

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

572T0399

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1111** - 2/9/2012

Introduced by: Representatives Verchio, Fargen, Feickert, Gosch, Hansen (Jon), Kopp, Miller, Olson (Betty), Russell, and Schaefer and Senators Rampelberg, Frerichs, Kraus, Rhoden, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of eminent
2 domain by certain nongovernmental entities.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Condemn," to take property under the power of eminent domain;

6 (2) "Condemnee," a person who has or claims an interest in property that is the subject
7 of a prospective or pending condemnation action;

8 (3) "Condemnor," a railroad as defined in subdivision 49-16A-1(5) or a utility
9 constructing a pipeline transmission line as defined in subdivision 49-41B-2.1(2) that
10 may exercise the right of eminent domain in acquiring right-of-way as prescribed by
11 statute.

12 Section 2. A condemnor shall apply for and be successfully granted any controlling federal
13 or state order, permit, or authority uniquely required for pipeline or railroad construction as the
14 case may be for construction, laying, relaying, operation, and maintenance of any such railroad



1 or pipeline or the location of any plant or equipment necessary to operate such railroad or
2 pipeline prior to commencing action to condemn property.

3 Section 3. A condemnor shall attempt to acquire property by good faith negotiation as
4 described in section 4 of this Act prior to commencing action to condemn property.

5 Section 4. For purposes of this Act, good faith negotiation includes:

6 (1) A written notice. The condemnor shall submit, by certified mail, a written notice to
7 the condemnee prior to making an initial offer. The notice shall include:

8 (a) A description of the proposed project;

9 (b) A description of the total land proposed to be condemned for the proposed
10 project;

11 (c) A description of the plan of work, operations and facilities in a manner
12 sufficient to enable the condemnee to evaluate the effect of the proposed
13 project, plan of work, operations and facilities on the condemned's use of the
14 land, to the extent reasonably known at the time;

15 (d) A description of the general location and extent of the condemnee's property
16 sought, with sufficient detail for reasonable identification;

17 (e) A statement that, at the condemnee's request, a representative of the
18 condemnor will tour the property sought with the condemnee or the
19 condemnee's representative at a mutually agreeable time thirty days or less
20 after the condemnor's initial written offer is received to discuss issues related
21 to properties sought;

22 (f) An estimate of the fair market value of the property sought and the general
23 basis for such estimate; and

24 (g) A description of the reclamation planned by the condemnor for the property

1 disturbed by the condemnor's project;

2 (2) A bona fide initial offer to acquire the property sought. The condemnor shall submit
3 the offer by certified mail to the condemnee. The offer shall be accompanied by
4 written notice that the condemnee is under no obligation to accept this initial written
5 offer, but if the condemnee fails to respond to the initial written offer, the right to
6 object to the good faith of the condemnor may be waived, and that the condemnee
7 has a right to seek advice from an attorney, real estate appraiser, or any other person
8 of the condemnee's choice during the negotiations and any subsequent legal
9 proceedings;

10 (3) A counter offer. The condemnee may make a counteroffer in writing within ninety
11 days of the initial offer specified in section 5 of this Act specifying areas of
12 disagreement; and

13 (4) A response. The condemnor may accept the counteroffer, if made, or shall make a
14 final offer including a response to any areas of disagreement indicated by the
15 condemnee. The final offer shall be sent by certified mail at least thirty days prior to
16 commencing a condemnation action.

17 Section 5. A condemnee may request one appraisal be performed prior to the deadline for
18 a counteroffer as described in subdivision (3) of section 4 of this Act by an appraiser chosen by
19 the condemnee. The condemnor shall pay for such appraisal.

20 Section 6. No action to condemn property may be maintained over timely objection by the
21 condemnee unless the condemnor completed good faith negotiations with the condemnee as
22 described in section 4 of this Act to acquire the property by purchase before commencing the
23 condemnation action. No condemnee may object to the good faith of the condemnor if the
24 condemnee has failed to respond to an initial written offer as provided in section 4 of this Act

1 and the condemnor has met the requirements of section 4 of this Act.

2 Section 7. Notwithstanding the provisions of chapter 21-35, within thirty days from the date
3 the summons described in § 21-35-9 is served, the defendant may demand a hearing in circuit
4 court on the petitioner's right to take. At this hearing, the condemnor shall prove the following:

5 (1) That the condemnor completed good faith negotiations with the condemnee as
6 defined in section 4 of this Act;

7 (2) That the condemnor executed purchase or easement agreements with landowners
8 controlling at least ninety percent of the requisite land, if more than ten landowners
9 are involved;

10 (3) That the condemnor has complied with section 2 of this Act; and

11 (4) That the condemnee's property is necessary for the project.

12 Failure to make such demand or to consent in writing to the taking, within the thirty-day
13 period, constitutes a waiver of the right to question the necessity of the taking. The finding of
14 necessity by the plaintiff, unless based upon fraud, bad faith, or an abuse of discretion, shall be
15 binding on all persons.

16 Section 8. Any easement authorized by the provisions of this Act terminates if the property
17 is not used by the condemnor for a period of three years, if the property is transferred for a use
18 where the transferee could not have condemned for the new use of the property, or if the new
19 use of the property is not identical to the original use and new damages to the condemnee will
20 occur. In such case the property shall be restored as much as possible by the condemnor to the
21 condition before condemnation or the condemnor shall pay the condemnee for any cost to
22 restore the property to the property's condition before condemnation.

23 Section 9. That § 49-16A-75 be amended to read as follows:

24 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way

1 as provided by statute, but only upon obtaining authority from the Governor or if directed by the
2 Governor, or the commission, based upon a determination by the Governor or the commission
3 that the railroad's exercise of the right of eminent domain would be for a public use consistent
4 with public necessity. The Governor or the commission shall consider the requirements of
5 §§ 49-16A-75.1 to 49-16A-75.3, inclusive, when granting or denying an application for
6 authority to use eminent domain. The decision to grant or deny an application shall be made
7 after reasonable notice and opportunity to be heard, pursuant to chapter 1-26. However, an
8 impartial hearing examiner may be appointed by the Governor or the commission to administer
9 the proceedings or make recommendations. Any parties who are united in interest or
10 representation shall unite in the filing of an affidavit for change of hearing examiner under the
11 provisions of § 1-26D-10. The filing of such affidavit by one party is deemed to be filed by all
12 of the parties. No more than one change of hearing examiner may be granted on request or
13 affidavit made by or on behalf of the same party or parties united in interest under the provisions
14 of § 1-26D-10. However, the filing of an affidavit and the first change of hearing examiner does
15 not prevent any other party to the action or any party's attorney from obtaining a change in
16 hearing examiner upon a showing of an unacceptable risk of actual bias or prejudice concerning
17 a party. The Governor or the chair of the commission shall replace the hearing examiner within
18 five business days upon any recusal. A hearing shall be held and a decision rendered on any
19 application within ninety days following the receipt of a new application and upon any
20 application pending before the Governor or the commission on July 1, 2008.

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

24 Section 10. That § 49-16A-75.1 be repealed.

1 ~~49-16A-75.1. The commission shall in accordance with chapter 1-26, promulgate rules:~~

2 ~~(1) Establishing a form upon which a railroad may apply for authority to exercise the~~
3 ~~right of eminent domain;~~

4 ~~(2) Specifying the information to be submitted by an applicant; and~~

5 ~~(3) Administering applications for authority to exercise the right of eminent domain.~~

6 Section 11. That § 49-16A-75.2 be repealed.

7 ~~49-16A-75.2. The applicant has the burden of proving by a preponderance of the evidence~~
8 ~~that the exercise of the right of eminent domain is a public use consistent with public necessity.~~

9 Section 12. That § 49-16A-75.3 be repealed.

10 ~~49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent~~
11 ~~with public necessity only if the use of eminent domain is proposed by an applicant who has~~
12 ~~negotiated in good faith to privately acquire sufficient property without the use of eminent~~
13 ~~domain. No determination of public use or necessity or any other issue properly decided by the~~
14 ~~Governor or the commission may be addressed by the circuit court in an action for~~
15 ~~condemnation. Such a determination may only be challenged upon direct appeal of that~~
16 ~~determination. Notwithstanding appeal of such determination, the railroad may proceed at any~~
17 ~~time by action in circuit court for possession and determination of compensation for any real~~
18 ~~property taken or damaged.~~

19 Section 13. That § 49-16A-75.4 be repealed.

20 ~~49-16A-75.4. Upon a failure to reach agreement on compensation following a determination~~
21 ~~pursuant to § 49-16A-75.3, either party may bring a proceeding in state court to establish~~
22 ~~compensation to be paid for the property taken or damaged. The court shall expedite the~~
23 ~~proceedings. A railroad is not entitled to physical possession of the property to be taken~~
24 ~~pursuant to the exercise of eminent domain except upon the earlier to occur of either:~~

1 ~~(1) Execution of a written agreement between the parties as to fair market value of~~
2 ~~compensation;~~

3 ~~(2) Entry of a judgment of condemnation in the circuit court; or~~

4 ~~(3) Upon posting by the railroad of a bond to be established by the court as soon as~~
5 ~~possible but no later than one hundred twenty days following petition by the railroad~~
6 ~~for possession. The bond shall be in an amount the court determines to be a~~
7 ~~preliminary estimate of compensation based on the best information available, but~~
8 ~~is not determinative of final compensation or admissible as evidence thereon.~~

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

391T0563

HOUSE JUDICIARY ENGROSSED NO. **HB 1126** 2/13/2012

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

Introduced by: Representative Hunt and Senator Krebs

1 FOR AN ACT ENTITLED, An Act to establish provisions that certain bonds paid by, or on
2 behalf of, certain persons with child support arrearages shall be paid to the Department of
3 Social Services to pay any child support the defendant owes.

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

5 Section 1. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Notwithstanding any provision of chapter 23A-43 to the contrary, any cash bond deposited
8 with the court, whether or not personally posted by the defendant, to assure appearance of an
9 individual charged with nonsupport of a child under § 25-7-15 or 25-7-16 or subject to civil
10 proceedings to enforce child support obligations, may, at the discretion of the court, be ordered
11 paid to the Department of Social Services or the support obligee and applied to child support
12 arrearages either as a condition imposed by the court or as a result of the individual's failure to
13 appear as required by the court.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

208T0651

HOUSE APPROPRIATIONS

ENGROSSED NO. **HB 1164** - 2/10/2012

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

Introduced by: Representatives Wismer, Brunner, Dennert, Hawley, Hoffman, Schaefer, and Sigdestad and Senators Sutton, Frerichs, and Putnam

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the sale of certain
2 surplus property in Yankton County.

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

4 Section 1. That section 1 of chapter 30 of the 2011 Session Laws be amended to read as
5 follows:

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

10 (a) Certain property under the control of the Department of Human Services described
11 generally as Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section
12 21, Township 94 North, Range 55, West of the 5th P.M., also described as Lot 13,
13 consisting of 10.1 acres, more or less, and that portion of Lot 14 ~~as~~ described in
14 Warranty Deed, F.V. Willhite, Grantor to Yankton State Hospital (administered by



1 the South Dakota Department of Human Services) Grantee; as recorded August 26th
2 1918 in Book 120 on page 388 in the County of Yankton to wit: Commencing on the
3 West or right bank of the James or Dakota River at a point where the east and west
4 section line between sections 21 and 28 of Township 94 North, of Range 55 West of
5 the 5th P.M. intersects said bank of said river; thence west along said section line
6 4.51 chains; thence north to the right bank of said river, thence down said stream
7 along the right bank of said river to the place of beginning north to the right bank of
8 said river, and accreted land; all of Section 21, Township 94 North, range 55, West
9 of the 5th P.M., consisting of 15 acres, more or less; and
10 (b) Certain property under the control of the Department of Human Services described
11 generally as the East 1900 feet of the South 1300 feet of Lot A being a Subdivision
12 of the SE1/4 of Section 36 Township 94 North Range 56 West of the 5th P.M.,
13 consisting of 56.70 acres, more or less.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

643T0612

HOUSE JUDICIARY ENGROSSED NO. **HB 1185** 2/10/2012

Introduced by: Representatives Hansen (Jon), Deelstra, Gosch, Haggar, Hickey, Hunt, Nelson (Stace), Olson (Betty), Rausch, Tornow, and Wick and Senator Brown

1 FOR AN ACT ENTITLED, An Act to prohibit all qualified health plans offered through a
2 health care exchange from including abortion coverage.

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

4 Section 1. Pursuant to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148,
5 no qualified health plan offered through a health insurance exchange established in the state may
6 include elective abortion coverage.

7 Section 2. For the purposes of this Act, an elective abortion is an abortion performed for any
8 reason other than a medical emergency as set forth in subdivision 34-23A-1(5).



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

839T0537

HOUSE EDUCATION ENGROSSED NO. **HB 1189** 2/10/2012

Introduced by: Representative Greenfield

1 FOR AN ACT ENTITLED, An Act to establish a deadline within each semester after which no
2 student may transfer to a school district other than the resident school district through the
3 enrollment options program.

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

5 Section 1. That § 13-28-43 be amended to read as follows:

6 13-28-43. A student's parent or legal guardian who wishes to enroll the student, or an
7 emancipated student who wishes to enroll, under the provisions of §§ 13-28-40 to 13-28-47,
8 inclusive, in a South Dakota school district other than the resident district or in a school within
9 the resident district other than the school to which the student has been assigned shall apply on
10 forms provided by the Department of Education.

11 The school board or the board's designee of the district in which the student desires to enroll
12 shall approve or disapprove the application and shall notify the applicant and the resident board,
13 if applicable, of its decision within five days of the decision. The district in which the student
14 desires to enroll shall review the applications in the order received.

15 Transfers to a school district other than the resident school district under the provisions of



1 §§ 13-28-40 to 13-28-47, inclusive, may only take place prior to the last Friday in September
2 during the first semester of any school year, and prior to the last Friday in January during the
3 second semester of any school year. If a school district approves an application for such a
4 transfer after the deadline in the first semester, the transfer will occur at the start of the second
5 semester. If a school district approves an application for such a transfer after the deadline in the
6 second semester, the transfer will occur at the start of the following school year. However, the
7 deadlines for transfer established in this section do not apply to any student seeking to attend
8 an alternative school that is operated by a school district or with which a school district
9 contracts.

10 Intradistrict transfer applications may be accepted and acted upon at any time at the board's
11 discretion if the policies on which the transfer decisions are based are consistent with the other
12 requirements of §§ 13-28-40 to 13-28-47, inclusive.

13 An application may be withdrawn by the applicant prior to the approval of the request and
14 upon notification of the district to which the student applied. Once approved by the district in
15 which the student wishes to enroll, the approved application serves as the applicant's notice of
16 intent to enroll in the nonresident district or desired school during the school year and obligates
17 the student to attend school in the nonresident district or desired school during the school year,
18 unless the affected school board or boards agree in writing to allow the student to transfer back
19 to the resident district or assigned school, or unless the parents, guardians, or emancipated
20 student change residence to another district.

21 Once enrolled in a nonresident district or nonassigned school, the student may remain
22 enrolled and is not required to resubmit annual applications.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

319T0613

HOUSE JUDICIARY ENGROSSED NO. **HB 1193** 2/10/2012

Introduced by: Representatives Hunt, Abdallah, Haggar, Hansen (Jon), and Van Gerpen and
Senators Schlekeway, Cutler, Kraus, and Rhoden

1 FOR AN ACT ENTITLED, An Act to regulate the sale of dextromethorphan and to provide a
2 penalty thereto.

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

4 Section 1. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
5 as follows:

6 For purposes of this Act, dextromethorphan is the dextrorotatory isomer of 3-methoxy-N-
7 methylmorphinan, including its salts, but not including its racemic or levorotatory forms.

8 Section 2. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No person, corporation, or retail distributor may willfully and knowingly supply, deliver,
11 or give possession of a drug, material, compound, mixture, preparation, or substance containing
12 any quantity of dextromethorphan to a person under eighteen years of age in an over-the-counter
13 sale without a prescription. A violation of this section is punishable by a civil fine not exceeding
14 two hundred fifty dollars to be deposited in the state general fund.



1 The fine imposed pursuant to section 2 of this Act may not be imposed on a retail clerk who
2 fails to require and obtain proof of age from the purchaser unless the retail clerk is a willful
3 participant in an ongoing criminal conspiracy to violate the provisions of this Act prohibiting
4 the sale of dextromethophan to minors.

5 Section 3. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
6 as follows:

7 It is an affirmative defense to any civil prosecution under section 2 of this Act that a person,
8 corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and
9 acted in reasonable reliance upon bona fide evidence of majority and identity.

10 Section 4. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
11 as follows:

12 For purposes of this Act, bona fide evidence of majority and identity is a document issued
13 by a federal, state, county, or municipal government, or subdivision or agency thereof, that bears
14 the name, date of birth, description, and picture of the person.

15 Section 5. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
16 as follows:

17 No employee or retailer is civilly liable to any injured person or the person's estate for any
18 injury suffered, including any wrongful death, or property damage suffered due to the sale of
19 any dextromethorphan product in violation of § 34-20D-1.

20 Section 6. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
21 as follows:

22 No county or municipality may establish requirements or establish a penalty that is higher
23 or more stringent than the requirements or penalties established by this chapter.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

597T0572

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1199** - 2/10/2012

Introduced by: Representatives Wink and Brunner and Senators Rhoden and Juhnke

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the distribution of
2 funds to sparse school districts.

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

4 Section 1. That § 13-13-79 be amended to read as follows:

5 13-13-79. At the same time that foundation program state aid is distributed to school
6 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of
7 Education shall distribute funds to sparse school districts by multiplying the result of the
8 calculation in either subdivision 13-13-78(2) or subdivision 13-13-78(3) by seventy-five percent
9 of the per student allocation as defined in § 13-13-10.1. However, no sparse school district may
10 receive a sparsity benefit in any year that exceeds ~~one hundred twenty-three thousand seven~~
11 ~~hundred fifty dollars~~ one hundred ten thousand dollars. ~~If the appropriation is insufficient to~~
12 ~~fully fund all sparse school districts as per the calculation in either subdivision 13-13-78(2) or~~
13 ~~subdivision 13-13-78(3), each eligible district shall receive a pro rata share of the total~~
14 ~~appropriated amount.~~



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

619T0683

HOUSE JUDICIARY ENGROSSED NO. **HB 1219** 2/10/2012

Introduced by: Representatives Hickey, Abdallah, Bolin, Boomgarden, Elliott, Fargen, Feickert, Gibson, Hansen (Jon), Hubbel, Hunhoff (Bernie), Kirkeby, Kopp, Lucas, Moser, Nelson (Stace), Perry, Schaefer, Sigdestad, Street, Stricherz, Turbiville, and Willadsen and Senators Peters, Adelstein, Buhl, Cutler, Frerichs, Juhnke, Nelson (Tom), Sutton, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the process of
2 collecting DNA upon arrest for a qualifying offense.

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

4 Section 1. That § 23-5A-5.2 be amended to read as follows:

5 23-5A-5.2. Any person eighteen years of age or older who is arrested for a qualifying offense
6 shall provide a DNA sample upon booking or ~~as determined by the supervising agency before~~
7 the person is released from custody. If it is determined that the person's DNA sample is included
8 in the State DNA Database, no additional sample is required.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

267T0616

HOUSE APPROPRIATIONS

ENGROSSED NO. **HB 1228** - 2/10/2012

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

Introduced by: Representatives Moser, Cronin, Rausch, Street, and Willadsen and Senators Hansen (Tom) and Begalka

- 1 FOR AN ACT ENTITLED, An Act to repeal the sunset concerning tax refunds for new or
2 expanded agricultural facilities and new or expanded business facilities.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 4 Section 1. The sunset of the tax refunds for new or expanded agricultural facilities and new
5 or expanded business facilities shall be repealed.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

360T0663

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1242** - 2/13/2012

Introduced by: Representatives Abdallah, Dennert, Feickert, Feinstein, Gibson, Gosch, Hubbel, Kirkeby, Kirschman, Lucas, Moser, Munsterman, Sigdestad, Street, Turbiville, and Wismer and Senators Krebs, Bradford, Cutler, Fryslie, Holien, Maher, Nelson (Tom), and Putnam

1 FOR AN ACT ENTITLED, An Act to revise the general appropriations act for fiscal year 2012.

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

3 Section 1. That section 2 of chapter 23 of the 2011 Session Laws be amended to read as
4 follows:

5 BUREAU OF FINANCE AND MANAGEMENT

6 (8A) SD Ellsworth Development Authority

7	Personal Services	\$0	\$0	\$0	\$0
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8	Operating Expenses	\$1	\$0	\$0	\$1
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9	Total	\$1	\$0	\$0	\$1
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10	F.T.E.				0.0
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11 Adjust all totals accordingly.

12 Section 2. The commissioner of the Governor's Office of Economic Development approve
13 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

808T0601

HOUSE JUDICIARY ENGROSSED NO. **HB 1253** -
2/10/2012

Introduced by: Representative Hunt

1 FOR AN ACT ENTITLED, An Act to prohibit the judicial enforcement of any religious codes.

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

3 Section 1. That chapter 19-8 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 No court, administrative agency, or other governmental agency may enforce any provisions
6 of any religious code.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

385T0713

HOUSE JUDICIARY ENGROSSED NO. **HB 1255** -
2/13/2012

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

Introduced by: Representatives Hunt, Brunner, Hansen (Jon), and Van Gerpen and Senator Kraus

1 FOR AN ACT ENTITLED, An Act to prohibit the enforcement of surrogacy arrangements.

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

3 Section 1. A surrogacy agreement is void and unenforceable as against public policy. No

4 surrogacy agreement is enforceable.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

367T0758

HOUSE JUDICIARY ENGROSSED NO. **HB 1266** 2/13/2012

Introduced by: Representatives Tulson, Gosch, Hubbel, Jensen, Magstadt, Moser, Rausch,
Venner, and Wick and Senators Rhoden, Begalka, and Novstrup (A)

1 FOR AN ACT ENTITLED, An Act to reduce the period of time necessary to cure and validate
2 certain adoption proceedings.

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

4 Section 1. That § 25-6-21 be amended to read as follows:

5 25-6-21. Except in any case involving fraud or any case controlled by the Indian Child
6 Welfare Act, (25 U.S.C. §§ 1901 to 1963, inclusive), as amended to January 1, 2012, any
7 proceeding for the adoption of a child commenced under chapter 25-6 shall be in all things
8 legalized, cured, and validated ~~two years~~ one year after the proceeding is finalized. If any person
9 has a claim or right arising from any adoption proceeding, that person ~~must~~ shall initiate any
10 action to enforce such right or claim within ~~two years~~ one year of the date when the proceeding
11 is finalized unless a two year statute of limitations is imposed by the Indian Child Welfare Act,
12 (25 U.S.C. §§ 1901 to 1963, inclusive), as amended to January 1, 2012.



State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0497

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1270** - 2/10/2012

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

1 FOR AN ACT ENTITLED, An Act to revise the time period for which unclaimed property is
2 presumed abandoned and to revise certain provisions regarding the publication notice of
3 unclaimed property.

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

5 Section 1. That § 43-41B-2 be amended to read as follows:

6 43-41B-2. (a) Except as otherwise provided by this chapter, all intangible property,
7 including any income or increment derived therefrom, less any lawful charges, that is held,
8 issued, or owing in the ordinary course of a holder's business and has remained unclaimed by
9 the owner for more than ~~five~~ three years after it became payable or distributable is presumed
10 abandoned.

11 (b) Property is payable or distributable for the purpose of this chapter notwithstanding the
12 owner's failure to make demand or to present any instrument or document required to receive
13 payment.

14 Section 2. That § 43-41B-4 be amended to read as follows:



1 43-41B-4. (a) Any sum payable on a travelers check that has been outstanding for more than
2 fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has
3 communicated in writing with the issuer concerning it or otherwise indicated an interest as
4 evidenced by a memorandum or other record on file prepared by an employee of the issuer.

5 (b) Any sum payable on a money order or similar written instrument, other than a third-party
6 bank check, that has been outstanding for more than ~~five~~ three years after its issuance is
7 presumed abandoned unless the owner, within ~~five~~ three years, has communicated in writing
8 with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum
9 or other record on file prepared by an employee of the issuer.

10 (c) A holder may not deduct from the amount of a travelers check or money order any charge
11 imposed by reason of the failure to present the instrument for payment unless there is a valid and
12 enforceable written contract between the issuer and the owner of the instrument pursuant to
13 which the issuer may impose a charge and the issuer regularly imposes such charges and does
14 not regularly reverse or otherwise cancel them.

15 (d) No sum payable on a travelers check, money order, or similar written instrument, other
16 than a third-party bank check, as described in subsections (a) and (b), may be subjected to the
17 custody of this state as unclaimed property unless:

18 (1) The records of the issuer show that the travelers check, money order, or similar
19 written instrument was purchased in this state;

20 (2) The issuer has its principal place of business in this state and the records of the issuer
21 do not show the state in which the travelers check, money order, or similar written
22 instrument was purchased; or

23 (3) The issuer has its principal place of business in this state, the records of the issuer
24 show the state in which the travelers check, money order, or similar written

1 instrument was purchased and the laws of the state of purchase do not provide for the
2 escheat or custodial taking of the property or its escheat or unclaimed property law
3 is not applicable to the property.

4 (e) Notwithstanding any other provisions of this chapter, subsection (d) applies to sums
5 payable on travelers checks, money orders, and similar written instruments presumed abandoned
6 on or after February 1, 1965, except to the extent that those sums have been paid over to a state.

7 Section 3. That § 43-41B-5 be amended to read as follows:

8 43-41B-5. (a) Any sum payable on a check, draft, or similar instrument, except those subject
9 to § 43-41B-4, on which a banking or financial organization is directly liable, including a
10 cashier's check and a certified check, which has been outstanding for more than ~~five~~ three years
11 after it was payable or after its issuance if payable on demand, is presumed abandoned, unless
12 the owner, within ~~five~~ three years, has communicated in writing with the banking or financial
13 organization concerning it or otherwise indicated an interest as evidenced by a memorandum
14 or other record on file prepared by an employee thereof.

15 (b) A holder may not deduct from the amount of any instrument subject to this section any
16 charge imposed by reason of the failure to present the instrument for payment unless there is a
17 valid and enforceable written contract between the holder and the owner of the instrument
18 pursuant to which the holder may impose a charge, and the holder regularly imposes such
19 charges and does not regularly reverse or otherwise cancel them.

20 Section 4. That § 43-41B-6 be amended to read as follows:

21 43-41B-6. (a) Any demand, savings, or matured time deposit with a banking or financial
22 organization, including a deposit that is automatically renewable, and any funds paid toward the
23 purchase of a share, a mutual investment certificate, or any other interest in a banking or
24 financial organization is presumed abandoned unless in the case of a matured time deposit, the

1 banking or financial organization has mailed, at least once in ~~five~~ three years certified mail
2 requesting a return receipt, to the owner and the receipt has been returned and signed by the
3 addressee, or unless the owner, within ~~five~~ three years has:

4 (1) In the case of a deposit, increased or decreased its amount or presented the passbook
5 or other similar evidence of the deposit for the crediting of interest;

6 (2) Communicated in writing with the banking or financial organization concerning the
7 property;

8 (3) Otherwise indicated an interest in the property as evidenced by a memorandum or
9 other record on file prepared by an employee of the banking or financial organization;

10 (4) Owned other property to which paragraph (1), (2), or (3) applies and if the banking
11 or financial organization communicates in writing with the owner with regard to the
12 property that would otherwise be presumed abandoned under this subsection at the
13 address to which communications regarding the other property regularly are sent;

14 (5) Had another relationship with the banking or financial organization concerning which
15 the owner has:

16 (i) Communicated in writing with the banking or financial organization; or

17 (ii) Otherwise indicated an interest as evidenced by a memorandum or other
18 record on file prepared by an employee of the banking or financial
19 organization and if the banking or financial organization communicates in
20 writing with the owner with regard to the property that would otherwise be
21 abandoned under this subsection at the address to which communications
22 regarding the other relationship regularly are sent; or

23 (6) Received tax reports or regular statements of the deposit by mail from the banking
24 or financial organization regarding the deposit. Receipt of the statement by the owner

1 is presumed if the statement is mailed first class by the banking or financial
2 organization and not returned.

3 (b) For purposes of subsection (a) property includes any income, increments, interest, or
4 dividends.

5 (c) A holder may not impose with respect to property described in subsection (a) any charge
6 due to dormancy or inactivity or cease payment of interest unless:

7 (1) There is an enforceable written contract between the holder and the owner of the
8 property pursuant to which the holder may impose a charge or cease payment of
9 interest;

10 (2) For property in excess of two dollars, the holder, no more than three months before
11 the initial imposition of those charges or cessation of interest, has given written
12 notice to the owner of the amount of those charges at the last known address of the
13 owner stating that those charges will be imposed or that interest will cease, but the
14 notice provided in this section need not be given with respect to charges imposed or
15 interest ceased before July 1, 1993; and

16 (3) The holder regularly imposes such charges or ceases payment of interest and does not
17 regularly reverse or otherwise cancel them or retroactively credit interest with respect
18 to the property.

19 (d) Any property described in subsection (a) that is automatically renewable is matured for
20 purposes of subsection (a) upon the expiration of its initial time period, but in the case of any
21 renewal to which the owner consents at or about the time of renewal by communicating in
22 writing with the banking or financial organization or otherwise indicating consent as evidenced
23 by a memorandum or other record on file prepared by an employee of the organization, the
24 property is matured upon the expiration of the last time period for which consent was given. If,

1 at the time provided for delivery in § 43-41B-20, a penalty or forfeiture in the payment of
2 interest would result from the delivery of the property, the time for delivery is extended until
3 the time when no penalty or forfeiture would result.

4 Section 5. That § 43-41B-7 be amended to read as follows:

5 43-41B-7. (a) Funds held or owing under any life or endowment insurance policy or annuity
6 contract that has matured or terminated are presumed abandoned if unclaimed for more than
7 ~~four~~ three years after the funds became due and payable as established from the records of the
8 insurance company holding or owing the funds, but property described in subsection (c)(2) is
9 presumed abandoned if unclaimed for more than ~~four~~ three years.

10 (b) If a person other than the insured or annuitant is entitled to the funds and an address of
11 the person is not known to the company or it is not definite and certain from the records of the
12 company who is entitled to the funds, it is presumed that the last known address of the person
13 entitled to the funds is the same as the last known address of the insured or annuitant according
14 to the records of the company.

15 (c) For purposes of this chapter, a life or endowment insurance policy or annuity contract
16 not matured by actual proof of the death of the insured or annuitant according to the records of
17 the company is matured and the proceeds due and payable if:

18 (1) The company knows that the insured or annuitant has died; or

19 (2)(i) The insured has attained, or would have attained if he were living, the limiting age
20 under the mortality table on which the reserve is based;

21 (ii) The policy was in force at the time the insured attained, or would have
22 attained, the limiting age specified in subparagraph (I); and

23 (iii) Neither the insured nor any other person appearing to have an interest in the
24 policy within the preceding ~~four~~ three years, according to the records of the

1 company, has assigned, readjusted, or paid premiums on the policy, subjected
2 the policy to a loan, corresponded in writing with the company concerning the
3 policy, or otherwise indicated an interest as evidenced by a memorandum or
4 other record on file prepared by an employee of the company.

5 (d) For purposes of this chapter, the application of an automatic premium loan provision or
6 other nonforfeiture provision contained in an insurance policy does not prevent a policy from
7 being matured or terminated under subsection (a) if the insured has died or the insured or the
8 beneficiary of the policy otherwise has become entitled to the proceeds thereof before the
9 depletion of the cash surrender value of a policy by the application of those provisions.

10 (e) If the laws of this state or the terms of the life insurance policy require the company to
11 give notice to the insured or owner that an automatic premium loan provision or other
12 nonforfeiture provision has been exercised and the notice, given to an insured or owner whose
13 last known address according to the records of the company is in this state, is undeliverable, the
14 company shall make a reasonable search to ascertain the policyholder's correct address to which
15 the notice must be mailed.

16 (f) Notwithstanding any other provision of law, if the company learns of the death of the
17 insured or annuitant and the beneficiary has not communicated with the insurer within four
18 months after the death, the company shall take reasonable steps to pay the proceeds to the
19 beneficiary.

20 (g) Commencing on July 1, 1994, every change of beneficiary form issued by an insurance
21 company under any life or endowment insurance policy or annuity contract to an insured or
22 owner who is a resident of this state must request the following information:

23 (1) The name of each beneficiary, or if a class of beneficiaries is named, the name of
24 each current beneficiary in the class;

1 (2) The address of each beneficiary; and

2 (3) The relationship of each beneficiary to the insured.

3 Section 6. That § 43-41B-10 be amended to read as follows:

4 43-41B-10. (a) Except as provided in subsections (b) and (e), stock or other intangible
5 ownership interest in a business association, the existence of which is evidenced by records
6 available to the association, is presumed abandoned and, with respect to the interest, the
7 association is the holder, if a dividend, distribution, or other sum payable as a result of the
8 interest has remained unclaimed by the owner for ~~five~~ three years and the owner within ~~five~~
9 three years has not:

10 (1) Communicated in writing with the association regarding the interest or a dividend,
11 distribution, or other sum payable as a result of the interest; or

12 (2) Otherwise communicated with the association regarding the interest or a dividend,
13 distribution, or other sum payable as a result of the interest, as evidenced by a
14 memorandum or other record on file with the association prepared by an employee
15 of the association.

16 (b) At the expiration of a ~~five-year~~ three-year period following the failure of the owner to
17 claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the
18 interest is not presumed abandoned unless there have been at least ~~five~~ three dividends,
19 distributions, or other sums paid during the period, none of which has been claimed by the
20 owner. If ~~five~~ three dividends, distributions, or other sums are paid during the ~~five-year~~ three-
21 year period, the period leading to a presumption of abandonment commences on the date
22 payment of the first such unclaimed dividend, distribution, or other sum became due and
23 payable. If ~~five~~ three dividends, distributions, or other sums are not paid during the presumptive
24 period, the period continues to run until there have been ~~five~~ three dividends, distributions, or

1 other sums that have not been claimed by the owner.

2 (c) The running of the ~~five-year~~ three-year period of abandonment ceases immediately upon
3 the occurrence of a communication referred to in subsection (a). If any future dividend,
4 distribution, or other sum payable to the owner as a result of the interest is subsequently not
5 claimed by the owner, a new period of abandonment commences and relates back to the time
6 a subsequent dividend, distribution, or other sum became due and payable.

7 (d) At the time an interest is presumed abandoned under this section, any dividend,
8 distribution, or other sum then held for or owing to the owner as a result of the interest, and not
9 previously presumed abandoned, is presumed abandoned.

10 (e) This chapter does apply to any stock or other intangible ownership interest enrolled in
11 a plan that provides for the automatic reinvestment of dividends, distributions, or other sums
12 payable as a result of the interest if the records available to the administrator of the plan show,
13 with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the
14 owner has not within ~~five~~ three years communicated in any manner described in subsection (a).

15 Section 7. That § 43-41B-13 be amended to read as follows:

16 43-41B-13. (a) Intangible property and any income or increment derived therefrom held by
17 fiduciaries and agents for the benefit of another person is presumed abandoned unless the owner,
18 within ~~five~~ three years after it has become payable or distributable, has increased or decreased
19 the principal, accepted payment of principal or income, communicated concerning the property,
20 or otherwise indicated an interest as evidenced by a memorandum or other record on file
21 prepared by the fiduciary.

22 (b) Funds in an individual retirement account or a retirement plan for self-employed
23 individuals or similar account or plan established pursuant to the Internal Revenue laws of the
24 United States are not payable or distributable within the meaning of subsection (a) unless, under

1 the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

2 (c) For the purpose of this section, a person who holds property as an agent for a business
3 association is deemed to hold the property in a fiduciary capacity for that business association
4 alone, unless the agreement between him and the business association provides otherwise.

5 (d) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary
6 capacity for a business association alone is the holder of the property only insofar as the interest
7 of the business association in the property is concerned, and the business association is the
8 holder of the property insofar as the interest of any other person in the property is concerned.

9 Section 8. That § 43-41B-15 be amended to read as follows:

10 43-41B-15. (a) A gift certificate or a credit memo issued in the ordinary course of an issuer's
11 business which remains unclaimed by the owner for more than ~~five~~ three years after becoming
12 payable or distributable is presumed abandoned.

13 (b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the
14 purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned
15 is the amount credited to the recipient of the memo.

16 Section 9. That § 43-41B-17 be amended to read as follows:

17 43-41B-17. Any tangible and intangible property held in a safe deposit box or any other
18 safekeeping repository or agency or collateral deposit box in this state in the ordinary course of
19 the holder's business and proceeds resulting from the sale of the property permitted by other law,
20 which remain unclaimed by the owner for more than ~~five~~ three years after the lease or rental
21 period on the box or other repository has expired, are presumed abandoned.

22 Section 10. That § 43-41B-19 be amended to read as follows:

23 43-41B-19. (a) The administrator shall cause a notice to be published ~~not later than March~~
24 ~~first of the year~~ within the quarter immediately following the report required by § 43-41B-18

1 at least once ~~a week for two consecutive weeks~~ in a newspaper of general circulation in the
2 county of this state in which is located the last known address of any person to be named in the
3 notice. If no address is listed or the address is outside this state, the notice must be published
4 in the county in which the holder of the property has its principal place of business within this
5 state.

6 (b) The published notice must be entitled "Notice of Names of Persons Appearing to be
7 Owners of Abandoned Property" and contain:

8 (1) The names in alphabetical order and last known address, if any, of persons listed in
9 the report and entitled to notice within the county as specified in subsection (a);

10 (2) A statement that information concerning the property and the name and last known
11 address of the holder may be obtained by any person possessing an interest in the
12 property by addressing an inquiry to the administrator; and

13 (3) A statement that if proof of claim is not presented by the owner and the owner's right
14 to receive the property must be established to the administrator's satisfaction to whom
15 all claims must be directed.

16 (c) The administrator is not required to publish in the notice any items of less than ~~fifty one~~
17 hundred twenty-five dollars unless the administrator considers their publication to be in the
18 public interest.

19 (d) This section is not applicable to sums payable on travelers checks, money orders, and
20 other written instruments presumed abandoned under § 43-41B-4.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

805T0545

HOUSE JUDICIARY ENGROSSED NO. **HB 1273** 2/13/2012

Introduced by: Representatives Haggar, Abdallah, Conzet, Gosch, Hansen (Jon), Magstadt, Turbiville, and Wick and Senators Holien, Brown, Novstrup (Al), and Rave

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of loose leaf incense to minors, to
2 prohibit certain marketing techniques, to regulate the sale of certain types of incense, to
3 provide penalties therefor, and to declare an emergency.

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

5 Section 1. For purposes of this Act, a retailer is any person who sells merchandise at retail.

6 Section 2. No retailer may sell, in a single transaction, one quarter of a gram or more of
7 loose leaf incense. Any person who sells loose leaf incense in violation of this section is guilty
8 of a Class 1 misdemeanor.

9 Section 3. No retailer may willfully and knowingly supply, deliver, give possession, or sell
10 any amount of loose leaf incense to a person under twenty-one years of age. A violation of this
11 is a Class 1 misdemeanor.

12 Section 4. Any retailer who offers loose leaf incense for sale shall display and offer the
13 product for sale behind the counter or in a locked case so that a customer wanting access to the
14 product must ask a store employee for assistance. A violation of this section is a Class 1



1 misdemeanor.

2 Section 5. If offering for sale loose leaf incense, a retailer shall, before making such a sale,
3 require and make a record of the identification of the person purchasing the product. For
4 purposes of this Act, the term, identification, means a document issued by a governmental
5 agency which contains a description of the person or a photograph of the person, or both, and
6 gives the person's date of birth, such as a driver license, passport, or military identification card.
7 The retailer shall maintain the record of identification, including the purchaser's name and date
8 of birth. On August 1, 2012, and no later than the fifth day of every month thereafter, the retailer
9 shall send any such records to the Office of the Attorney General. No retailer may use or
10 maintain the record for any private or commercial purpose or disclose the record to any person,
11 except as authorized by law. The retailer shall disclose the record, upon request, to a law
12 enforcement agency for a law enforcement purpose.

13 Section 6. No manufacturer, distributor, or retailer may advertise to the public, directly or
14 indirectly, that loose leaf incense can be ingested. A violation of this section is a Class 1
15 misdemeanor.

16 Section 7. A retailer shall label each package of loose leaf incense sold in this state with a
17 warning label that reads as follows: "This product is not meant to be ingested. The side effects
18 of ingesting this product are unknown." A violation of this section is a Class 1 misdemeanor.

19 Section 8. For purposes of this Act, loose leaf incense includes loose potpourri, loose herbal
20 incense, herbal smoking blends, or similar dried, leafy substances sold or marketed, directly or
21 indirectly, as a relaxation, smoking, or herbal enhancement product. Herbal dietary supplements
22 or remedies and United States Food and Drug Administration approved herbal teas or products
23 are not included as loose leaf incense under this Act.

24 Section 9. A retailer shall ensure that each package of loose leaf incense sold is labeled with

1 each ingredient present in the product, including all chemicals and additives.

2 Section 10. Whereas, this Act is necessary for the immediate preservation of the public

3 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full

4 force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0179

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 32** - 1/19/2012

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

1 FOR AN ACT ENTITLED, An Act to revise the suitability requirements for annuities.

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

3 Section 1. That § 58-33A-16 be amended to read as follows:

4 58-33A-16. In recommending to a consumer the purchase of an annuity or the exchange of
5 an annuity that results in another insurance transaction or series of insurance transactions, the
6 insurance producer, or the insurer if no producer is involved, shall have reasonable grounds for
7 believing that the recommendation is suitable for the consumer on the basis of the facts
8 disclosed by the consumer as to the consumer's investments and other insurance products and
9 as to the consumer's financial situation and needs and that there is a reasonable basis to believe
10 all of the following:

11 (1) The consumer has been reasonably informed of various features of the annuity, such
12 as the potential surrender period and surrender charge, potential tax penalty if the
13 consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and
14 expense fees, investment advisory fees, potential charges for and features of riders,



1 limitations on interest returns, insurance and investment components, and market
2 risk;

3 (2) The consumer would benefit from certain features of the annuity, such as
4 tax-deferred growth, annuitization, or death or living benefit;

5 (3) The particular annuity as a whole, the underlying subaccounts to which funds are
6 allocated at the time of purchase or exchange of the annuity, and riders and similar
7 product enhancements, if any, are suitable (and in the case of an exchange or
8 replacement, the transaction as a whole is suitable) for the particular consumer based
9 on the consumer's suitability information; and

10 (4) In the case of an exchange or replacement of an annuity, the exchange or replacement
11 is suitable including taking into consideration whether:

12 (a) The consumer will incur a surrender charge, be subject to the commencement
13 of a new surrender period, lose existing benefits (such as death, living, or other
14 contractual benefits), or be subject to increased fees, investment advisory fees,
15 or charges for riders and similar product enhancements;

16 (b) The consumer would benefit from product enhancements and improvements;
17 and

18 (c) The consumer has had another annuity exchange or replacement and, in
19 particular, an exchange or replacement within the preceding thirty-six months.

20 Section 2. That § 58-33A-17 be amended to read as follows:

21 58-33A-17. Prior to the execution of a purchase or exchange of an annuity resulting from
22 a recommendation, an insurance producer, or an insurer if no producer is involved, shall make
23 reasonable efforts to obtain the consumer's suitability information~~concerning~~. Suitability
24 information includes:

- 1 (1) ~~The consumer's financial status;~~
- 2 ~~(2) The consumer's tax status;~~
- 3 ~~(3) The consumer's investment objectives; and~~
- 4 ~~(4) Such other information used or considered to be reasonable by the insurance~~
5 ~~producer, or the insurer if no producer is involved, in making any recommendation~~
6 ~~to the consumer~~ Age;
- 7 (2) Annual income;
- 8 (3) Financial situation and needs, including the financial resources used for the funding
9 of the annuity;
- 10 (4) Financial experience;
- 11 (5) Financial objectives;
- 12 (6) Intended use of the annuity;
- 13 (7) Financial time horizon;
- 14 (8) Existing assets, including investment and life insurance holdings;
- 15 (9) Liquidity needs;
- 16 (10) Liquid net worth;
- 17 (11) Risk tolerance; and
- 18 (12) Tax status.

19 Section 3. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Except as permitted under §§ 58-33A-18 and 58-33A-19, no insurer may issue an annuity
22 recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable
23 based on the consumer's suitability information.

24 Section 4. That § 58-33A-18 be amended to read as follows:

1 58-33A-18. Except as provided pursuant to § 58-33A-19, no insurance producer; nor any
 2 insurer ~~if no producer is involved~~, has any obligation to a consumer under § 58-33A-16 related
 3 to any recommendation ~~if a consumer~~:

4 (1) ~~Refuses~~ A consumer refuses to provide relevant suitability information ~~requested by~~
 5 ~~the insurer or insurance producer~~ and the annuity transaction is not recommended;

6 (2) ~~Decides~~ A consumer decides to enter into an insurance transaction that is not based
 7 on a recommendation of the insurer or insurance producer; ~~or~~

8 (3) ~~Fails to provide complete or accurate information~~ A recommendation was made and
 9 was later found to have been prepared based on materially inaccurate information
 10 provided by the consumer; or

11 (4) No recommendation is made.

12 Section 5. That § 58-33A-19 be amended to read as follows:

13 58-33A-19. An ~~insurer or insurance producer's recommendation~~ insurer's issuance of an
 14 annuity subject to § 58-33A-16 shall be reasonable under all the circumstances actually known
 15 to the insurer ~~or insurance producer~~ at the time of the ~~recommendation~~ annuity is issued.

16 Section 6. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
 17 as follows:

18 An insurance producer or, if no insurance producer is involved, the responsible insurer
 19 representative, shall at the time of sale:

20 (1) Make a record of any recommendation subject to § 58-33A-16;

21 (2) Obtain a customer signed statement documenting a customer's refusal to provide
 22 suitability information, if any; and

23 (3) Obtain a customer signed statement acknowledging that an annuity transaction is not
 24 recommended if a customer decides to enter into an annuity transaction that is not

1 based on the insurance producer's or insurer's recommendation.

2 Section 7. That § 58-33A-20 be amended to read as follows:

3 58-33A-20. An insurer ~~either shall assure that~~ establish a system to supervise
4 recommendations that is reasonably designed to achieve compliance with §§ 58-33A-13 to 58-
5 33A-27, inclusive, ~~is established and maintained by complying with § 58-33A-22, or shall~~
6 ~~establish and maintain such a system~~ and this Act, including:

7 (1) ~~Maintaining written procedures; and~~ The insurer shall maintain reasonable
8 procedures to inform its insurance producers of the requirements of this Act and shall
9 incorporate the requirements of this regulation into relevant insurance producer
10 training manuals;

11 (2) ~~Conducting periodic reviews of its records that are reasonably designed to assist in~~
12 ~~detecting and preventing violations of §§ 58-33A-13 to 58-33A-27, inclusive~~ The
13 insurer shall establish standards for insurance producer product training and shall
14 maintain reasonable procedures to require its insurance producers to comply with the
15 requirements of sections 11 to 13, inclusive, of this Act;

16 (3) The insurer shall provide product-specific training and training materials that explain
17 all material features of its annuity products to its insurance producers;

18 (4) The insurer shall maintain procedures for review of each recommendation prior to
19 issuance of an annuity that are designed to ensure that there is a reasonable basis to
20 determine that a recommendation is suitable. Such review procedures may apply a
21 screening system for the purpose of identifying selected transactions for additional
22 review and may be accomplished electronically or through other means including,
23 physical review. Such an electronic or other system may be designed to require
24 additional review only of those transactions identified for additional review by the

1 selection criteria;

2 (5) The insurer shall maintain reasonable procedure to detect recommendations that are
3 not suitable. This may include confirmation of consumer suitability information,
4 systematic customer surveys, interviews, confirmation letters, and programs of
5 internal monitoring. Nothing in this subdivision prevents an insurer from complying
6 with this subdivision by applying sampling procedures or by confirming suitability
7 information after issuance or delivery of the annuity; and

8 (6) The insurer shall annually provide a report to senior management, including to the
9 senior manager responsible for audit functions, that details a review, with appropriate
10 testing, reasonably designed to determine the effectiveness of the supervision system,
11 the exceptions found, and corrective action taken or recommended, if any.

12 Section 8. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Nothing in § 58-33A-20 or this section restricts an insurer from contracting for performance
15 of a function required under § 58-33A-20, including maintenance of procedures. An insurer is
16 responsible for taking appropriate corrective action and may be subject to sanctions and
17 penalties pursuant to section 14 of this Act regardless of whether the insurer contracts for
18 performance of a function and regardless of the insurer's compliance with this section.

19 An insurer's supervision system under § 58-33A-20 and this section shall include
20 supervision of contractual performance under this section. This includes the following:

21 (1) Monitoring and, as appropriate, conducting audits to assure that the contracted
22 function is properly performed; and

23 (2) Annually obtaining a certification from a senior manager who has responsibility for
24 the contracted function that the manager has a reasonable basis to represent, and does

1 represent, that the function is properly performed.

2 An insurer is not required to include in its system of supervision an insurance producer's
3 recommendations to consumers of products other than the annuities offered by the insurer.

4 Section 9. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 No insurance producer may dissuade, or attempt to dissuade, a consumer from:

- 7 (1) Truthfully responding to an insurer's request for confirmation of suitability
8 information;
- 9 (2) Filing a complaint; or
- 10 (3) Cooperating with the investigation of a complaint.

11 Section 10. That § 58-33A-25 be amended to read as follows:

12 58-33A-25. If the director finds that the Conduct Rules of the ~~National Association of~~
13 ~~Securities Dealers~~ Financial Industry Regulatory Authority meet or exceed the requirements of
14 §§ 58-33A-16 to 58-33A-24, inclusive, and this Act, then any recommendations made for
15 variable annuities that comply with the Conduct Rules of the ~~National Association of Securities~~
16 ~~Dealers~~ Financial Industry Regulatory Authority meet the requirements of §§ 58-33A-16 to 58-
17 33A-24, inclusive, and this Act. For this section to apply, an insurer shall:

- 18 (1) Monitor the Financial Industry Regulatory Authority member broker-dealer using
19 information collected in the normal course of an insurer's business; and
- 20 (2) Provide to the Financial Industry Regulatory Authority member broker-dealer
21 information and reports that are reasonably appropriate to assist the Financial
22 Industry Regulatory Authority member broker-dealer to maintain its supervision
23 system.

24 Section 11. That chapter 58-33A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No insurance producer may solicit the sale of an annuity product unless the insurance
3 producer has adequate knowledge of the product to recommend the annuity and the insurance
4 producer is in compliance with the insurer's standards for product training. An insurance
5 producer may rely on insurer-provided product-specific training standards and materials to
6 comply with this section. An insurance producer who engages in the sale of annuity products
7 shall complete a one-time four credit training course approved by the director and provided by
8 a director-approved education provider.

9 Any insurance producer who holds a life insurance line of authority on the effective date of
10 this Act and who desires to sell annuities shall complete the requirements of this section within
11 six months after the effective date of this Act. Any person who obtains a life insurance line of
12 authority on or after the effective date of this Act may not engage in the sale of annuities unless
13 the annuity training course required under this section has been completed. The minimum length
14 of the training required under this section shall be sufficient to qualify for at least four
15 continuing education credits, but may be longer. The training required under this section shall
16 include information on the following subjects:

- 17 (1) The types of annuities and various classifications of annuities;
- 18 (2) Identification of the parties to an annuity;
- 19 (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
- 20 (4) The application of income taxation of qualified and nonqualified annuities;
- 21 (5) The primary uses of annuities; and
- 22 (6) Appropriate sales practices, replacement, and disclosure requirements.

23 Section 12. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 Each course provider intending to comply with section 11 of this Act shall cover all subjects
2 listed in section 11 of this Act. No provider of such course may present any marketing
3 information or provide training on sales techniques or provide specific information about a
4 particular insurer's products. Additional subjects may be offered in conjunction with and in
5 addition to the required subjects. Each provider of an annuity training course intending to
6 comply with section 11 of this Act shall register as a continuing education provider in this state
7 and shall comply with the rules applicable to insurance producer continuing education courses
8 as set forth in chapter 58-30.

9 An annuity training course may be conducted and completed by classroom or self-study
10 methods. Each provider of annuity training shall comply with the reporting requirements and
11 shall issue certificates of completion in accordance with chapter 58-30. The satisfaction of the
12 training requirements of another state that are substantially similar to the provisions of this
13 section satisfy the training requirements of this section and section 11 of this Act.

14 Section 13. That chapter 58-33A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 An insurer shall verify that an insurance producer has completed the annuity training course
17 required pursuant to section 11 of this Act before allowing the producer to sell an annuity
18 product for that insurer. An insurer may satisfy its responsibility under this section by obtaining
19 certificates of completion of the training course or obtaining reports provided by a
20 director-sponsored database system or vendor or from a reasonably reliable commercial database
21 vendor that has a reporting arrangement with an approved insurance education provider.

22 Section 14. That § 58-33A-26 be amended to read as follows:

23 58-33A-26. An insurer is responsible for compliance with §§ 58-33A-13 to 58-33A-27,
24 inclusive, and this Act. The director may order:

- 1 (1) An insurer to take reasonably appropriate corrective action for any consumer harmed
2 by the insurer's, or by its insurance producer's, violation of §§ 58-33A-13 to 58-33A-
3 27, inclusive;
- 4 (2) An insurance producer to take reasonably appropriate corrective action for any
5 consumer harmed by the insurance producer's violation of §§ 58-33A-13 to 58-33A-
6 27, inclusive; and
- 7 (3) A general agency or independent agency that employs or contracts with an insurance
8 producer to sell, or solicit the sale, of annuities to consumers, to take reasonably
9 appropriate corrective action for any consumer harmed by the insurance producer's
10 violation of §§ 58-33A-13 to 58-33A-27, inclusive.

11 Any violation of § 58-33A-16, 58-33A-17, or 58-33A-19 subjects the insurer, insurance
12 producer, or general agency or independent agency to suspension, revocation, refusal to renew
13 a license, or to a monetary penalty as provided for under this title. However, the penalty may be
14 reduced or eliminated, according to a schedule adopted by the director, if corrective action for
15 the consumer is taken promptly after a violation is discovered or the violation was not part of
16 a pattern or practice.

17 Section 15. That § 58-33A-21 be repealed.

18 ~~58-33A-21. A general agent and independent agency either shall adopt a system established~~
19 ~~by an insurer to supervise recommendations of its insurance producers that is reasonably~~
20 ~~designed to achieve compliance with §§ 58-33A-13 to 58-33A-27, inclusive, or shall establish~~
21 ~~and maintain such a system, including:~~

22 ~~(1) Maintaining written procedures; and~~

23 ~~(2) Conducting periodic reviews of records that are reasonably designed to assist in~~
24 ~~detecting and preventing violations of §§ 58-33A-13 to 58-33A-27, inclusive.~~

1 Section 16. That § 58-33A-22 be repealed.

2 ~~58-33A-22. An insurer may contract with a third party, including a general agent or~~
3 ~~independent agency, to establish and maintain a system of supervision as required by § 58-33A-~~
4 ~~20 with respect to insurance producers under contract with or employed by the third party.~~

5 ~~An insurer shall make reasonable inquiry to assure that the third party contracting under this~~
6 ~~section is performing the functions required under § 58-33A-20 and shall take such action as~~
7 ~~is reasonable under the circumstances to enforce the contractual obligation to perform the~~
8 ~~functions. An insurer may comply with its obligation to make reasonable inquiry by doing all~~
9 ~~of the following:~~

10 ~~(1) The insurer annually obtains a certification from a third party senior manager who~~
11 ~~has responsibility for the delegated functions that the manager has a reasonable basis~~
12 ~~to represent, and does represent, that the third party is performing the required~~
13 ~~functions; and~~

14 ~~(2) The insurer, based on reasonable selection criteria, periodically selects third parties~~
15 ~~contracting under this section for a review to determine whether the third parties are~~
16 ~~performing the required functions. The insurer shall perform those procedures to~~
17 ~~conduct the review that are reasonable under the circumstances.~~

18 ~~Any insurer that contracts with a third party pursuant to this section and that complies with~~
19 ~~the requirements to supervise in this section has fulfilled its responsibilities under § 58-33A-20.~~

20 Section 17. That § 58-33A-23 be repealed.

21 ~~58-33A-23. No insurer, general agent, or independent agency is required by § 58-33A-20~~
22 ~~or 58-33A-21 to:~~

23 ~~(1) Review, or provide for review of, all insurance producer solicited transactions; or~~

24 ~~(2) Include in its system of supervision an insurance producer's recommendations to~~

1 consumers of products other than the annuities offered by the insurer, general agent,
2 or independent agency.

3 ~~— A general agent or independent agency contracting with an insurer pursuant to § 58-33A-22~~
4 ~~shall promptly, if requested by the insurer, give a certification as described in § 58-33A-22 or~~
5 ~~give a clear statement that it is unable to meet the certification criteria.~~

6 Section 18. That § 58-33A-24 be repealed.

7 ~~— 58-33A-24. No person may provide a certification under subdivision § 58-33A-22(1) unless:~~

8 ~~— (1) The person is a senior manager with responsibility for the delegated functions; and~~

9 ~~— (2) The person has a reasonable basis for making the certification.~~

10 Section 19. That § 58-33A-1 be amended to read as follows:

11 58-33A-1. This chapter applies to all individual and group health policies which are solicited
12 or sold in this state that are subject to chapters 58-15, 58-16, 58-17, 58-18, 58-18B, 58-37A, 58-
13 38, 58-39, 58-40, and 58-41. However, this chapter does not apply to insurance policies and
14 subscriber contracts subject to the medicare supplement requirements. Except for the
15 exemptions specified in this section, this chapter applies to any solicitation, negotiation, or
16 effectuation of life insurance occurring within this state. This chapter applies to any issuer of
17 life insurance contracts including fraternal benefit societies. This chapter does not apply to:

18 (1) Group annuities;

19 (2) Credit life insurance;

20 (3) Group life insurance (except for disclosures relating to preneed funeral contracts or
21 prearrangements as provided by this chapter. These disclosure requirements extend
22 to the issuance or delivery of certificates as well as to the master policy);

23 (4) Life insurance policies issued in connection with pension and welfare plans as
24 defined by and which are subject to the federal Employee Retirement Income

1 Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended to
2 January 1, 1999; or

3 (5) Variable life insurance under which the amount or duration of the life insurance
4 varies according to the investment experience of a separate account; ~~or~~

5 ~~(6) Variable annuities under which the amount varies according to the investment~~
6 ~~experience.~~

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0202

SENATE APPROPRIATIONS ENGROSSED NO. **SB 38** - 1/26/2012

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to provide for the transfer of control of an office building
2 in Rapid City, to make an appropriation for the construction and renovation of the office
3 building, and to declare an emergency.

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

5 Section 1. The 4.46 acre property located at 3305 West South Street in Rapid City, South
6 Dakota, currently held by the Department of Game, Fish and Parks, shall be under the control
7 and ownership of the Department of Agriculture and the fee title shall be duly transferred.

8 Section 2. There is hereby appropriated from the general fund the sum of four hundred
9 thousand dollars (\$400,000), or so much thereof as may be necessary, to the Department of
10 Agriculture for the purpose of designing, renovating, constructing, furnishing, and equipping
11 office facilities located at 3305 West South Street in Rapid City, South Dakota, including
12 heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and
13 engineering services, asbestos abatement, and such other services and improvements as may be
14 required.



1 Section 3. The Bureau of Administration, pursuant to § 5-14-2, shall supervise the design,
2 renovation, and construction of the facilities approved by this Act. The commissioner of the
3 Bureau of Administration and the secretary of the Department of Agriculture shall approve
4 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

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

7 Section 5. Whereas, this Act is necessary for the support of the state government and its
8 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
9 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

561T0630

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 99** - 2/2/2012

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

Introduced by: Senators Hansen (Tom), Bradford, and Johnston and Representatives White and Gibson

1 FOR AN ACT ENTITLED, An Act to prohibit certain licensees or employees of a licensed
2 establishment who have been charged with certain felony offenses from entering the
3 licensed premises and to provide a penalty therefor.

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

5 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any licensee or employee of a licensee who is charged with a felony offense involving a
8 minor, a crime of violence pursuant to subdivision 22-1-2(9), or a felony drug-related offense
9 on the licensed premises is prohibited from entering onto the licensed premises until the charges
10 have been fully adjudicated. A violation of this section is a class 1 misdemeanor.

