

REPORT OF THE ATTORNEY GENERAL
ON THE
STATUS OF OPEN GOVERNMENT IN SOUTH DAKOTA

APPENDIX C

EXAMPLES OF STATUTES EXPRESSLY REQUIRING RECORDS TO BE PUBLIC

JUNE 30, 2007

MEETINGS OF PUBLIC AGENCIES

1-25-3. State agencies to keep minutes of proceedings--Availability to public--Misdemeanor. Any board or commission of the various departments of the State of South Dakota shall keep detailed minutes of the proceedings of all regular or special meetings. The minutes shall be available for inspection by the public at all times at the principal place of business of the board or commission. A violation of this section is a Class 2 misdemeanor.

ADMINISTRATIVE PROCEDURE AND RULES

1-26-6. Completion of adoption of rule or change in rules. The adoption, amendment, or repeal of a rule is complete when:

.....No rule promulgated after June 30, 1975, is valid unless adopted in compliance with § 1-26-4 or 1-26-5, and this section and copies of the rule are made available to the public upon request, by the agency.

1-26-7. Records retained--Copies--Public inspection of current rules. Each agency shall keep the original records, documents, and instruments required by this chapter. Agencies shall make copies of all records, documents, and exhibits available to members of the Legislature upon request. The secretary of state shall keep a copy of the agency's current rules and the certificates pertaining thereto, which shall be open to public inspection.

1-26-12.1. Lists of rules and organizational statements maintained and kept current. To assist interested persons dealing with it, each agency which has adopted rules shall prepare and make available for inspection in a prominent place at each of its offices servicing the public a list of its rules and a descriptive statement of its central and field organization, including the locations of persons and places from which the public can secure information, make submittals or requests, or obtain decisions. All such lists and descriptive statements shall be kept current.

PUBLIC RECORDS AND FILES

1-27-1. Records open to inspection--Sale of lists. If the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours. Any employment examination or performance appraisal record maintained by the Bureau of Personnel is excluded from this requirement.

Any subscription or license holder list maintained by the Department of Game, Fish and Parks may be made available to the public for a reasonable fee. State agencies are exempt from payment of this fee for approved state use. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the fee for the sale of such lists.

Any automobile liability insurer licensed in the state, or its certified authorized agent, may have access to the name and address of any person licensed or permitted to drive a motor vehicle solely for the purpose of verifying insurance applicant and policyholder information. An insurer requesting any such name and address shall pay a reasonable fee to cover the costs of producing such name and address. The Department of Public Safety shall set such fee by rules promulgated pursuant to chapter 1-26.

Any list released or distributed under this section may not be resold or redistributed. Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.

1-27-21. "Public document or record" defined--Public meeting. For the purposes of §§ 1-27- 20 to 1-27-26, inclusive, an official public document or record is any document officially compiled, published, or recorded by the state including deeds, publicly probated wills, records of births, deaths, and marriages, and any other document or record required to be kept open for public inspection pursuant to chapter 1-27. An official public meeting is any meeting or proceeding required to be open to the public pursuant to chapter 1-25.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

1-40-31. Full public disclosure of nonconfidential public records--Reproduction--Fee-- Waiver--Response time to written requests--Denial of disclosure--Appeals--Promulgation of rules-- Attorney's fees and costs for denial of access to hazardous waste public records. Full public inspection and disclosure of all nonconfidential public records relating to the Department of Environment and Natural Resources and those activities within its jurisdiction shall be allowed. The department shall make available for public inspection and disclosure all public records subject to inspection pursuant to § 1-26-2 and chapter 1-27. The department shall provide for the reproduction of all public records subject to inspection and reasonably capable of being reproduced and may impose a fee to recover the reasonable cost of reproduction. Any fee imposed for records reproduction shall be promulgated pursuant to chapter 1-26 and shall provide for fee waiver for public records requests from the press or communications media, public interest groups, educational organizations, and institutions of government. The department shall respond to all written requests for public records within twenty working days of the date when the request was received. The department may deny inspection and disclosure of any public record not subject to inspection under chapter 1-27, or held confidential pursuant to statute or court order. Written notice of denial of inspection or disclosure shall be provided to the person making the request. Such denial or failure by the department to respond within twenty working days shall be considered final agency action and may be appealed to circuit court as provided in chapter 1-26. The secretary, pursuant to chapter 1-26, may promulgate rules to implement the provisions of this section.

Any person denied access to any hazardous waste public record required under chapter 34A-11 may recover in circuit court reasonable attorney's fees and other litigation costs

reasonably incurred in an action against the state if the requestor substantially prevails on judicial review.

DEPARTMENT OF HEALTH

1-43-16. Data collection--Availability to public. Any statistical summary of data collected under the provisions of §§ 1-43-11 to 1-43-17, inclusive, shall be available to the public, but may not be sold by the Department of Health or any agent under contract or agreement with the department pursuant to § 1-43-12. Any data released shall be presented in such a statistical manner that no person, who represents a case contained in the cancer data collection system, may be identified.

CUSTODY AND INVESTMENT OF STATE FUNDS

4-5-32. Monthly report to investment council--Contents--Public inspection. Not later than fifteen days after the close of each month, the state investment officer shall submit to the State Investment Council a report of the operations of the Division of Investments during the month. Each report shall include a detailed summary of investment, reinvestment, purchase, sale, and exchange transactions, setting forth, among other things, the investments bought, sold, and exchanged, the dates thereof, the prices paid and obtained, the names of the brokers involved, and a statement of the funds or accounts referred to herein. The reports shall be open for inspection to the public.

4-11-11. Filing of audit reports--Open to public inspection. The auditor-general shall at all times keep on file in his office the original copy and such additional copies as may be deemed necessary of any report of investigations, audits, or examinations made by his department or any private audit under the provisions of this chapter. All of the reports shall at all times be open to public inspection ten days after date of filing in any of the public offices.

INTERIM TRANSFERS AND APPROPRIATIONS

4-8A-8. Transfers of general appropriations between programs, departments, and bureaus-- Record of transfers. Moneys appropriated on a program basis by the General Appropriation Act may be transferred between program accounts within or between programs within departments and bureaus or between departments and bureaus to reflect a reorganization pursuant to Article IV, section 8 of the South Dakota Constitution only at the written request of a governing body, department secretary, or bureau commissioner, or designee, in accordance with procedures established by the Bureau of Finance and Management and only upon written approval of the Bureau of Finance and Management. Transfer of moneys appropriated by the General Appropriations Act between departments, institutions, and bureaus that is not necessary for a reorganization pursuant to Article IV, section 8 of the South Dakota Constitution may only occur at the written request of a governing body, department secretary, or bureau commissioner, or

designee, only in accordance with procedures established by the Bureau of Finance and Management and only upon approval by the special committee created in this chapter. The Bureau of Finance and Management shall keep a record of all such authorizations of transfers and make them available for public inspection. The bureau shall also submit an informational report detailing all transfers approved to the special legislative committee established in § 4-8A-2.

PUBLIC PROPERTY, PURCHASES AND CONTRACTS

DEPARTMENT OF SCHOOL AND PUBLIC LANDS

5-1-10. Public survey records maintained--Access of United States to records. The state archivist shall receive and safely keep in his office as public records of this state all field notes, maps, plats of surveys, mineral survey notes, homestead survey notes, records, or other papers relating to the public survey of this state, whenever the same shall be turned over to the state in pursuance of law. The United States shall at all times have free access thereto for the purpose of taking abstracts therefrom and making copies thereof.

MUNICIPAL OFFICERS AND EMPLOYEES

9-14-24. Qualifications and duties of city engineer--Preservation of surveys, plans and estimates. The city engineer shall be a practical engineer and surveyor. He shall keep his office in some convenient place in the municipality.

The governing body shall by ordinance prescribe his duties and fix his compensation.

All surveys, profiles, plans, or estimates made by the city engineer for the municipality shall be the property of the municipality and shall be carefully preserved in the office of the engineer open to public inspection.

PENAL INSTITUTIONS, PROBATION & PAROLE

STATE PRISON INDUSTRIES

24-14-11. Effects of pardon--Disabilities removed--Records sealed--Filing of document making pardon public--Failure to acknowledge proceedings not perjury--Prior conviction for habitual offender law. Any person who has been granted a pardon under the provisions of this chapter shall be released from all disabilities consequent on the person's conviction. Upon the granting of a pardon under the provisions of this chapter, the Governor shall order that all official records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt, application for a pardon, and the proceedings of the Board of Pardons and Paroles shall be sealed. The Governor shall file a public document with the secretary of state certifying that the Governor has pardoned the person in compliance with the provisions of this chapter. The document shall remain a public document for five years and after five years that document shall be sealed. The

receipt of any pardon, which was granted without following the provisions of this chapter, may not be sealed. The pardon restores the person, in the contemplation of the law, to the status the person occupied before arrest, indictment, or information. No person as to whom such order has been entered may be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of such person's failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry made of such person for any purpose.

For the sole purpose of consideration of the sentence of a defendant for subsequent offenses or the determination of whether the defendant is a habitual offender under chapter 22-7 or whether the defendant has prior driving under the influence convictions pursuant to chapter 32-23, the pardoned offense shall be considered a prior conviction.

The court shall forward a nonpublic record of disposition to the Division of Criminal Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in determining whether or not, in any subsequent proceeding, the person is a habitual offender under chapter 22-7 or the determination of whether the defendant has prior driving under the influence convictions pursuant to chapter 32-23.

ACCIDENTS AND ACCIDENT REPORTS

32-34-13. Accident reports not privileged--Fees for locating and furnishing reports. Reports pursuant to §§ 32-34-7 to 32-34-12, inclusive, and the information contained in such reports is not privileged and may not be held confidential. The secretary of public safety shall collect four dollars for each request to locate a report on file. The secretary shall furnish to any person requesting a search, at no additional cost, any report located by the search. All sums collected shall be deposited in the state highway fund.

VITAL RECORDS AND BURIAL PERMITS

34-25-8. Birth registration--Certificate of live birth--Time for filing--Availability of records. The birth of every child born in this state shall be registered as provided in this chapter. Within seven days after the date of each live birth, there shall be filed with the department by electronic means if a facility has such capabilities, or otherwise if electronic means are not available, a certificate of such birth. The certificate shall be upon the form prescribed by the department. For certificates of birth filed after seven days, but within one year from the date of birth, the department may, by rules promulgated pursuant to chapter 1-26, require additional evidence in support of the facts of birth.

Informational copies of birth records shall be available to any person who can identify the birth record by providing the name of the person on the birth record, the date of birth, the mother's maiden name, or additional information required to locate the record. Nothing in this section prohibits the release of information contained on a birth record which would not identify any person named in the record.

If one hundred years have elapsed after the date of birth, the records of the birth in the custody of the department shall become available to the public without restriction. The department shall promulgate rules, pursuant to chapter 1-26, to provide for the continued safekeeping of these records.

CEMETERIES AND BURIAL RECORDS

34-27-6. Burial record book required of cemetery--Indexes--Ownership records--Official inspection. All copies of burial or removal permits shall be retained by the person in charge of any cemetery, or place of burial, and filed by him as a permanent record of such cemetery, and he shall forthwith make an exact copy of each burial or removal permit in a "burial record book," together with such additional information as may be prescribed by the secretary of health; such "burial record book" shall contain an alphabetical index, listing by name, all deceased persons interred or buried in the cemetery. Such cemetery burial record shall also provide a numerical or tract index, to be maintained by designating and numbering consecutively, each burial or removal permit, such permit number to be marked or noted on the individual grave space upon the cemetery plat or map, wherein such interment is or was made. Such person or cemetery officials shall also keep and maintain as a permanent record, the name and address of all grantees and a description of each cemetery subdivision, lot, or grave space, to whom such title has been conveyed or where certain areas have been reserved for special purposes. All such burial records together with the cemetery plat or map, shall at all times be open to official inspection.

PROFESSIONS AND OCCUPATIONS

RESPIRATORY CARE PRACTITIONERS

36-4C-21. Record keeping responsibilities of secretary of board. The secretary of the board shall keep a record book in which are entered the names of all persons to whom licenses or temporary permits have been granted under this chapter, the identification number of the license or temporary permit, the date of granting the license or temporary permit, license renewal dates, and other matters of record. This book is a book of records and transcripts of any record therein pertaining to a person charged with a violation of any of the provisions of this chapter, certified under the hand of the secretary, and the seal of the board, and shall be admitted as evidence in any of the courts of this state. The original books, records and papers of the board shall be kept at the office of the secretary of the board. The secretary shall furnish any person making an application a copy of any requested record, certified by him as secretary, upon payment of a fee of twenty-five cents per page.

TRADE REGULATION

FRANCHISES FOR BRAND-NAME GOODS AND SERVICES

37-5A-58. Filings open to public inspection--Publication. All applications, notices,

reports and other documents filed with the director under this chapter shall be open to public inspection in accordance with rules prescribed by the director. The director may publish information filed with him or obtained by him, if, in the judgment of the director, such action is in the public interest.

37-5A-59. Copies of orders and documents--Certification--Admissibility in evidence. The director upon request shall furnish to any person, at a reasonable charge, photostatic or other copies, certified under his seal of office, if certification is requested, of any entry in the register or any order or other document on file in his office. Any copy so certified is admissible in evidence under chapter 19-4.

BUSINESS OPPORTUNITIES

37-25A-35. Receipt by director as filing--Records maintained--Public inspection. A document is filed when it is received by the director of the Division of Securities. The director shall keep a register of all applications for registration and disclosure documents which are or have been effective under this chapter and all orders which have been entered under this chapter. The register shall be available for public inspection. Unless otherwise provided by law, any registration statement, filing, application, or report filed with the director shall be available for public inspection.

AGRICULTURE AND HORTICULTURE

38-1-19. Collection and publication of agricultural and marketing statistics. The Department of Agriculture shall have power to collect and publish statistics relating to crop production, marketing and farm economics, the production and marketing of all farm products only so far as such statistical information may be of value to the agricultural and allied interests of the state; and to cooperate with the federal government, the South Dakota State University and agricultural organizations in the matter of collecting such statistical information. Such published statistics shall be the official agricultural statistics of the state.

38-24A-13. Public notice of large-scale treatment operations. Where large areas or metropolitan areas, involving many people, are to be treated, notice may be by means of newspaper, radio, or other news media. Such notice if given by newspaper shall prominently appear at least ten days prior to treatment in at least two issues of a daily paper having local coverage.

ANIMALS AND LIVESTOCK

40-7-8. Herd testing after approval of eradication area--Notice--Regulation of livestock movement during testing period. Whenever any county or area has been approved as a brucellosis control and eradication area, the Animal Industry Board shall fix a time to commence the general test of the herds in any county or combination of counties for certification and notice of such date fixed shall be posted at the courthouse for the county and published in all official newspapers for the county for two consecutive

weeks. Testing in such county may not commence until one week after such notice; and any livestock brought from another county into the county of testing or any livestock moved from one part to another of the county, shall be in conformity with rules promulgated by the board to govern such movement during a period of such testing.

MECHANICS' AND MATERIALMEN'S LIENS

45-6D-11. Copy of application filed with register of deeds--Public inspection. The applicant shall file a copy of the application required by § 45-6D-6 with the register of deeds in each county within which the uranium exploration operation is intended to be located. The register of deeds shall make the application available to public inspection for seventy-five days after filing. At the completion of such time, the application may be returned to the applicant or destroyed. Confidential information exempted by § 45-6D-15 shall be deleted by the applicant from all copies available for public inspection.

GROUNDWATER AND WELLS

46-6-11. Records of well construction required. On each well drilled the driller shall keep accurate records and complete a record of well construction on a form supplied by the chief engineer. If for any reason well construction is begun but not completed, the well driller shall complete the record of well construction to the extent possible. Within one month of completion of a well driller's work on a well, he shall file all well construction records with the chief engineer for placement on permanent file. The public shall have access to the records at any time during normal business hours.

UNIFORM SECURITIES ACT OF 2002

47-31B-606. Administrative files and opinions. (a) Public register of filings. The director shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) Public availability. The director shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. The director shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the director of a record's nonexistence is prima facie evidence of a record or its nonexistence.

47-31B-607. Public records--Confidentiality.

(a) Presumption of public records. Except as otherwise provided in subsection (b), records obtained by the director or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) Nonpublic records. The following records are not public records and are not available for public examination under subsection (a):

(1) A record obtained by the director in connection with an audit or inspection under § 47-31B-411(d) or an investigation under § 47-31B-602;

(2) A part of a record filed in connection with a registration statement under §§ 47-31B-301 and 47-31B-303 through 47-31B-305 or a record under § 47-31B-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director or filed under this chapter and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in § 47-31B-608(a); and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and

(6) A record obtained by the director through a designee of the director or that a rule or order under this chapter determines has been:

(A) Expunged from the director's records by the designee; or

(B) Determined to be nonpublic or nondisclosable by that designee if the director finds the determination to be in the public interest and for the protection of investors.

(c) Director discretion to disclose. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in § 47-31B-608(a), the director may disclose a record obtained in connection with an audit or inspection under § 47-31B-411(d) or a record obtained in connection with an investigation under § 47-31B-602.