lists
23 on a rotating basis; supply an appraiser with information the appraiser is required to analyze
24 under the appraisal standards adopted by the department, such as agreements of sale, options,

1 and listings of the property to be valued; and withhold payment of an appraisal fee based on a
2 bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by
3 the Department of Revenue and Regulation pursuant to this Act.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

940S0307

HOUSE JUDICIARY ENGROSSED NO. **HB 1062** - 2/2/2011

Introduced by: Representatives Lust, Brunner, Dryden, Moser, Perry, Rausch, and Romkema
and Senators Nygaard, Nelson (Tom), Rhoden, Schlekeway, Tieszen, and
Vehle

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Adult Guardianship and Protective
2 Proceedings Jurisdiction Act.

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

4 Section 101. This Act may be cited as the Uniform Adult Guardianship and Protective
5 Proceedings Jurisdiction Act.

6 Section 102. In this Act:

7 (1) "Adult" means an individual who has attained eighteen years of age.

8 (2) "Conservator" means a person appointed by the court to administer the property of
9 an adult, including a person appointed under chapter 29A-5.

10 (3) "Guardian" means a person appointed by the court to make decisions regarding the
11 person of an adult, including a person appointed under chapter 29A-5, but excludes
12 one who is merely a guardian ad litem.

13 (4) "Guardianship order" means an order appointing a guardian, limited guardian, or
14 temporary guardian.



- 1 (5) "Guardianship proceeding" means a judicial proceeding in which an order for the
2 appointment of a guardian is sought or has been issued.
- 3 (6) "Party" means the respondent, petitioner, guardian, conservator, or any other person
4 allowed by the court to participate in a guardianship or protective proceeding.
- 5 (7) "Person," except in the term, protected person, means an individual, corporation,
6 business trust, estate, trust, partnership, limited liability company, association, joint
7 venture, public corporation, government or governmental subdivision, agency, or
8 instrumentality, or any other legal or commercial entity.
- 9 (8) "Protected person" means an adult for whom a guardian or conservator has been
10 appointed.
- 11 (9) "Protective order" means an order appointing a conservator or other order related to
12 management of an adult's property.
- 13 (10) "Protective proceeding" means a judicial proceeding in which a protective order is
14 sought or has been issued.
- 15 (11) "Provisional order" means a temporary, preliminary, or tentative order which must
16 be finalized by a subsequent order.
- 17 (12) "Record" means information that is inscribed on a tangible medium or that is stored
18 in an electronic or other medium and is retrievable in perceivable form.
- 19 (13) "Respondent" means an adult alleged to need protection for whom a protective order
20 or the appointment of a guardian is sought.
- 21 (14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, a federally recognized Indian tribe, or any territory or
23 insular possession subject to the jurisdiction of the United States.
- 24 Section 103. A court of this state may treat a foreign country as if it were a state for the

1 purpose of applying sections 101 to 302, inclusive, of this Act, and sections 501 and 502 of this
2 Act.

3 Section 104. (a) A court of this state may communicate with a court in another state
4 concerning a proceeding arising under this Act. The court may allow the parties to participate
5 in the communication. Except as otherwise provided in subsection (b), the court shall make a
6 record of the communication. The record may be limited to the fact that the communication
7 occurred.

8 (b) Courts may communicate concerning schedules, calendars, court records, and other
9 administrative matters without making a record.

10 Section 105. (a) In a guardianship or protective proceeding in this state, a court of this state
11 may request the appropriate court of another state to do any of the following:

- 12 (1) Hold an evidentiary hearing;
- 13 (2) Order a person in that state to produce evidence or give testimony pursuant to
14 procedures of that state;
- 15 (3) Order that an evaluation or assessment be made of the respondent;
- 16 (4) Order any appropriate investigation of a person involved in a proceeding;
- 17 (5) Forward to the court of this state a certified copy of the transcript or other record of
18 a hearing under paragraph (1) or any other proceeding, any evidence otherwise
19 produced under paragraph (2), and any evaluation or assessment prepared in
20 compliance with an order under paragraph (3) or (4);
- 21 (6) Issue any order necessary to assure the appearance in the proceeding of a person
22 whose presence is necessary for the court to make a determination, including the
23 respondent or the protected person;
- 24 (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant

1 information in that state, including protected health information as defined in 45
2 C.F.R 160.103, as of January 1, 2011.

3 (b) If a court of another state in which a guardianship or protective proceeding is pending
4 requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction
5 for the limited purpose of granting the request or making reasonable efforts to comply with the
6 request.

7 Section 106. (a) In a guardianship or protective proceeding, in addition to other procedures
8 that may be available, testimony of a witness who is located in another state may be offered by
9 deposition or other means allowable in this state for testimony taken in another state. The court
10 on its own motion may order that the testimony of a witness be taken in another state and may
11 prescribe the manner in which and the terms upon which the testimony is to be taken.

12 (b) In a guardianship or protective proceeding, a court in this state may permit a witness
13 located in another state to be deposed or to testify by telephone or audiovisual or other electronic
14 means. A court of this state shall cooperate with the court of the other state in designating an
15 appropriate location for the deposition or testimony.

16 (c) Documentary evidence transmitted from another state to a court of this state by
17 technological means that do not produce an original writing may not be excluded from evidence
18 on an objection based on the best evidence rule.

19 Section 201. (a) In sections 201 to 209, inclusive, of this Act:

20 (1) "Emergency" means a circumstance that likely will result in substantial harm to a
21 respondent's health, safety, or welfare, and for which the appointment of a guardian
22 is necessary because no other person has authority and is willing to act on the
23 respondent's behalf;

24 (2) "Home state" means the state in which the respondent was physically present,

1 including any period of temporary absence, for at least six consecutive months
2 immediately before the filing of a petition for a protective order or the appointment
3 of a guardian; or if none, the state in which the respondent was physically present,
4 including any period of temporary absence, for at least six consecutive months
5 ending within the six months prior to the filing of the petition.

6 (3) "Significant-connection state" means a state, other than the home state, with which
7 a respondent has a significant connection other than mere physical presence and in
8 which substantial evidence concerning the respondent is available.

9 (b) In determining under sections 203 of this Act and section 301(e) of this Act whether a
10 respondent has a significant connection with a particular state, the court shall consider:

11 (1) The location of the respondent's family and other persons required to be notified of
12 the guardianship or protective proceeding;

13 (2) The length of time the respondent at any time was physically present in the state and
14 the duration of any absence;

15 (3) The location of the respondent's property; and

16 (4) The extent to which the respondent has ties to the state such as voting registration,
17 state or local tax return filing, vehicle registration, drivers license, social relationship,
18 and receipt of services.

19 Section 202. Sections 201 to 209, inclusive, of this Act, provide the exclusive jurisdictional
20 basis for a court of this state to appoint a guardian or issue a protective order for an adult.

21 Section 203. A court of this state has jurisdiction to appoint a guardian or issue a protective
22 order for a respondent if:

23 (1) This state is the respondent's home state;

24 (2) On the date the petition is filed, this state is a significant-connection state and:

1 (A) The respondent does not have a home state or a court of the respondent's home
2 state has declined to exercise jurisdiction because this state is a more
3 appropriate forum; or

4 (B) The respondent has a home state, a petition for an appointment or order is not
5 pending in a court of that state or another significant-connection state, and,
6 before the court makes the appointment or issues the order:

7 (i) A petition for an appointment or order is not filed in the respondent's
8 home state;

9 (ii) An objection to the court's jurisdiction is not filed by a person required
10 to be notified of the proceeding; and

11 (iii) The court in this state concludes that it is an appropriate forum under
12 the factors set forth in section 206 of this Act;

13 (3) This state does not have jurisdiction under either paragraph (1) or (2), the
14 respondent's home state and all significant-connection states have declined to
15 exercise jurisdiction because this state is the more appropriate forum, and jurisdiction
16 in this state is consistent with the constitutions of this state and the United States; or

17 (4) The requirements for special jurisdiction under section 204 of this Act are met.

18 Section 204. (a) A court of this state lacking jurisdiction under section 203 of this Act has
19 special jurisdiction to do any of the following:

20 (1) Appoint a temporary guardian pursuant to § 29A-5-315 in an emergency for a term
21 not exceeding ninety days for a respondent who is physically present in this state
22 unless extended by the court for up to an additional ninety days for good cause
23 shown;

24 (2) Issue a protective order with respect to real or tangible personal property located in

1 this state;

2 (3) Appoint a guardian or conservator for the protected person for whom a provisional
3 order to transfer the proceeding from another state has been issued under procedures
4 similar to section 301 of this Act.

5 (b) If a petition for the appointment of a guardian in an emergency is brought in this state
6 and this state was not the respondent's home state on the date the petition was filed, the court
7 shall dismiss the proceeding at the request of the court of the home state, if any, whether
8 dismissal is requested before or after the emergency appointment.

9 Section 205. Except as otherwise provided in section 204 of this Act, a court that has
10 appointed a guardian or issued a protective order consistent with this Act has exclusive and
11 continuing jurisdiction over the proceeding until it is terminated by the court or the appointment
12 or order expires by its own terms.

13 Section 206. (a) A court of this state having jurisdiction under section 203 of this Act to
14 appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it
15 determines at any time that a court of another state is a more appropriate forum.

16 (b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall
17 either dismiss or stay the proceeding. The court may impose any condition the court considers
18 just and proper, including the condition that a petition for the appointment of a guardian or
19 issuance of a protective order be filed promptly in another state.

20 (c) In determining whether it is an appropriate forum, the court shall consider all relevant
21 factors, including:

22 (1) Any expressed preference of the respondent;

23 (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to
24 occur and which state could best protect the respondent from the abuse, neglect, or

1 exploitation;

2 (3) The length of time the respondent was physically present in or was a legal resident
3 of this or another state;

4 (4) The distance of the respondent from the court in each state;

5 (5) The financial circumstances of the respondent's estate;

6 (6) The nature and location of the evidence;

7 (7) The ability of the court in each state to decide the issue expeditiously and the
8 procedures necessary to present evidence;

9 (8) The familiarity of the court of each state with the facts and issues in the proceeding;
10 and

11 (9) If an appointment were made, the court's ability to monitor the conduct of the
12 guardian or conservator.

13 Section 207. (a) If at any time a court of this state determines that it acquired jurisdiction to
14 appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

15 (1) Decline to exercise jurisdiction;

16 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to
17 ensure the health, safety, and welfare of the respondent or the protection of the
18 respondent's property or prevent a repetition of the unjustifiable conduct, including
19 staying the proceeding until a petition for the appointment of a guardian or issuance
20 of a protective order is filed in a court of another state having jurisdiction; or

21 (3) Continue to exercise jurisdiction after considering:

22 (A) The extent to which the respondent and all persons required to be notified of
23 the proceedings have acquiesced in the exercise of the court's jurisdiction;

24 (B) Whether it is a more appropriate forum than the court of any other state under

1 the factors set forth in section 206(c) of this Act; and

2 (C) Whether the court of any other state would have jurisdiction under factual
3 circumstances in substantial conformity with the jurisdictional standards of
4 section 203 of this Act.

5 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
6 issue a protective order because a party seeking to invoke its jurisdiction engaged in
7 unjustifiable conduct, it may assess against that party necessary and reasonable expenses,
8 including attorney's fees, investigative fees, court costs, communication expenses, witness fees
9 and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind
10 against this state or a governmental subdivision, agency, or instrumentality of this state unless
11 authorized by law other than this Act.

12 Section 208. If a petition for the appointment of a guardian or issuance of a protective order
13 is brought in this state and this state was not the respondent's home state on the date the petition
14 was filed, in addition to complying with the notice requirements of this state, notice of the
15 petition must be given to those persons who would be entitled to notice of the petition if a
16 proceeding were brought in the respondent's home state. The notice must be given in the same
17 manner as notice is required to be given in this state.

18 Section 209. Except for a petition for the appointment of a guardian in an emergency or
19 issuance of a protective order limited to property located in this state under section 204(a)(1)
20 or (a)(2) of this Act, if a petition for the appointment of a guardian or issuance of a protective
21 order is filed in this state and in another state and neither petition has been dismissed or
22 withdrawn, the following rules apply:

23 (1) If the court in this state has jurisdiction under section 203 of this Act, it may proceed
24 with the case unless a court in another state acquires jurisdiction under provisions

1 similar to section 203 of this Act before the appointment or issuance of the order.

2 (2) If the court in this state does not have jurisdiction under section 203 of this Act,
3 whether at the time the petition is filed or at any time before the appointment or
4 issuance of the order, the court shall stay the proceeding and communicate with the
5 court in the other state. If the court in the other state has jurisdiction, the court in this
6 state shall dismiss the petition unless the court in the other state determines that the
7 court in this state is a more appropriate forum.

8 Section 301. (a) A guardian or conservator appointed in this state may petition the court to
9 transfer the guardianship or conservatorship to another state.

10 (b) Notice of a petition under subsection (a) must be given to the persons that would be
11 entitled to notice of a petition in this state for the appointment of a guardian or conservator.

12 (c) On the court's own motion or on request of the guardian or conservator, the protected
13 person, or other person required to be notified of the petition, the court shall hold a hearing on
14 a petition filed pursuant to subsection (a).

15 (d) The court shall issue an order provisionally granting a petition to transfer a guardianship
16 and shall direct the guardian to petition for guardianship in the other state if the court is satisfied
17 that the guardianship will be accepted by the court in the other state and the court finds that:

18 (1) The protected person is physically present in or is reasonably expected to move
19 permanently to the other state;

20 (2) An objection to the transfer has not been made or, if an objection has been made, the
21 objector has not established that the transfer would be contrary to the interests of the
22 protected person; and

23 (3) Plans for care and services for the protected person in the other state are reasonable
24 and sufficient.

1 (e) The court shall issue a provisional order granting a petition to transfer a conservatorship
2 and shall direct the conservator to petition for conservatorship in the other state if the court is
3 satisfied that the conservatorship will be accepted by the court of the other state and the court
4 finds that:

5 (1) The protected person is physically present in or is reasonably expected to move
6 permanently to the other state, or the protected person has a significant connection
7 to the other state considering the factors in section 201(b) of this Act;

8 (2) An objection to the transfer has not been made or, if an objection has been made, the
9 objector has not established that the transfer would be contrary to the interests of the
10 protected person; and

11 (3) Adequate arrangements will be made for management of the protected person's
12 property.

13 (f) The court shall issue a final order confirming the transfer and terminating the
14 guardianship or conservatorship upon its receipt of:

15 (1) A provisional order accepting the proceeding from the court to which the proceeding
16 is to be transferred which is issued under provisions similar to section 302 of this
17 Act; and

18 (2) The documents required to terminate a guardianship or conservatorship in this state.

19 Section 302. (a) To confirm transfer of a guardianship or conservatorship transferred to this
20 state under provisions similar to section 301 of this Act, the guardian or conservator must
21 petition the court in this state to accept the guardianship or conservatorship. The petition must
22 include a certified copy of the other state's provisional order of transfer.

23 (b) Notice of a petition under subsection (a) must be given to those persons that would be
24 entitled to notice if the petition were a petition for the appointment of a guardian or issuance of

1 a protective order in both the transferring state and this state. The notice must be given in the
2 same manner as notice is required to be given in this state.

3 (c) On the court's own motion or on request of the guardian or conservator, the protected
4 person, or other person required to be notified of the proceeding, the court shall hold a hearing
5 on a petition filed pursuant to subsection (a).

6 (d) The court shall issue an order provisionally granting a petition filed under subsection (a)
7 unless:

8 (1) An objection is made and the objector establishes that transfer of the proceeding
9 would be contrary to the interests of the protected person; or

10 (2) The guardian or conservator is ineligible for appointment in this state.

11 (e) The court shall issue a final order accepting the proceeding and appointing the guardian
12 or conservator as guardian or conservator in this state upon its receipt from the court from which
13 the proceeding is being transferred of a final order issued under provisions similar to section 301
14 of this Act transferring the proceeding to this state.

15 (f) Not later than ninety days after issuance of a final order accepting transfer of a
16 guardianship or conservatorship, the court shall determine whether the guardianship or
17 conservatorship needs to be modified to conform to the law of this state.

18 (g) In granting a petition under this section, the court shall recognize a guardianship or
19 conservatorship order from the other state, including the determination of the protected person's
20 incapacity and the appointment of the guardian or conservator.

21 (h) The denial by a court of this state of a petition to accept a guardianship or
22 conservatorship transferred from another state does not affect the ability of the guardian or
23 conservator to seek appointment as guardian or conservator in this state under chapter 29A-5
24 if the court has jurisdiction to make an appointment other than by reason of the provisional order

1 of transfer.

2 Section 401. If a guardian has been appointed in another state and a petition for the
3 appointment of a guardian is not pending in this state, the guardian appointed in the other state,
4 after giving notice to the appointing court of an intent to register, may register the guardianship
5 order in this state by filing as a foreign judgment in a court, in any appropriate county of this
6 state, certified copies of the order and letters of office.

7 Section 402. If a conservator has been appointed in another state and a petition for a
8 protective order is not pending in this state, the conservator appointed in the other state, after
9 giving notice to the appointing court of an intent to register, may register the protective order
10 in this state by filing as a foreign judgment in a court of this state, in any county in which
11 property belonging to the protected person is located, certified copies of the order and letters of
12 office and of any bond.

13 Section 403. (a) Upon registration of a guardianship or protective order from another state,
14 the guardian or conservator may exercise in this state all powers authorized in the order of
15 appointment except as prohibited under the laws of this state, including maintaining actions and
16 proceedings in this state and, if the guardian or conservator is not a resident of this state, subject
17 to any conditions imposed upon nonresident parties.

18 (b) A court of this state may grant any relief available under this Act and other law of this
19 state to enforce a registered order.

20 Section 501. In applying and construing this uniform act, consideration must be given to the
21 need to promote uniformity of the law with respect to its subject matter among states that enact
22 it.

23 Section 502. This Act modifies, limits, and supersedes the federal Electronic Signatures in
24 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,

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

3 Section 503. That § 29A-5-108 be amended to read as follows:

4 29A-5-108. A petition for the appointment of a guardian or conservator shall be filed in the
5 county in which the minor ~~or person alleged to need protection~~ either resides or is present or,
6 if the minor ~~or person alleged to need protection~~ has been admitted to a facility pursuant to an
7 order of court, in the county in which that court is located. If the minor ~~or person alleged to need~~
8 ~~protection~~ neither resides in nor is present in this state, a petition for the appointment of a
9 conservator shall be filed in a county in which the minor ~~or person alleged to need protection~~
10 has property or in the county having jurisdiction of a decedent's estate in which the minor ~~or~~
11 ~~person alleged to need protection~~ has an interest. The court of the county in which the
12 proceeding is first commenced shall have exclusive jurisdiction to decide the petition unless that
13 court determines that a transfer of venue would be in the best interests of the minor ~~or person~~
14 ~~alleged to need protection~~.

15 Section 503.1 That § 29A-5-109 be amended to read as follows:

16 29A-5-109. Following the appointment of a guardian or conservator, the court with
17 jurisdiction over the proceeding may order the transfer of jurisdiction to another county in this
18 state or to another state if it appears to the court by reason of the residence or location of the
19 minor ~~or protected person~~, the location of a major portion of the property, or the residence of
20 the guardian or conservator, that the interests of the minor ~~or protected person~~ will be best
21 served by a transfer.

22 Section 504. (a) This Act applies to guardianship and protective proceedings begun after
23 June 30, 2011.

24 (b) The provisions of sections 101 to 106, inclusive, and 301 to 502, inclusive, of this Act,

- 1 apply to proceedings begun before [the effective date], regardless of whether a guardianship or
- 2 protective order has been issued.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

743S0390

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1130** - 2/28/2011

Introduced by: Representatives Feinstein, Gosch, Hunhoff (Bernie), Kirkeby, Lucas, and
Lust and Senators Adelstein and Hansen (Tom)

1 FOR AN ACT ENTITLED, An Act to allow certain adult children of overseas citizens to vote
2 in the state.

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

4 Section 1. That § 12-4-4.4 be amended to read as follows:

5 12-4-4.4. Any overseas citizen ~~shall have the right to~~ may register and vote in any federal,
6 state, county, or local election held within South Dakota under the following conditions:

7 (1) The overseas citizen, or the spouse or parent of the overseas citizen, was last
8 domiciled in South Dakota immediately prior to departure from the United States;

9 (2) The overseas citizen does not maintain a domicile, is not registered to vote, and is not
10 voting in any other state;

11 (3) The overseas citizen is otherwise qualified to vote according to law.

12 Section 2. That § 12-4-4.5 be amended to read as follows:

13 12-4-4.5. The overseas citizen ~~shall be allowed to~~ may register and vote absentee in the same
14 county and election precinct in which the overseas citizen, or spouse or parent of the overseas



1 citizen, resided immediately prior to leaving the United States.

2 Section 3. That chapter 12-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If an overseas citizen who has never resided in South Dakota, who is the adult child of an
5 active duty member of the armed forces of the United States, and who has not reached the age
6 of twenty-two and is eligible to register to vote pursuant to § 12-4-4.4, the voter registration of
7 the adult child shall be accompanied by a photocopy of the adult child's United States passport
8 identification page and an overseas registrant form indicating where the adult child's parent is
9 registered to vote in South Dakota. The State Board of Elections shall prescribe the overseas
10 registrant form.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

364S0287

HOUSE STATE AFFAIRS
ENGROSSED NO. **HB 1148** - 2/7/2011

Introduced by: Representatives Verchio, Boomgarden, Greenfield, Olson (Betty), Russell, Solum, and Turbiville and Senators Krebs, Brown, Gray, Maher, Nelson (Tom), and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise the minimum wage law for certain seasonal
2 employees and to declare an emergency.

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

4 Section 1. That § 60-11-3 be amended to read as follows:

5 60-11-3. Every employer shall pay to each employee wages at a rate of not less than seven
6 dollars and twenty-five cents an hour. Violation of this section is a Class 2 misdemeanor.

7 The provisions of this section do not apply to certain employees being paid an opportunity
8 wage pursuant to § 60-11-4.1, babysitters, or outside ~~salesmen~~ salespersons. The provisions of
9 this section also do not apply to employees employed by an amusement or recreational
10 establishment, an organized camp, or a religious or nonprofit educational conference center if
11 one of the following apply:

12 (1) The establishment, camp, or center does not operate for more than seven months in
13 any calendar year; or

14 (2) During the preceding calendar year, the average receipts of the establishment, camp,



1 or center for any six months of the calendar year were not more than thirty-three and
2 one-third percent of its average receipts for the other six months of the year.

3 Section 2. That § 60-11-3.1 be amended to read as follows:

4 60-11-3.1. Any employer of a tipped employee shall pay a cash wage of not less than two
5 dollars and thirteen cents an hour if the employer claims a tip credit against the employer's
6 minimum wage obligation. If an employee's tips combined with the employer's cash wage of not
7 less than two dollars and thirteen cents an hour do not equal the minimum hourly wage, the
8 employer shall make up the difference as additional wages for each regular pay period of the
9 employer.

10 A "tipped employee" is one engaged in an occupation in which the employee customarily
11 and regularly receives more than thirty-five dollars a month in tips or other considerations.

12 This section does not apply to babysitters or outside ~~salesmen~~ salespersons. This section also
13 does not apply to employees employed by an amusement or recreational establishment, an
14 organized camp, or a religious or nonprofit educational conference center if one of the following
15 apply:

16 (1) The establishment, camp, or center does not operate for more than seven months in
17 any calendar year; or

18 (2) During the preceding calendar year, the average receipts of the establishment, camp,
19 or center for any six months of the calendar year were not more than thirty-three and
20 one-third percent of its average receipts for the other six months of the year.

21 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,
22 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
23 effect from and after its passage and approval.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

175S0435

HOUSE ENGROSSED NO. **HB 1154** - 2/8/2011

Introduced by: Representatives Lust, Deelstra, Fargen, Hoffman, Hunhoff (Bernie), Moser,
and Novstrup (David) and Senators Cutler, Adelstein, Peters, and Vehle

1 FOR AN ACT ENTITLED, An Act to require persons convicted of crimes involving domestic
2 violence to support domestic violence programs.

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

4 Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to any other penalty, assessment, or fine provided by law, the court shall order
7 any person convicted of a crime involving domestic violence or domestic abuse to remit costs
8 in the amount of twenty-five dollars to the clerk of courts. The clerk of courts shall forward any
9 amount collected to the county treasurer for deposit in the county domestic violence program
10 fund. Failure to remit the amount to the clerk of courts in the time specified by the court is
11 punishable by contempt proceedings.



State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

681S0438

HOUSE TAXATION ENGROSSED NO. **HB 1157** - 2/15/2011

Introduced by: Representatives Kirkeby, Greenfield, Hunhoff (Bernie), Kopp, Verchio, and Willadsen and Senators Maher, Haverly, Peters, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise the rate of the insurance company premium and
2 annuity taxes applied to court appearance bonds and to establish an annual fee for certificate
3 of authority for domestic insurers issuing court appearance bonds.

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

5 Section 1. That § 10-44-2 be amended to read as follows:

6 10-44-2. Any company doing insurance business in this state shall pay a tax at the rates
7 specified in this section. The tax shall be paid to the Division of Insurance at the time the
8 company files its annual statement, or, if no annual statement is required, then before March
9 first of each year.

10 If, during the previous year, a company paid more than five thousand dollars in premium
11 taxes in this state, the company shall submit payments equal to one-quarter of the previous year's
12 premium taxes to the Division of Insurance on April thirtieth, July thirty-first, October thirty-
13 first, and January thirty-first. The quarterly payments shall be credited against the amount due
14 from the company at the time the company files its annual statement, or if no annual statement



1 is required, then on March first of each year. The director of the Division of Insurance may
2 waive the requirement in writing for quarterly payments or reduce the amount of deposit if the
3 director finds the requirement would impose an undue premium tax on a company because of
4 a significant decline in sales within the state. If the sum of the quarterly payments exceeds the
5 total taxes due, the director shall credit the overpayment against subsequent amounts due or, if
6 requested in writing at the time the company files its annual statement, refund the overpayment
7 to the company. If the overpayment cannot be credited, there is excess remaining after the credit
8 is taken on the annual statement, or the refund is not requested, the division may refund the
9 amount overpaid by May first of the following year. The rates are:

10 (1) On each domestic company, two and one-half percent of premiums, except for life
11 insurance policies, other than credit life as defined in chapter 58-19, of a face amount
12 of seven thousand dollars or less, for which the rate is one and one-fourth percent of
13 premiums; and one and one-fourth percent of the consideration for annuity contracts.

14 However, the rate for life insurance ~~and~~, annuities, and court appearance bonds shall
15 be computed as follows:

16 (a) Two and one-half percent of premiums for a life policy on the first one
17 hundred thousand dollars of annual premium, and eight one-hundredths of a
18 percent for that portion of a policy's annual life premiums exceeding one
19 hundred thousand dollars; ~~and~~

20 (b) One and one-fourth percent of the consideration for an annuity contract on the
21 first five hundred thousand dollars of consideration, and eight one-hundredths
22 of a percent for that portion of the consideration on an annuity contract
23 exceeding five hundred thousand dollars; and

24 (c) One percent of premiums for court appearance bonds.

1 The tax also applies to premiums for insurance written on individuals residing
2 outside this state or property located outside this state if no comparable tax is paid
3 by the direct writing company to any other appropriate taxing authority. However, the
4 tax applies only to premiums for insurance written after July 1, 1980, on individuals
5 residing outside of the United States;

6 (2) On each foreign company the rate shall be computed as follows:

7 (a) Two and one-half percent of premiums, except for life insurance policies,
8 other than credit life as defined in chapter 58-19, of a face amount of seven
9 thousand dollars or less, for which the rate is one and one-fourth percent of
10 premiums;

11 (b) Two and one-half percent of premiums for a life policy on the first one
12 hundred thousand dollars of annual premium, and eight one-hundredths of a
13 percent for the portion of a policy's annual life premiums exceeding one
14 hundred thousand dollars; ~~and~~

15 (c) One and one-fourth percent of the consideration for an annuity contract on the
16 first five hundred thousand dollars of consideration, and eight one-hundredths
17 of a percent for that portion of the consideration on an annuity contract
18 exceeding five hundred thousand dollars; and

19 (d) One percent of premiums for court appearance bonds;

20 (3) On each insurer not licensed or not authorized to do business in this state the rate
21 shall be computed as follows:

22 (a) Two and one-half percent of premiums, except for life insurance policies,
23 other than credit life as defined in chapter 58-19, of a face amount of seven
24 thousand dollars or less, for which the rate is one and one- fourth percent of

1 premiums;

2 (b) Two and one-half percent of premiums for a life policy on the first one
3 hundred thousand dollars of annual premium, and eight one-hundredths of a
4 percent for that portion of a policy's annual life premiums exceeding one
5 hundred thousand dollars; ~~and~~

6 (c) One and one-fourth percent of the consideration for an annuity contract on the
7 first five hundred thousand dollars of consideration, and eight one-hundredths
8 of a percent for that portion of the consideration on an annuity contract
9 exceeding five hundred thousand dollars; and

10 (d) One percent of premiums for court appearance bonds;

11 (4) Fourteen dollars for each insurance policy issued or renewed for workers'
12 compensation coverage.

13 Revenue from subdivision (4) of this section shall be deposited in the insurance operating
14 fund of the state treasury and is dedicated to the Department of Labor for purposes of
15 automating the administration of the workers' compensation law and supporting the Workers'
16 Compensation Advisory Council.

17 Section 2. That § 58-2-29 be amended by adding thereto a NEW SUBDIVISION to read as
18 follows:

19 (14) Annual renewal of certificate of authority for domestic insurer issuing court
20 appearance bonds 6,000

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

915S0583

SENATE LOCAL GOVERNMENT ENGROSSED NO. **HB 1174** - 2/25/2011

Introduced by: Representatives Conzet, Abdallah, Kirkeby, Novstrup (David), Solum, Stricherz, and Tornow and Senators Rampelberg and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning alcoholic beverage
2 licenses issued at the county fairgrounds.

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

4 Section 1. That § 35-4-12335-4-123 be amended to read as follows:

5 35-4-123. Any county operating a county fairgrounds may, by resolution, without an
6 election, but subject to referendum, ~~make application for the issuance of an~~ issue one on-sale
7 license, including a malt beverage retailer's license, at the county fairgrounds to an applicant
8 who is authorized by the county to operate as the leaseholder at the county fairgrounds. The
9 selling, serving, or dispensing of any alcoholic beverage at the county fairgrounds may not occur
10 more than one hour before the commencement of any event at the county fairgrounds or at any
11 time after the event is concluded. A license issued pursuant to this section may not be
12 transferred. The license shall be issued without regard to the population limitations established
13 pursuant to §§ 35-4-11 and 35-4-11.1.



State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

635S0526

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1215** - 2/8/2011

Introduced by: Representatives Sigdestad, Abdallah, Dennert, Schrempp, Van Gerpen, White, and Wismer and Senators Tidemann, Frerichs, Fryslie, Hansen (Tom), Hundstad, Nygaard, Putnam, and Vehle

1 FOR AN ACT ENTITLED, An Act to repeal certain refund provisions of the motor fuel tax for
2 certain nonhighway agricultural use of motor fuels and to provide for the distribution of
3 such motor fuel tax.

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

5 Section 1. That § 10-47B-119 be repealed.

6 ~~— 10-47B-119. Any motor fuel consumer may apply for and obtain a refund of fuel taxes~~
7 ~~imposed and paid to this state, for motor fuel purchased and used by consumers in motor~~
8 ~~vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes~~
9 ~~or used in motor vehicles or equipment for nonhighway commercial uses. The portion of this~~
10 ~~refund attributed to nonhighway use of motor vehicles shall be calculated by multiplying the~~
11 ~~motor vehicle's average miles per gallon during the claim period times the number of~~
12 ~~nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway~~
13 ~~miles shall be supported by actual individual vehicle fuel disbursement records and odometer~~
14 ~~readings. The portion of this refund attributed to nonhighway machinery and equipment shall~~



1 ~~be supported by individual vehicle fuel disbursement records. Three cents per gallon of each tax~~
2 ~~refund shall be deposited in the value added agriculture subfund created in § 1-16G-25. For the~~
3 ~~purposes of this section, the refund applies to any purchases of motor fuel made after July 1,~~
4 ~~1999.~~

5 Section 2. That § 10-47B-149 be amended to read as follows:

6 10-47B-149. At the beginning of each month, the secretary shall make adjustments to the
7 motor fuel tax fund balance in the following manner:

8 (1) Each July transfer an amount to the snowmobile trails' fund equal to the product of
9 multiplying the number of licensed snowmobiles as of July first, times one hundred
10 twenty-five gallons, times the rate of tax provided for motor fuel under this chapter;

11 (2) ~~Transfer~~ Each July transfer from the amount of motor fuel tax collected from the
12 motor fuel used for nonhighway purposes to the motor fuel tax refund fund an
13 amount to pay motor fuel tax refunds for the current month value added agriculture
14 subfund created in § 1-16G-25 one hundred thirty-five thousand dollars;

15 (3) Each July transfer from the amount of motor fuel tax collected from the motor fuel
16 used for nonhighway purposes to the Department of Agriculture seventy-five
17 thousand dollars to be used for a grant to the Northern Crops Institute;

18 (4) Transfer to the motor fuel tax administration account two percent of the deposits
19 made to the motor fuel tax fund during the preceding month to cover the expenses
20 incurred in administering all motor fuel and special fuel tax laws of this state. On or
21 about August first of each year, the preceding year's remaining motor fuel tax
22 administration account balance, less an amount to provide cash flow within the
23 account, shall be transferred to the state highway fund. The remaining balance is to
24 be calculated by subtracting from the total of monthly deposits, the amount of

1 corresponding expenses. The expense of administering the chapters relating to motor
2 and special fuel taxation shall be paid out of appropriations made by the Legislature;

3 ~~(4)(5)~~ Transfer Each July transfer from the amount of motor fuel tax collected from the
4 motor fuel used for nonhighway purposes to the coordinated natural resources
5 conservation fund ~~an amount equal to thirty-five percent of the claimed refunds~~
6 ~~authorized by § 10-47B-119 for the preceding month, not to exceed a cumulative~~
7 ~~total of one million five hundred thousand dollars in any single fiscal year~~ five
8 hundred thousand dollars;

9 ~~(5)(6)~~ Each July transfer to the parks and recreation fund an amount equal to the product of
10 multiplying the number of licensed motorized boats as of the previous December
11 thirty-first, times one hundred forty gallons, times the rate of tax provided for motor
12 fuels under this chapter;

13 ~~(6)(7)~~ Each July distribute to counties and townships as provided in section 3 of this Act
14 seven hundred thousand dollars;

15 (8) Transfer to the member jurisdictions taxes collected under the provisions of the
16 international fuel tax agreement; and

17 ~~(7)(9)~~ Transfer the remaining cash balance to the state highway fund.

18 Section 3. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The amount to be distributed to counties and townships pursuant to section 2 of this Act
21 shall be distributed among the counties, pro rata, twenty-five percent according to truck
22 registrations, twenty-five percent according to population, and fifty percent according to total
23 road mileage. Each county shall distribute sixty percent of the amount received pursuant to this
24 section to the county road and bridge fund and forty percent to the special highway fund to be

1 distributed pursuant to the provisions of subdivision 32-11-4.1(2) and § 32-11-6.

2 Section 4. That § 32-11-6 be amended to read as follows:

3 32-11-6. The amount set aside to the various unorganized and organized civil townships
4 pursuant to § 32-11-4.1 and section 3 of this Act shall be apportioned among the townships
5 according to the number of miles of maintained township roads within the townships. The
6 county treasurer shall distribute ~~such~~ the money to each organized township within the county
7 within thirty days of apportionment. However, an organized township may request in writing
8 that ~~such~~ the money remain in the custody of the county treasurer and shall be paid out only on
9 warrants issued by the county auditor in payment of claims for the construction, reconstruction,
10 or maintenance of roads and highways within the township highway system.

11 Section 5. That § 10-47B-135 be amended to read as follows:

12 10-47B-135. No refund of motor fuel or special fuel taxes paid may be made for any of the
13 following uses of fuel:

- 14 (1) Fuel used in motor vehicles operated on the public highways of this state;
- 15 (2) Fuel used for propulsion on the highway in any vehicles, machinery, or equipment
16 for any highway construction or maintenance work which is paid for, wholly or in
17 part, by public moneys;
- 18 (3) Fuel used in aircraft or watercraft;
- 19 (4) Undyed special fuel used in off-road machinery or equipment; ~~or~~
- 20 (5) Fuel used from the engine fuel supply tank by a motor vehicle while idling. Fuel used
21 by a motor vehicle while idling shall be included in the total amount of fuel
22 consumed when calculating average miles per gallon; or
- 23 (6) Fuel used in any motor vehicle, recreation vehicle, or farm equipment used for
24 nonhighway agricultural purposes or, unless otherwise provided by this chapter, used

1 in any motor vehicle or equipment for nonhighway commercial uses.

2 Section 6. That § 10-47B-144 be amended to read as follows:

3 10-47B-144. Interest at the rate provided for under § 10-59-6 shall be paid on any refund
4 claim amount authorized by §§ ~~10-47B-119~~ 10-47B-119.2 to 10-47B-131, inclusive, which has
5 not been refunded to the claimant within sixty days of acceptance by the department during the
6 months of January, February, or March. Claims received during any other month shall be paid
7 within forty-five days, otherwise interest shall be paid to the claimant. No interest may be paid
8 for refunds made to interstate fuel tax agreement licensees or licensed interstate users.

9 Section 7. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The Legislature finds, based on historical data, that one million four hundred ten thousand
12 dollars represents the amount of motor fuel taxes collected annually on motor fuel for
13 nonhighway agricultural uses. The Legislature further finds that these funds should be utilized
14 in a manner which benefits agriculture and the citizens of the state.

15 Section 8. That § 38-7-26 be amended to read as follows:

16 38-7-26. The coordinated natural resources conservation fund consists of money transferred
17 from the ~~unclaimed tax refunds from the~~ sale of motor fuel for nonhighway agricultural uses in
18 the motor fuel tax fund as provided in § ~~10-47A-11~~ 10-47B-149, and all public and private
19 sources including legislative appropriations or federal grants.

20 Section 9. That § 10-47B-119.1 be repealed.

21 ~~—10-47B-119.1. Any special fuel or motor fuel user may apply for and obtain a refund of fuel~~
22 ~~taxes imposed and paid to this state for motor fuel or special fuel purchased and used as racing~~
23 ~~fuel in motor vehicles operated solely off of public highways in organized racing events.~~

24 Section 10. That § 10-47B-127 be repealed.

1 ~~10-47B-127. Any undyed special fuel consumer may apply for and obtain a refund of fuel~~
2 ~~taxes imposed and paid to this state, for undyed special fuel purchased and used by the~~
3 ~~consumer in the engine fuel supply tank of a motor vehicle used for nonhighway agricultural~~
4 ~~purposes or nonhighway commercial uses, except special fuel used to power a refrigeration unit~~
5 ~~which is attached to the engine fuel supply tank of the motor vehicle. This refund shall be~~
6 ~~calculated by multiplying the motor vehicle's average miles per gallon during the claim period~~
7 ~~times the number of nonhighway miles the vehicle was operated. The average miles per gallon~~
8 ~~and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records~~
9 ~~and odometer readings.~~

10 Section 11. That § 10-47B-138 be repealed.

11 ~~10-47B-138. Any consumer who desires to claim refund of motor fuel or special fuel taxes~~
12 ~~paid to this state, shall apply for a refund claimant license from the department before or at the~~
13 ~~time that the first claim for refund is made. Applications for licenses and claims for refund shall~~
14 ~~be made on forms provided by the department. Upon approval of the application by the~~
15 ~~department, a nonassignable license and claimant number shall be issued to each claimant. Each~~
16 ~~subsequent claim for refund is to bear the claimant's assigned refund permit number.~~

17 Section 12. That § 10-47B-139 be repealed.

18 ~~10-47B-139. The claim for refund of fuel taxes which is allowed under this chapter shall~~
19 ~~contain the following information:~~

- 20 ~~(1) The name and mailing address of the refund claimant;~~
- 21 ~~(2) The refund claimant license number assigned by the department to the claimant;~~
- 22 ~~(3) The claim period during which fuel was purchased and used;~~
- 23 ~~(4) If applicable, a listing of the licensed motor vehicles owned or operated by the~~
24 ~~claimant during the claim period;~~

- 1 ~~— (5) — If applicable, information concerning the miles driven and fuel consumed by the~~
2 ~~vehicles listed in subdivision (4) of this section;~~
- 3 ~~— (6) — If the claimant is the user of the fuel, a summary of fuel purchased during the claim~~
4 ~~period;~~
- 5 ~~— (7) — If the claimant is the seller of the fuel, a summary of the refundable sales;~~
- 6 ~~— (8) — The claimant's signature verified under oath; and~~
- 7 ~~— (9) — Any other information which the secretary deems necessary for the administration of~~
8 ~~this section.~~

9 Section 13. That § 10-47B-140 be repealed.

10 ~~— 10-47B-140. Motor fuel and special fuel tax refund claims of consumers shall be~~
11 ~~accompanied by proof that the South Dakota fuel tax has been paid. Proof of tax payment may~~
12 ~~be presented in one or more of the following forms:~~

- 13 ~~— (1) — An original invoice. An invoice shall be an original copy which is serially numbered~~
14 ~~by machine and prepared in duplicate. The original copy shall be given to the~~
15 ~~purchaser either at the time of delivery or upon payment of the amount due; or~~
- 16 ~~— (2) — Any of the following forms of proof containing the information required in § 10-47B-~~
17 ~~159:~~
 - 18 ~~— (a) — A credit card receipt. A receipt may be prepared using NCR (no carbon~~
19 ~~required) paper or other means of data transferal. Only an unaltered original~~
20 ~~copy of a credit card receipt is accepted; or~~
 - 21 ~~— (b) — A statement generated from an unattended, automated pump facility. An~~
22 ~~itemized monthly statement is acceptable if the statement contains the required~~
23 ~~invoice information and if the seller has marked the statement as having been~~
24 ~~paid. If a statement is used as proof of tax payment, the use of double-faced~~

1 ~~carbon, NCR (no carbon required) paper, and serial numbering are not~~
2 ~~required in preparation of the statement.~~

3 Section 14. That § 10-47B-141 be repealed.

4 ~~— 10-47B-141. Any claim for refund of motor fuel or special fuel tax shall be received by the~~
5 ~~department within fifteen months of the date the fuel was originally purchased in order to be~~
6 ~~accepted for refund. Fuel purchased more than fifteen months from the date the claim is~~
7 ~~received is forever barred from refund eligibility.~~

8 Section 15. That § 10-47B-142 be repealed.

9 ~~— 10-47B-142. The secretary may, in order to establish the validity of any claim for refund of~~
10 ~~motor fuel or special fuel tax, require the claimant to furnish any additional proof of the validity~~
11 ~~of the claim the secretary may determine necessary. The department may examine the books and~~
12 ~~records of the seller and purchaser for this purpose. The failure of the claimant to furnish the~~
13 ~~books or records for examination shall constitute a waiver of all rights to the refund on account~~
14 ~~of the transaction questioned.~~

15 Section 16. That § 10-47B-154 be repealed.

16 ~~— 10-47B-154. The Legislature finds that not all motor fuel taxes which qualify for the~~
17 ~~nonhighway agricultural motor fuel tax refund are, in fact, refunded under the procedure set~~
18 ~~forth in this chapter. The Legislature further finds that a certain amount of these unclaimed tax~~
19 ~~refunds from the sale of motor fuel for nonhighway agricultural uses should be utilized for~~
20 ~~agricultural purposes in a manner which benefits both agriculture and the citizens of the state~~
21 ~~by preserving its natural resources. Therefore, the Legislature declares that an amount equal to~~
22 ~~thirty-five percent of the claimed refunds authorized by § 10-47B-119, not to exceed one million~~
23 ~~five hundred thousand dollars in any single fiscal year, represents the amount of unclaimed tax~~
24 ~~refunds from the sale of motor fuel tax for nonhighway agricultural uses. The Legislature further~~

1 ~~declares that it is the policy of this state to use these funds, representing the unclaimed tax~~
2 ~~refunds from the sale of motor fuel for nonhighway agricultural purposes, to implement the~~
3 ~~coordinated natural resources conservation program.~~

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

844S0588

HOUSE ENGROSSED NO. **HB 1217** - 2/22/2011

Introduced by: Representatives Hunt, Abdallah, Bolin, Brunner, Cronin, Feickert, Gosch, Greenfield, Hansen (Jon), Hickey, Hoffman, Hubbel, Jensen, Kirschman, Kloucek, Kopp, Magstadt, Munsterman, Nelson (Stace), Russell, Steele, Stricherz, Tornow, Tulson, Van Gerpen, Venner, and Wick and Senators Novstrup (Al), Brown, Heineman, Holien, Kraus, Lederman, Maher, Olson (Russell), Rave, Rhoden, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings pertaining to the
2 decision of a pregnant mother considering termination of her relationship with her child by
3 an abortion, to establish certain procedures to better insure that such decisions are voluntary,
4 uncoerced, and informed, and to revise certain causes of action for professional negligence
5 relating to performance of an abortion.

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

7 Section 1. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The Legislature finds that as abortion medicine is now practiced in South Dakota that:

10 (1) In the overwhelming majority of cases, abortion surgery and medical abortions are
11 scheduled for a pregnant mother without the mother first meeting and consulting with
12 a physician or establishing a traditional physician-patient relationship;

13 (2) The surgical and medical procedures are scheduled by someone other than a



1 physician, without a medical or social assessment concerning the appropriateness of
2 such a procedure or whether the pregnant mother's decision is truly voluntary,
3 uncoerced, and informed, or whether there has been an adequate screening for a
4 pregnant mother with regard to the risk factors that may cause complications if the
5 abortion is performed;

6 (3) Such practices are contrary to the best interests of the pregnant mother and her child
7 and there is a need to protect the pregnant mother's interest in her relationship with
8 her child and her health by passing remedial legislation;

9 (4) There exists in South Dakota a number of pregnancy help centers, as defined in this
10 Act, which have as their central mission providing counseling, education, and other
11 assistance to pregnant mothers to help them maintain and keep their relationship with
12 their unborn children, and that such counseling, education, and assistance provided
13 by these pregnancy help centers is of significant value to the pregnant mothers in
14 helping to protect their interest in their relationship with their children; and

15 (5) It is a necessary and proper exercise of the state's authority to give precedence to the
16 mother's fundamental interest in her relationship with her child over the irrevocable
17 method of termination of that relationship by induced abortion.

18 Section 2. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The physician's common law duty to determine that the physician's patient's consent is
21 voluntary and uncoerced and informed applies to all abortion procedures. The requirements
22 expressly set forth in this Act, that require procedures designed to insure that a consent to an
23 abortion is voluntary and uncoerced and informed, are an express clarification of, and are in
24 addition to, those common law duties.

1 Section 3. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 No surgical or medical abortion may be scheduled except by a licensed physician and only
4 after the physician physically and personally meets with the pregnant mother, consults with her,
5 and performs an assessment of her medical and personal circumstances. Only after the physician
6 completes the consultation and assessment complying with the provisions of this Act, may the
7 physician schedule a surgical or medical abortion, but in no instance may the physician schedule
8 such surgical or medical abortion to take place in less than seventy-two hours from the
9 completion of such consultation and assessment except in a medical emergency as set forth in
10 § 34-23A-10.1 and subdivision 34-23A-1(5). No physician may have the pregnant mother sign
11 a consent for the abortion on the day of this initial consultation. No physician may take a signed
12 consent from the pregnant mother unless the pregnant mother is in the physical presence of the
13 physician and except on the day the abortion is scheduled, and only after complying with the
14 provisions of this Act as it pertains to the initial consultation, and only after complying with the
15 provisions of subdivisions 34-23A-10.1(1) and (2). During the initial consultation between the
16 physician and the pregnant mother, prior to scheduling a surgical or medical abortion, the
17 physician shall:

- 18 (1) Do an assessment of the pregnant mother's circumstances to make a reasonable
19 determination whether the pregnant mother's decision to submit to an abortion is the
20 result of any coercion, subtle or otherwise. In conducting that assessment, the
21 physician shall obtain from the pregnant mother the age or approximate age of the
22 father of the unborn child, and the physician shall determine whether any disparity
23 in the age between the mother and father is a factor in creating an undue influence or
24 coercion;

- 1 (2) Provide the written disclosure required by subdivision 34-23A-10.1(1) and discuss
2 them with her to determine that she understands them;
- 3 (3) Provide the pregnant mother with the names, addresses, and telephone numbers of
4 all pregnancy help centers that are registered with the South Dakota Department of
5 Health pursuant to this Act, and provide her with written instructions that set forth
6 the following:
 - 7 (a) That prior to the day of any scheduled abortion the pregnant mother must have
8 a consultation at a pregnancy help center at which the pregnancy help center
9 shall inform her about what education, counseling, and other assistance is
10 available to help the pregnant mother keep and care for her child, and have a
11 private interview to discuss her circumstances that may subject her decision
12 to coercion;
 - 13 (b) That prior to signing a consent to an abortion, the physician shall first obtain
14 from the pregnant mother, a written statement that she obtained a consultation
15 with a pregnancy help center, which sets forth the name and address of the
16 pregnancy help center, the date and time of the consultation, and the name of
17 the counselor at the pregnancy help center with whom she consulted;
- 18 (4) Conduct an assessment of the pregnant mother's health and circumstances to
19 determine if any of the risk factors associated with abortion are present in her case,
20 completing a form which for each factor reports whether the factor is present or not;
- 21 (5) Discuss with the pregnant mother the results of the assessment for risk factors,
22 reviewing with her the form and its reports with regard to each factor listed;
- 23 (6) In the event that any risk factor is determined to be present, discuss with the pregnant
24 mother, in such manner and detail as is appropriate so that the physician can certify

1 that the physician has made a reasonable determination that the mother understands
2 the information, all material information about any complications associated with the
3 risk factor, and to the extent available all information about the rate at which those
4 complications occurs both in the general population and in the population of persons
5 with the risk factor;

6 (7) In the event that no risk factor is determined to be present, the physician shall include
7 in the patient's records a statement that the physician has discussed the information
8 required by the other parts of this section and that the physician has made a
9 reasonable determination that the mother understands the information in question;

10 (8) Records of the assessments, forms, disclosures, and instructions performed and given
11 pursuant to this section shall be prepared by the physician and maintained as a
12 permanent part of the pregnant mother's medical records.

13 Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 On the day on which the abortion is scheduled, no physician may take a consent for an
16 abortion nor may the physician perform an abortion, unless the physician has fully complied
17 with the provisions of this Act and first obtains from the pregnant mother, a written, signed
18 statement setting forth all information required by subsection (3)(b) of section 3 of this Act. The
19 written statement signed by the pregnant mother shall be maintained as a permanent part of the
20 pregnant mother's medical records.

21 Section 5. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The Department of Health shall maintain a registry of pregnancy help centers located in the
24 state of South Dakota. The Department shall publish a list of all pregnancy help centers which

1 submit a written request or application to be listed on the state registry of pregnancy help
2 centers. All pregnancy help centers seeking to be listed on the registry shall be so listed without
3 charge, if they submit an affidavit that certifies that:

4 (1) The pregnancy help center has a facility or office in the state of South Dakota in
5 which it routinely consults with women for the purpose of helping them keep their
6 relationship with their unborn children;

7 (2) That one of its principal missions is to educate, counsel, and otherwise assist women
8 to help them maintain their relationship with their unborn children;

9 (3) That they do not perform abortions at their facility, and have no affiliation with any
10 organization or physician which performs abortions;

11 (4) That they do not now refer pregnant women for abortions, and have not referred any
12 pregnant women for an abortion at any time in the three years immediately preceding
13 July 1, 2011;

14 (5) That they have a medical director licensed by South Dakota to practice medicine or
15 that they have a collaborative agreement with a physician licensed in South Dakota
16 to practice medicine to whom women can be referred;

17 (6) That they shall provide the counseling and interviews described in this Act upon
18 request by pregnant mothers; and

19 (7) That they shall comply with the provisions of section 11 of this Act as it relates to
20 discussion of religious beliefs.

21 For purposes of placing the name of a pregnancy help center on the state registry of
22 pregnancy help centers maintained by the Department of Health, it is irrelevant whether the
23 pregnancy help center is secular or faith based. The Department of Health shall immediately
24 provide a copy of the registry of pregnancy health centers to all physicians, facilities, and entities

1 that request it. The registry shall be regularly updated by the Department of Health in order to
2 include a current list of pregnancy help centers and shall forward all updated lists to all
3 physicians, facilities, and entities that previously requested the list. The Department of Health
4 shall accept written requests or applications to be placed on the state registry of pregnancy help
5 centers from pregnancy help centers after enactment but prior to the effective date of this Act.

6 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A pregnancy help center consulted by a pregnant mother considering consenting to an
9 abortion, as a result of the provisions of this Act, shall be permitted to interview the pregnant
10 mother to determine whether the pregnant mother has been subject to any coercion to have an
11 abortion, and shall be permitted to inform the pregnant mother in writing or orally, or both, what
12 counseling, education, and assistance that is available to the pregnant mother to help her
13 maintain her relationship with her unborn child and help her care for the child both through the
14 pregnancy help center or any other organization, faith-based program, or governmental program.

15 During the consultation interviews provided for by this Act, the pregnancy help centers, their
16 agents and employees, may not discuss with the pregnant mothers religion or religious beliefs,
17 either of the mother or the counselor, unless the pregnant mother consents in writing. The
18 pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption.

19 The pregnancy help center is under no obligation to communicate with the abortion provider in
20 any way, and is under no obligation to submit any written or other form of confirmation that the
21 pregnant mother consulted with the pregnancy help center. The pregnancy help center may
22 voluntarily provide a written statement of assessment to the abortion provider, whose name the
23 woman shall give to the pregnancy help center, if the pregnancy help center obtains information
24 that indicates that the pregnant mother has been subjected to coercion or that her decision to

1 consider an abortion is otherwise not voluntary or not informed. The physician shall make the
2 physician's own independent determination whether or not a pregnant mother's consent to have
3 an abortion is voluntary, uncoerced, and informed before having the pregnant mother sign a
4 consent to an abortion. The physician shall review and consider any information provided by
5 the pregnancy help center as one source of information, which in no way binds the physician,
6 who shall make an independent determination consistent with the provisions of this Act, the
7 common law requirements, and accepted medical standards. Any written statement or summary
8 of assessment prepared by the pregnancy help center as a result of counseling of a pregnant
9 mother as a result of the procedures created by this Act, may be forwarded by the pregnancy
10 help center, in its discretion, to the abortion physician. If forwarded to the physician, the written
11 statement or summary of assessment shall be maintained as a permanent part of the pregnant
12 mother's medical records. Other than forwarding such documents to the abortion physician, no
13 information obtained by the pregnancy help center from the pregnant mother may be released,
14 without the written signed consent of the pregnant mother or unless the release is in accordance
15 with federal, state, or local law.

16 Nothing in this Act may be construed to impose any duties or liability upon a pregnancy help
17 center.

18 Section 7. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Terms as used in this Act mean:

- 21 (1) "Pregnancy help center," any entity whether it be a form of corporation, partnership,
22 or proprietorship, whether it is for profit, or nonprofit, that has as one of its principal
23 missions to provide education, counseling, and other assistance to help a pregnant
24 mother maintain her relationship with her unborn child and care for her unborn child,

1 which entity has a medical director who is licensed to practice medicine in the state
2 of South Dakota, or that it has a collaborative agreement with a physician licensed
3 in South Dakota to practice medicine to whom women can be referred, which entity
4 does not perform abortions and is not affiliated with any physician or entity that
5 performs abortions, and does not now refer pregnant mothers for abortions, and has
6 not referred any pregnant mother for abortions for the three-year period immediately
7 preceding July 1, 2011;

8 (2) "Risk factor associated with abortion," any factor, including any physical,
9 psychological, emotional, demographic, or situational factor, for which there is a
10 statistical association with an increased risk of one or more complications associated
11 with legal abortion, such that there is a less than five percent probability that the
12 statistical association is due to sampling error. To be recognized as a risk factor
13 associated with legal abortion, the statistical information must have been published
14 in the English language, after 1972, in at least one peer-reviewed journal indexed by
15 the search services maintained by the United States National Library of Medicine
16 (PubMed or MEDLINE, or any replacement services subsequently established by the
17 National Library) or in at least one peer-reviewed journal indexed by any search
18 service maintained by the American Psychological Association (PsycINFO, or any
19 replacement service) and the date of first publication must be not less than twelve
20 months before the date of the initial consultation described in section 3 of this Act;

21 (3) "Complications associated with abortion," any adverse physical, psychological, or
22 emotional reaction, for which there is a statistical association with legal abortion,
23 such that there is a less than five percent probability that the statistical association is
24 due to sampling error. To be recognized as a complication associated with legal

1 abortion, the statistical information must have been published in the English
2 language, after 1972, in at least one peer-reviewed journal indexed by the search
3 services maintained by the United States National Library of Medicine (PubMed or
4 MEDLINE, or any replacement services subsequently established by the National
5 Library) or in at least one peer-reviewed journal indexed by any search service
6 maintained by the American Psychological Association (PsycINFO, or any
7 replacement service) and the date of first publication must be not less than twelve
8 months before the date of the initial consultation described in section 3 of this Act;

9 (4) "Coercion," exists if the pregnant mother has a desire to carry her unborn child and
10 give birth, but is induced, influenced, or persuaded to submit to an abortion by
11 another person or persons against her desire. Such inducement, influence, or
12 persuasion may be by use of, or threat of, force, or may be by pressure or intimidation
13 effected through psychological means, particularly by a person who has a relationship
14 with the pregnant mother that gives that person influence over the pregnant mother.

15 Section 8. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Any woman who undergoes an abortion, or her survivors, where there has been an
18 intentional, knowing, or negligent failure to comply with the provisions of sections 3 and 4 of
19 this Act may bring a civil action, and obtain a civil penalty in the amount of ten thousand
20 dollars, plus reasonable attorney's fees and costs, jointly and severally from the physician who
21 performed the abortion and the abortion facility where the abortion was performed.

22 This amount shall be in addition to any damages that the woman or her survivors may be
23 entitled to receive under any common law or statutory provisions, to the extent that she sustains
24 any injury. This amount shall also be in addition to the amounts that the woman or other

1 survivors of the deceased unborn child may be entitled to receive under any common law or
2 statutory provisions, including but not limited to the wrongful death statutes of this state.

3 Section 9. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 In any civil action presenting a claim arising from a failure to comply with any of the
6 provisions of this chapter, the following shall apply:

7 (1) The failure to comply with the requirements of this chapter relative to obtaining
8 consent for the abortion shall create a rebuttable presumption that if the pregnant
9 mother had been informed in accordance with the requirements of this chapter, she
10 would have decided not to undergo the abortion;

11 (2) If the trier of fact determines that the abortion was the result of coercion, and it is
12 determined that if the physician acted prudently, the physician would have learned
13 of the coercion, there is a nonrebuttable presumption that the mother would not have
14 consented to the abortion if the physician had complied with the provisions of this
15 Act;

16 (3) If evidence is presented by a defendant to rebut the presumption set forth in
17 subdivision (1), then the finder of fact shall determine whether this particular mother,
18 if she had been given all of the information a reasonably prudent patient in her
19 circumstance would consider significant, as well as all information required by this
20 Act to be disclosed, would have consented to the abortion or declined to consent to
21 the abortion based upon her personal background and personality, her physical and
22 psychological condition, and her personal philosophical, religious, ethical, and moral
23 beliefs;

24 (4) The pregnant mother has a right to rely upon the abortion doctor as her source of

1 information, and has no duty to seek any other source of information, other than from
2 a pregnancy help center as referenced in sections 3 and 4 of this Act, prior to signing
3 a consent to an abortion;

4 (5) No patient or other person responsible for making decisions relative to the patient's
5 care may waive the requirements of this chapter, and any verbal or written waiver of
6 liability for malpractice or professional negligence arising from any failure to comply
7 with the requirements of this chapter is void and unenforceable.

8 Section 10. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Nothing in this Act repeals, by implication or otherwise, any provision not explicitly
11 repealed.

12 Section 11. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 If any provision of this Act is found to be unconstitutional or its enforcement temporarily
15 or permanently restrained or enjoined by judicial order, the provision is severable.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0611

HOUSE EDUCATION ENGROSSED NO. **HB 1228** - 2/14/2011

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

1 FOR AN ACT ENTITLED, An Act to increase the bonding limit for the four technical
2 institutes.

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

4 Section 1. That § 1-16A-77 be amended to read as follows:

5 1-16A-77. The aggregate outstanding principal amount of bonds, notes, or other obligations
6 of the authority which are payable out of receipts, rentals, and other payments made pursuant
7 to lease purchase agreements with an LEA or the South Dakota Board of Education under the
8 authority of chapter 13-39, may not exceed ~~eighty~~ one hundred five million dollars for
9 obligations issued by the authority in connection with any lease-purchase agreement with the
10 Western Dakota Technical Institute, the Southeast Technical Institute, the Lake Area Technical
11 Institute or the Mitchell Technical Institute. However, at the option of the authority to be
12 expressed in a resolution or an indenture which authorizes or authorized any refunding bonds,
13 the principal amount of the bonds, notes, or other obligations which are issued to refund, pay,
14 discharge, or defease any outstanding bonds, notes, or other obligations or which are, as a result
15 of issuance of any such refunding obligations, deemed to be paid, discharged, or defeased by



1 reason of an irrevocable deposit of cash or securities, may be excluded from the total principal
2 amount of obligations of the authority for the purpose of determining compliance with the
3 limitation of this section.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0643

HOUSE STATE AFFAIRS ENGROSSED NO. **HB 1231** - 2/16/2011

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

1 FOR AN ACT ENTITLED, An Act to provide for the sale of certain surplus real estate, to
2 appropriate the proceeds to the revolving economic development and initiative fund, and to
3 revise certain provisions relating to the sale of certain surplus property.

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

5 Section 1. Upon the request of the Governor, the Commissioner of School and Public Lands
6 shall sell all or any portion of the following real estate and any related personal property and
7 improvements located on the property:

8 (1) In Aurora County:

9 (a) Certain property under the control of the Department of Corrections and
10 described generally as the N1/2 of the NE1/4, less the North 600', Section 13,
11 Township 103, Range 64, consisting of 42.68 acres, more or less;

12 (b) Certain property under the control of the Department of Corrections and
13 described generally as the NW1/4, less the North 880', Section 13, Township
14 103, Range 64, consisting of 106.72 acres, more or less; and

15 (c) Certain property under the control of the Department of Corrections and



1 described generally as the N880' of the NE1/4 of Section 14, Township 103,
2 Range 64, consisting of 53.44 acres more or less;

3 (2) In Custer County:

4 (a) Certain property under the control of the Department of Corrections and
5 described generally as HES#168, less Tract A and less Lot A, located in
6 Sections 22 and 23, Township 4S, Range 4EBHM, consisting of 73.48 acres,
7 more or less;

8 (3) In Fall River County:

9 (a) Certain property under the control of the Department of Military and Veterans
10 Affairs and described generally as Lots 1-5, inclusive, of Block 42; and Lots
11 13-23, inclusive, of Block 42, Second Minnekahta Addition, City of Hot
12 Springs; and

13 (b) Certain property under the control of the Department of Military and Veterans
14 Affairs and described generally as Lots 1-12, inclusive, of Block 1; Lots 1-12,
15 inclusive, of Block 2; Lots 1-24, inclusive, of Block 3; Lots 1-14, inclusive,
16 of Block 4; Lots 1-12, inclusive, of Block 6; and Lots 1-4, inclusive, of Block
17 7, Cottage Grove Addition, City of Hot Springs;

18 (4) In Minnehaha County:

19 (a) Certain property under the control of the Department of Corrections and
20 described generally as the SW1/4 of the NW1/4 and NW1/4 of the SW1/4,
21 Section 7, Township 101, Range 50, consisting of 80 acres, more or less;

22 (b) Certain property under the control of the Department of Corrections and
23 described generally as the W1/2 of the NW1/4 of the NW1/4 of Section 18,
24 Township 101, Range 50, consisting of 20 acres, more or less;

- 1 (c) Certain property under the control of the Department of Corrections and
2 described generally as the W1/2 of the NE1/4 and the SE1/4 of the NE1/4 of
3 Section 12, Township 101, Range 51, consisting of 120 acres, more or less;
- 4 (d) Certain property under the control of the Department of Corrections and
5 described generally as the N1/2 of the NW1/4 of Section 12, Township 101,
6 Range 51, consisting of 80 acres, more or less;
- 7 (e) Certain property under the control of the Department of Corrections and
8 described generally as the N1/2 of the SE1/4 and E1/2 of the SE1/4 of the
9 SE1/4 of Section 12, Township 101, Range 51, consisting of 100 acres, more
10 or less;
- 11 (f) Certain property under the control of the Department of Corrections and
12 described generally as the NE1/4 of the NE1/4 of Section 13, Township 101,
13 Range 51, consisting of 40 acres, more or less;
- 14 (g) Certain property under the control of the Department of Corrections and
15 described generally as the S1/2 of the NW1/4 (except the South 806.87' of the
16 West 810') and the N1/2 of the SW1/4 of Section 14, Township 101, Range
17 51, consisting of 145 acres, more or less; and
- 18 (h) Certain property under the control of the Department of Corrections and
19 described generally as a part of the SW1/4 of Section 4, Township 101, Range
20 49, lying east of the Big Sioux River diversion channel, including Lot "H-2",
21 except Lot B of Lot "H-2" and except Lot "H-1," consisting of 32 acres, more
22 or less; and
- 23 (5) In Spink County:
 - 24 (a) Certain property under the control of the Department of Human Services

1 described generally as, Lot CC3, being a Subdivision of Government Lot 1 of
2 Section 4, Township 116 North, Range 64 West of the 5th P.M. Spink County,
3 South Dakota, containing 52.67 acres, more or less, less Hwy ROW of 2.15
4 acres, more or less.

5 Section 2. Real property and related personal property and improvements on the property
6 which are generally considered a part of the tracts described in section 1 of this Act but not
7 specifically included in the legal descriptions set out in section 1 of this Act may be sold as
8 provided in this Act as though they were specifically described in section 1 of this Act.

9 Section 3. Nothing in section 1 of this Act is intended to authorize the sale of real property
10 under the control of the Department of Military and Veterans Affairs that is intended for use for
11 construction of a new Veterans Home.

12 Section 4. The real property and other property described in section 1 of this Act shall be
13 appraised by the board of appraisal established by § 5-9-3 and shall be sold according to the
14 procedure established in §§ 5-9-6 to 5-9-9, inclusive, §§ 5-9-11 to 5-9-15, inclusive, § 5-9-28
15 and 5-9-36, subject to all applicable constitutional reservations.

16 Section 5. Except as otherwise required by the South Dakota Constitution or applicable
17 federal law, notwithstanding any other law to the contrary, the proceeds from the sale of the real
18 estate and other property described in section 1 of this Act shall be deposited into the revolving
19 economic development and initiative fund created by § 1-16G-3. The provisions of § 1-16G-7
20 notwithstanding, the sale proceeds are hereby appropriated for the purpose of making loans and
21 grants for economic development pursuant to chapter 1-16G.

22 Section 6. That § 5-2-2.1 be amended to read as follows:

23 5-2-2.1. The Board of Regents, ~~the Department of Corrections, and the Department of~~
24 ~~Human Services~~ may sell extraneous real property subject to the provisions of the Constitution

1 and approval of the Legislature.

2 The proceeds from a sale of such land under the Board of Regents shall be deposited with
3 the state treasurer and credited to a fund specifically designated as the "real property acquisition
4 and capital improvement fund" for each institution under the Board of Regents involved in such
5 transaction. The proceeds shall be invested by the State Investment Council in accordance with
6 chapter 4-5. Expenditures from the fund shall be approved by the Legislature.

7 ~~The proceeds from the sale of land under the Department of Corrections and the Department~~
8 ~~of Human Services shall be deposited in the Department of Corrections building improvement~~
9 ~~fund and the Department of Human Services building improvement fund which are hereby~~
10 ~~created in the state treasury.~~

11 Section 7. That § 5-2-2.3 be amended to read as follows:

12 5-2-2.3. The proceeds and accumulated interest from sale of land under the Board of
13 Regents pursuant to § 5-2-2.1 shall be used by the Board of Regents for acquisition of real and
14 personal property or capital improvements subject to the approval of the Legislature. For
15 purposes of this section, the definition of capital improvement contained in § 5-14-1 applies.

16 ~~The proceeds of the sale of land under the Department of Corrections or the Department of~~
17 ~~Human Services pursuant to § 5-2-2.1 shall be expended in such manner as determined by the~~
18 ~~Legislature.~~

19 Section 8. Notwithstanding the provisions of this Act or any other law to the contrary, the
20 Governor may direct the Commissioner of School and Public Lands to sell any real estate and
21 related personal property described in section 1 of this Act to a political subdivision within
22 which the real estate and related personal property is located. The sale may be made without
23 first offering the real estate and related personal property for sale to the public. The sale price
24 shall be at least the appraised value as determined by the board of appraisal established by § 5-9-

1 3, and is subject to all applicable statutory and constitutional reservations.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0644

HOUSE STATE AFFAIRS ENGROSSED NO. **HB 1232** - 2/16/2011

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

1 FOR AN ACT ENTITLED, An Act to provide for the sale of certain surplus real estate, to
2 provide for the deposit of the proceeds, and to revise certain provisions relating to the sale
3 of certain surplus property.

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

5 Section 1. The provisions of any law to the contrary, upon the request of the Governor, the
6 Commissioner of School and Public Lands shall sell all or any portion of the following real
7 estate located in Yankton County and any related personal property and improvements located
8 on the property:

9 (a) Certain property under the control of the Department of Human Services described
10 generally as Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section
11 21, Township 94 North, Range 55, West of the 5th P.M., also described as Lot 13 and
12 that portion of Lot 14 as described in Warranty Deed, F.V. Willhite, Grantor to
13 Yankton State Hospital (administered by the South Dakota Department of Human
14 Services) Grantee; as recorded August 26th 1918 in Book 120 on page 388 in the
15 County of Yankton to wit: Commencing on the West or right bank of the James or



1 Dakota River at a point where the east and west section line between sections 21 and
2 28 of Township 94 North, of Range 55 West of the 5th P.M. intersects said bank of
3 said river; thence west along said section line 4.51 chains; thence north to the right
4 bank of said river, thence down said stream along the right bank of said river to the
5 place of beginning north to the right bank of said river, and accreted land; all of
6 Section 21, Township 94 North, range 55, West of the 5th P.M., consisting of 15
7 acres, more or less; and

8 (b) Certain property under the control of the Department of Human Services described
9 generally as the East 1900 feet of the South 1300 feet of Lot A being a Subdivision
10 of the SE1/4 of Section 36 Township 94 North Range 56 West of the 5th P.M.,
11 consisting of 56.70 acres, more or less.

12 Section 2. Real property and related personal property and improvements on the property
13 which are generally considered a part of the tracts described in section 1 of this Act but not
14 specifically included in the legal descriptions set out in section 1 of this Act may be sold as
15 provided in this Act as though they were specifically described in section 1 of this Act.

16 Section 3. The real estate and other property described in section 1 of this Act shall be
17 appraised by the board of appraisal established by §§ 5-9-3 and shall be sold according to the
18 procedure established in §§ 5-9-6 to 5-9-9, inclusive, 5-9-11 to 5-9-15, inclusive, 5-9-28 and
19 5-9-36, subject to all applicable constitutional reservations.

20 Section 4. The proceeds from the sale of the real estate and other property described in
21 section 1 of this Act under the control of the Human Services Center shall be deposited into the
22 permanent fund established by Article VIII, Section 7, of the South Dakota Constitution for the
23 use and benefit of the Human Services Center.

24 Section 5. That § 5-2-2.1 be amended to read as follows:

1 5-2-2.1. The Board of Regents, ~~the Department of Corrections, and the Department of~~
2 ~~Human Services~~ may sell extraneous real property subject to the provisions of the Constitution
3 and approval of the Legislature.

4 The proceeds from a sale of such land under the Board of Regents shall be deposited with
5 the state treasurer and credited to a fund specifically designated as the "real property acquisition
6 and capital improvement fund" for each institution under the Board of Regents involved in such
7 transaction. The proceeds shall be invested by the State Investment Council in accordance with
8 chapter 4-5. Expenditures from the fund shall be approved by the Legislature.

9 ~~The proceeds from the sale of land under the Department of Corrections and the Department~~
10 ~~of Human Services shall be deposited in the Department of Corrections building improvement~~
11 ~~fund and the Department of Human Services building improvement fund which are hereby~~
12 ~~created in the state treasury:~~

13 Section 6. That § 5-2-2.3 be amended to read as follows:

14 5-2-2.3. The proceeds and accumulated interest from sale of land under the Board of
15 Regents pursuant to § 5-2-2.1 shall be used by the Board of Regents for acquisition of real and
16 personal property or capital improvements subject to the approval of the Legislature. For
17 purposes of this section, the definition of capital improvement contained in § 5-14-1 applies.

18 ~~The proceeds of the sale of land under the Department of Corrections or the Department of~~
19 ~~Human Services pursuant to § 5-2-2.1 shall be expended in such manner as determined by the~~
20 ~~Legislature:~~

21 Section 7. Notwithstanding the provisions of this Act or any other law to the contrary, the
22 Governor may direct the Commissioner of School and Public Lands to sell any real estate and
23 related personal property described in section 1 of this Act to a political subdivision within
24 which the real estate and related personal property is located. The sale may be made without

1 first offering the real estate and related personal property for sale to the public. The sale price
2 shall be at least the appraised value as determined by the board of appraisal established by § 5-9-
3 3, and is subject to all applicable statutory and constitutional reservations.

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0649

HOUSE ENGROSSED NO. **HB 1244** - 2/23/2011

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

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to disasters in the
2 state.

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

4 Section 1. There is hereby appropriated from the general fund the sum of thirteen million
5 three hundred seventy-eight thousand three hundred forty-seven dollars (\$13,378,347), or so
6 much thereof as may be necessary, to the special emergency and disaster special revenue fund
7 for costs related to disasters in South Dakota.

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

10 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall
11 revert in accordance with the procedures prescribed in chapter 4-8.

