

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0330

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1043 - 02/15/2001

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

1 FOR AN ACT ENTITLED, An Act to authorize county commissioners and the state fire
2 marshal to prohibit open burning.

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

4 Section 1. That chapter 34-29B be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The state fire marshal, after consultation with the Governor and the affected board of county
7 commissioners, may prohibit or restrict open burning within a county in order to protect the
8 public health and safety. This section does not limit or affect the laws of this state relating to the
9 authority of counties or other local entities to prohibit or restrict open burning.

10 Section 2. That § 7-8-20 be amended by adding thereto a NEW SUBDIVISION to read as
11 follows:

12 To prohibit or restrict open burning, after consultation with local fire officials and law
13 enforcement officials, in order to protect the public health and safety.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0209

SENATE ENGROSSED NO. **HB 1056** - 01/31/2001

Introduced by: The Committee on Judiciary at the request of the Department of Game,
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to increase the penalty for violation of certain fur dealer
2 license requirements.

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

4 Section 1. That § 41-6-25 be amended to read as follows:

5 41-6-25. It is a ~~Class 2~~ Class 1 misdemeanor for a person to purchase or contract to purchase
6 for a commercial purpose the raw skins of fur-bearing animals or unskinned fur-bearing animals,
7 including jackrabbits, without a fur dealer's license or in violation of the license or the rules of
8 the Game, Fish and Parks Commission. For purposes of this section, commercial purpose is the
9 purchase of or contract to purchase the property by persons who hold themselves out as
10 engaging in the business of purchasing such property and does not include the isolated or
11 occasional purchase of such property.

12 A fur dealer's license permits the licensee to purchase or contract to purchase the skins of
13 fur-bearing animals, including jackrabbits, for the purpose of resale or other commercial purpose,
14 to the extent and in the manner provided by §§ 41-14-22 to 41-14-24, inclusive. A fur dealer's
15 license is valid for a period of one year from July first to June thirtieth.

1 Any person convicted of issuing an insufficient funds check or no account check shall be
2 denied a fur dealer's license until such time as all such checks are paid.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

367E0176

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1075 - 02/07/2001

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to modify certain procedures for grand jury returns.

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

3 Section 1. That § 23A-5-18 be amended to read as follows:

4 23A-5-18. A quorum of six grand jurors must be present before any evidence or testimony
5 may be received or any other business conducted. An indictment may be found only ~~when~~ if there
6 is probable cause to believe that an offense has been committed and that the defendant
7 committed it. An indictment may be found only upon the concurrence of six or more jurors. The
8 names of only those witnesses examined before the grand jury in relation to the particular
9 indictment shall be listed on that indictment before it is ~~presented to~~ filed with the court. An
10 indictment shall be returned by the grand jury to a circuit judge in open court, or, filed with the
11 clerk of courts, endorsed a true bill.

12 If six grand jurors do not concur in finding an indictment against a defendant who is in
13 custody but who has not had a preliminary hearing, the complaint or information and the certified
14 record of the proceedings before the committing magistrate transmitted to them ~~must~~ shall be
15 returned to the court, with an endorsement thereon, signed by the foreman, that the charge is

- 1 dismissed. The dismissal of the charge does not prevent its being again submitted to a grand jury
- 2 as often as a court may direct, but without such direction it cannot again be submitted.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

282E0427

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1201** -
02/20/2001

Introduced by: Representatives Pummel, Hansen (Tom), Jensen, Lintz, Pederson
(Gordon), Rhoden, and Sutton (Duane) and Senator Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to trespass by buffalo
2 and to specify the characteristics of legal fences for buffalo.

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

4 Section 1. That § 40-28-4 be amended to read as follows:

5 40-28-4. Except as in this chapter otherwise provided, any person owning or having ~~in his~~
6 charge or possession of any buffalo, horses, mules, cattle, goats, sheep, or swine, ~~which such~~
7 ~~animals shall~~ that trespass upon the land, either fenced or unfenced, owned by or in possession
8 of any person, or being cropped by any person injured by such trespass, ~~shall be~~ is liable to any
9 such person injured for all damages sustained by reason of ~~such trespassing~~ the trespass. No
10 person ~~shall be~~ is liable under this chapter ~~where~~ if the person injured has maintained an
11 inadequate partition fence and notice thereof has been given pursuant to § 43-23-5 or if ~~he~~ the
12 person is not required to build ~~such~~ the fence because of frozen earth pursuant to § 43-23-7.

13 Section 2. That § 40-28-5 be amended to read as follows:

14 40-28-5. No person ~~shall be~~ is liable for damages caused by buffalo, horses, cattle, mules,

1 goats, or sheep owned by ~~him, which~~ the person, that trespass upon lands within the exterior
2 boundaries of the Black Hills and Harney National Forests, ~~which~~ if the lands were not at the
3 time of the trespass ~~inclosed~~ enclosed by a legal fence, as defined in §§ 43-23-3 and 43-23-4.

4 Section 3. That chapter 43-23 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A legal fence for buffalo is the same as provided in § 43-23-4, except as provided in this
7 section. A legal fence for buffalo may use smooth wire rather than barbed wire. All posts shall
8 be of sufficient length to provide for fifty-four inches above the surface, and one additional strand
9 of wire shall be included at fifty-four inches above the earth. The additional cost and maintenance
10 of the legal fence for buffalo, other than an as provided in § 43-23-4, shall be borne by the owner
11 or caretaker of the buffalo if only one of the parties partitioned possesses the buffalo.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

634E0382

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 87 - 02/22/2001

Introduced by: Senators Diedtrich (Elmer), Moore, and Whiting and Representatives
Solum, Davis, McCoy, Slaughter, and Van Etten

1 FOR AN ACT ENTITLED, An Act to provide for uniform prescription drug information cards.

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

3 Section 1. Any health benefit plan that provides coverage for prescription drugs or devices
4 on an outpatient basis, or administers such a plan, including third-party administrators for self-
5 insured plans and state-administered plans, shall issue to its primary insured a card or other
6 technology containing uniform prescription drug information. The director of the Division of
7 Insurance shall prescribe the format and elements of information for the uniform prescription
8 drug information card or technology and shall consider the format and elements of information
9 approved by the National Council for Prescription Drug Programs (NCPDP) and the required
10 and conditional or situational fields and the most recent pharmacy identification card or
11 technology implementation guide produced by NCPDP. A health benefit plan is not required to
12 issue a pharmacy identification card separate from another identification card issued to an insured
13 under the health benefit plan if the identification card contains the elements of information
14 required by the Division of Insurance.

1 Section 2. A health benefit plan shall issue a card or other technology required by section 1
2 of this Act upon enrollment. The card or technology shall be reissued upon any change in the
3 insured's coverage that impacts data contained on the card or upon any change in the format
4 adopted by the director of the Division of Insurance. However, the health benefit plan is not
5 required to issue a new card or technology more often than once each calendar year. Newly
6 issued cards or technology shall be updated with the latest coverage information and the director
7 of the Division of Insurance shall consider the NCPDP standards then in effect and the
8 implementation guide then in use.

9 Section 3. As used in this Act, the term, health benefit plan, means an accident and health
10 insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a
11 health maintenance organization subscriber contract; a plan provided by a multiple employer
12 welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted
13 by the Employee Retirement Income Security Act of 1974, as amended to January 1, 2001, or
14 by any waiver of or other exception to that Act provided under federal law or regulation. The
15 term does not apply to any plan, policy, or contract that provides coverage only for:

- 16 (1) Accident;
- 17 (2) Credit;
- 18 (3) Disability income;
- 19 (4) Specified disease;
- 20 (5) Dental;
- 21 (6) Vision;
- 22 (7) Coverage issued as a supplement to liability insurance;
- 23 (8) Medical payments under automobile or homeowners;
- 24 (9) Insurance under which benefits are payable with or without regard to fault and that

1 is statutorily required to be contained in any liability policy or equivalent self-
2 insurance;

3 (10) Hospital income or indemnity;

4 (11) Long-term care; and

5 (12) Medicare supplement.

6 Section 4. This Act applies to health benefit plans that are delivered, issued for delivery, or
7 renewed on and after July 1, 2002. For purposes of this Act, renewal of a health benefit policy,
8 contract, or plan is presumed to occur on each anniversary of the date on which coverage was
9 first effective on the person or persons covered by the health benefit plan.

10 Section 5. The director of insurance shall enforce the provisions of this Act. The director of
11 insurance may promulgate rules pursuant to chapter 1-26 to establish the format and elements
12 of information for the uniform information card or technology to be used in the state following
13 the standards established in sections 1 and 2 of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

907E0433

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 107 - 02/22/2001

Introduced by: Senators Munson, de Hueck, Everist, Volesky, and Whiting and
Representatives Michels, Brown (Jarvis), and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise and update certain provisions of the Uniform
2 Commercial Code.

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

4 Section 1. That subsection (67) of subdivision (a) of § 57A-9-102 be amended to read as
5 follows:

6 (67) "Public-finance transaction" means a secured transaction in connection with which:

7 (A) Debt or other securities are issued; and

8 (B) ~~All or a portion of the securities issued have an initial stated maturity of at least~~
9 ~~20 years; and~~

10 ~~—————~~(C) The debtor, obligor, secured party, account debtor or other person obligated
11 on collateral, assignor or assignee of a secured obligation, or assignor or
12 assignee of a security interest is a State or a governmental unit of a State.

13 Section 2. That § 57A-9-109 be amended to read as follows:

14 57A-9-109. (a) Except as otherwise provided in subsections (c) and (d), this chapter applies

1 to:

2 (1) A transaction, regardless of its form, that creates a security interest in personal
3 property or fixtures by contract;

4 (2) An agricultural lien;

5 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

6 (4) A consignment;

7 (5) A security interest arising under § 57A-2-401, 57A-2-505, 57A-2-711(3), or
8 57A-2A-508(5), as provided in § 57A-9-110; and

9 (6) A security interest arising under § 57A-4-210 or 5-118.

10 (b) The application of this chapter to a security interest in a secured obligation is not affected
11 by the fact that the obligation is itself secured by a transaction or interest to which this chapter
12 does not apply.

13 (c) This chapter does not apply to the extent that:

14 (1) A statute, regulation, or treaty of the United States preempts this chapter;

15 (2) Another statute of this state expressly governs the creation, perfection, priority, or
16 enforcement of a security interest created by this state or a governmental unit of this
17 state;

18 (3) A statute of another state, a foreign country, or a governmental unit of another state
19 or a foreign country, other than a statute generally applicable to security interests,
20 expressly governs creation, perfection, priority, or enforcement of a security interest
21 created by the state, country, or governmental unit; or

22 (4) The rights of a transferee beneficiary or nominated person under a letter of credit are
23 independent and superior under § 57A-5-114.

24 (d) This chapter does not apply to:

- 1 (1) A landlord's lien, other than an agricultural lien;
- 2 (2) A lien, other than an agricultural lien, given by statute or other rule of law for services
3 or materials, but § 57A-9-333 applies with respect to priority of the lien;
- 4 (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- 5 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of
6 a sale of the business out of which they arose;
- 7 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes
8 which is for the purpose of collection only;
- 9 (6) An assignment of a right to payment under a contract to an assignee that is also
10 obligated to perform under the contract;
- 11 (7) An assignment of a single account, payment intangible, or promissory note to an
12 assignee in full or partial satisfaction of a preexisting indebtedness;
- 13 (8) A transfer of an interest in or an assignment of a claim under a policy of insurance,
14 other than an assignment by or to a health-care provider of a health-care-insurance
15 receivable and any subsequent assignment of the right to payment, but §§ 57A-9-315
16 and 57A-9-322 apply with respect to proceeds and priorities in proceeds;
- 17 (9) An assignment of a right represented by a judgment, other than a judgment taken on
18 a right to payment that was collateral;
- 19 (10) A right of recoupment or set-off, but:
 - 20 (A) Section 57A-9-340 applies with respect to the effectiveness of rights of
21 recoupment or set-off against deposit accounts; and
 - 22 (B) Section 57A-9-404 applies with respect to defenses or claims of an account
23 debtor;
- 24 (11) The creation or transfer of an interest in or lien on real property, including a lease or

1 rents thereunder, except to the extent that provision is made for:

2 (A) Liens on real property in §§ 57A-9-203 and 57A-9-308;

3 (B) Fixtures in § 57A-9-334;

4 (C) Fixture filings in §§ 57A-9-501, 57A-9-502, 57A-9-512, 57A-9-516, and
5 57A-9-519; and

6 (D) Security agreements covering personal and real property in § 57A-9-604;

7 (12) An assignment of a claim arising in tort, other than a commercial tort claim, but
8 §§ 57A-9-315 and 57A-9-322 apply with respect to proceeds and priorities in
9 proceeds;

10 (13) A transfer or security interest made or created by a state or any governmental unit;

11 (14) An assignment of a deposit account in a consumer transaction, but §§ 57A-9-315 and
12 57A-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

13 ~~(14)~~(15) The pledging or segregating of collateral for public deposits as authorized by
14 § 51-22-12, chapter 52-5, and chapter 4-6A;

15 (16) An assignment of a claim or right to receive compensation for injuries or sickness as
16 described in 26 U.S.C. § 104(a)(1) or (2), as amended to January 1, 2001; or

17 (17) An assignment of a claim or right to receive benefits under a special needs trust as
18 described in 42 U.S.C. § 1396p(d)(4), as amended to January 1, 2001.

19 Section 3. That § 57A-9-515 be amended to read as follows:

20 57A-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed
21 financing statement is effective for a period of five years after the date of filing. Financing
22 statements filed before July 1, 1997, are effective for a period of five years from the date of filing
23 and thereafter for a period of 60 days.

24 The expiration date established by a financing statement filed prior to July 1, 1997, whether

1 or not continued by a continuation statement shall remain in full force and effect and is not
2 diminished by any subsequent amendments to this chapter.

3 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement
4 filed in connection with a ~~public-finance transaction or manufactured-home transaction~~ is effective
5 for a period of 30 years after the date of filing if it indicates that it is filed in connection with a
6 ~~public-finance transaction or manufactured-home transaction~~.

7 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of
8 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection

9 (d). Upon lapse, a financing statement ceases to be effective and any security interest or
10 agricultural lien that was perfected by the financing statement becomes unperfected, unless the
11 security interest is perfected otherwise. If the security interest or agricultural lien becomes
12 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the
13 collateral for value.

14 (d) A continuation statement may be filed only within six months before the expiration of the
15 five-year period specified in subsection (a) or the 30-year period specified in subsection (b),
16 whichever is applicable.

17 However, for financing statements filed before July 1, 1997, a continuation statement may be
18 filed within six months before and 60 days after the expiration of the five-year period.

19 (e) Except as otherwise provided in § 57A-9-510, upon timely filing of a continuation
20 statement, the effectiveness of the initial financing statement continues for a period of five years
21 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial
22 financing statement continues for a period of five years and sixty days, commencing on the day
23 on which the financing statement would have become ineffective in the absence of the filing. Upon
24 the expiration of the five-year period, the financing statement lapses in the same manner as

1 provided in subsection (c), unless, before the lapse, another continuation statement is filed
2 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner
3 to continue the effectiveness of the initial financing statement.

4 (f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing
5 statement is effective until a termination statement is filed.

6 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing
7 under § 57A-9-502(c) remains effective as a financing statement filed as a fixture filing until the
8 mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real
9 property.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0736

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

SB 160 - 02/22/2001

Introduced by: Senators Brown (Arnold), Everist, and Olson (Ed) and Representatives
McCoy and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to prohibit the offering of postsecondary education credit
2 or degree by nonaccredited institutions.

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

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No person or governmental entity may offer postsecondary education credit or degree in
7 South Dakota, or while organized under the laws of South Dakota, unless currently participating
8 in any federal financial assistance program authorized by Title IV of the Higher Education Act
9 of 1965 as amended to January 1, 2001. A violation of this section is a Class 1 misdemeanor and
10 subjects the violator to a civil penalty of twenty-five thousand dollars.

11 The provisions of this section do not apply to a religious institution that offers credit or
12 degree solely for the purpose of conferring status or authority within that religion.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

381E0694

HOUSE TAXATION COMMITTEE ENGROSSED NO.

SB 175 - 02/20/2001

Introduced by: Senators Symens, Dennert, Diedrich (Larry), and Duxbury and
Representatives Jaspers, Burg, Hanson (Gary), Juhnke, Lange, and
Nachtigal

1 FOR AN ACT ENTITLED, An Act to exempt from sales and use tax certain contract services
2 provided to agricultural producers by an agent of a parent company through a local
3 contracting entity.

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

5 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 There are specifically exempted from the provisions of this chapter and from the computation
8 of the tax imposed by it, the gross receipts from the sale of services rendered by a parent company
9 to a local cooperative, if the local cooperative is a local contracting entity, for the purpose of
10 paying for the services of an agent who meets with agricultural producers promoting, educating,
11 and providing technical assistance and information on the parent company's products which are
12 sold through a local contracting entity.

13 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
14 follows:

1 There are specifically exempted from the provisions of this chapter and from the computation
2 of the tax imposed by it, the gross receipts from the sale of services rendered by a parent company
3 to a local cooperative, if the local cooperative is a local contracting entity, for the purpose of
4 paying for the services of an agent who meets with agricultural producers promoting, educating,
5 and providing technical assistance and information on the parent company's products which are
6 sold through a local contracting entity.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

583E0743

SENATE ENGROSSED NO. **SB 187** - 02/15/2001

Introduced by: Senators Bogue, Brown (Arnold), Daugaard, de Hueck, Diedrich (Larry),
Diedrich (Elmer), Duxbury, Hutmacher, Koetzle, Madden, McCracken,
Moore, Olson (Ed), Putnam, Sutton (Dan), Symens, Vitter, Volesky, and
Whiting and Representatives Madsen, Brown (Jarvis), Brown (Richard),
Burg, Derby, Flowers, Fryslie, Gillespie, Hanson (Gary), Hargens, Hennies
(Thomas), Jensen, Juhnke, Kooistra, McCaulley, McCoy, Monroe,
Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Smidt, Solum,
Teupel, Valandra, Van Gerpen, and Van Norman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to comparative
2 negligence.

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

4 Section 1. That § 20-9-2 be amended to read as follows:

5 20-9-2. In all actions brought to recover damages for injuries to a person or to that person's
6 property caused by the negligence of another, the fact that the plaintiff may have been guilty of
7 contributory negligence does not bar a recovery ~~when~~ if the contributory negligence of the
8 plaintiff was slight in comparison with the negligence of the defendant or defendants, but in such
9 case, the damages shall be reduced in proportion to the amount of plaintiff's contributory
10 negligence.

11 ~~—Notwithstanding Woods vs. City of Crooks, 559 N.W.2d 558 (SD 1997), the determination~~
12 ~~of whether the contributory negligence of the plaintiff was slight in comparison with the~~

1 negligence of the defendant shall be made without disclosing any determination of percentage of
2 plaintiff's fault by special interrogatory.

3 For the purposes of this section, slight in comparison means that the contributory negligence
4 of the plaintiff was less than forty percent of the total negligence of all parties. Any such
5 determination shall be made by disclosing the percentage of the parties' fault by special
6 interrogatory. The jury shall be instructed on the effects of the allocation of negligence.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

624E0549

SENATE ENGROSSED NO. **SB 210** - 02/13/2001

Introduced by: Senators Diedrich (Larry), Daugaard, Hutmacher, Olson (Ed), Reedy,
Sutton (Dan), and Symens and Representatives Jaspers, Duenwald, Hanson
(Gary), Jensen, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff program for swine.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Assessment," a per head fee collected on the sale of all varieties of swine in South
5 Dakota;

6 (2) "Commission," the South Dakota Pork Commission;

7 (3) "Participating seller," any person who owns or operates an agricultural producing or
8 growing facility for swine and shares in the profits and risks of loss from such
9 operation, and who produces swine in South Dakota during the current or preceding
10 marketing year, and has not requested a refund from the payment of assessments on
11 swine production under this Act for the past twelve months;

12 (4) "Purchaser," any person who buys, accepts for shipment, accepts for consignment,
13 brokers, order buys, or otherwise acquires swine from a producer;

14 (5) "Secretary," the secretary of the Department of Agriculture.

1 Section 2. There is hereby established the South Dakota Pork Commission. The commission
2 shall be composed of five members who:

- 3 (1) Are landowning residents of South Dakota;
- 4 (2) Are at least twenty-five years of age and residents of South Dakota;
- 5 (3) Have been actually engaged in raising swine in this state for a period of at least five
6 years;
- 7 (4) Derive a substantial portion of their income from raising swine; and
- 8 (5) Are participating sellers.

9 Section 3. The initial members shall be appointed by the secretary from a list of
10 recommendations submitted to the secretary by the pork producers of the state. The terms of
11 members are three years; the initial appointments shall be for staggered terms. The secretary is
12 an ex officio, nonvoting member of the commission.

13 Section 4. Each successor to the initial members shall be elected by the pork producers of the
14 state under rules promulgated by the secretary pursuant to chapter 1-26. No member may serve
15 for more than two consecutive elected terms.

16 Section 5. If a member of the commission ceases to be a participating seller or resigns from
17 office before the expiration of the member's term, the secretary shall appoint a successor for the
18 balance of the term of office vacated.

19 Section 6. The commission shall annually elect a chair and a vice chair. A majority of voting
20 members constitutes a quorum. All meetings of the commission shall be called by the chair except
21 that special meetings may be called by three members of the commission. The commission shall
22 adopt procedures for the calling of special meetings.

23 Section 7. The commission may:

- 24 (1) For purposes related to the swine industry, enter into contracts, including loans and

1 grants, and cooperate with any person, any local, state, or national organization,
2 whether public or private, or with any governmental department or agency for the
3 discovery, promotion, development, and expansion of domestic and export markets
4 and industries and for research, protection, education, transportation, and health
5 issues;

6 (2) Expend the funds collected pursuant to this Act and appropriated for its
7 administration;

8 (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such
9 personnel as it deems necessary;

10 (4) Accept donations of funds, property, services, or other assistance from public or
11 private sources for the purpose of furthering the objectives of the commission;

12 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies
13 necessary to carry out the provisions of this Act.

14 Section 8. The commission shall promulgate rules pursuant to chapter 1-26 concerning:

15 (1) The procedures for obtaining a declaratory ruling;

16 (2) The procedures for collecting assessments for swine sold to a purchaser and the
17 amount of the assessment in accordance with section 9 of this Act;

18 (3) The procedures for obtaining a refund of the assessment;

19 (4) The procedures for collecting delinquent assessments and assessing penalties;

20 (5) The record-keeping and reporting requirements of purchasers.

21 Section 9. An assessment not to exceed 0.45 percent of the market value of each swine when
22 sold is imposed by the commission upon all swine sold in the state by a South Dakota resident.

23 However the commission may enter into reciprocal agreements with other states that also have
24 a swine checkoff fee to remit the assessment to the state where the swine were grown.

1 Section 10. Any purchaser of swine shall collect the assessment imposed by this Act by
2 deducting the assessment from the purchase prices of all swine subject to the assessment.

3 Section 11. Moneys collected from checkoff fees shall be deposited in a special revolving fund
4 created in the state treasury and are continuously appropriated to the commission.

5 Section 12. Each purchaser shall keep a permanent record for three years of all purchases of
6 swine, which may be examined by the commission at any reasonable time. Each purchaser shall
7 report to the commission stating the seller and quantity of swine. The report and remittance of
8 the assessment shall be made at the times and in the manner prescribed by the commission
9 pursuant to rules promulgated by the commission pursuant to chapter 1-26.

10 Section 13. If a purchaser disputes an assessment made under this Act, the purchaser may
11 appeal to the commission, which shall conduct a hearing and resolve the matter pursuant to the
12 contested case provisions of chapter 1-26. If a purchaser fails to remit the assessment provided
13 in this Act, the commission may enforce collection in any appropriate court within this state.

14 Section 14. Within ninety days following the assessment, any seller subject to the assessment
15 provided in this Act may apply to the commission for a refund of the assessment. The refund
16 application shall be accompanied by a copy of the record of the assessment on the sale. The
17 commission shall refund the amount of the assessment collected within sixty days of receiving a
18 valid refund application.

19 Section 15. The commission, to inform the seller, shall develop and disseminate information
20 and instructions relating to the purpose of the swine assessment and manner in which refunds may
21 be claimed, and to this extent shall cooperate with government agencies, state and federal, and
22 private businesses engaged in the purchase of swine.

23 Section 16. If any national promotion, research, or consumer information program that uses
24 an assessment mechanism on the sale of swine and is under the supervision of an agency of the

1 federal government is resumed or established, the collection of assessments under this Act is
2 suspended beginning sixty days after the collection of assessments under the national program
3 begins. If the collection of assessments under this Act remains suspended for more than two
4 years, the commission is dissolved and the assets and liabilities of the commission shall be
5 managed as the Legislature shall determine. If, after the commission has been dissolved, the
6 collection of assessments by the national program ceases for a period of sixty days, new members
7 of the commission shall be appointed and subsequent commission members elected as provided
8 in this Act, and the activities of the commission shall resume.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

445E0168

HOUSE ENGROSSED NO. **SB 228** - 02/23/2001

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

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

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

4 Section 1. Any person convicted of a felony and currently serving a term of imprisonment may
5 file a petition in the circuit court that entered the judgment of conviction in the person's case
6 requesting performance of forensic deoxyribonucleic acid (DNA) testing. The petition shall be
7 served on the state's attorney in the county of conviction. Any response shall be filed within sixty
8 days of the date on which the state's attorney was served with the petition.

9 Section 2. Before the court may grant the petition, the petitioner shall demonstrate that post-
10 conviction DNA analysis will:

- 11 (1) Meet the current test for scientific reliability;
- 12 (2) Show that the petitioner would be entitled to the testing and that the results would be
13 admissible if the case were being presently tried;

1 (3) Show that a favorable test result would most likely produce an acquittal in a new trial;
2 and

3 (4) Show that the testing will not impose an unreasonable burden on the state.

4 Section 3. The court, in its discretion, may order a hearing on the petition. The court may
5 appoint legal counsel for the petitioner, pursuant to chapter 23A-40, if the court determines that
6 person is indigent and that appointment is in the best interests of justice.

7 Section 4. The court may grant the petition for DNA testing if it determines that petitioner
8 has met the four factors to test set out in section 2 of this Act and that DNA testing is suitable
9 under the circumstances. If the court grants the petition for DNA testing, the court order shall
10 identify the specific evidence to be tested and the DNA technology to be used. The testing shall
11 be conducted by a laboratory mutually agreed upon by the state and the person filing the petition.
12 If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing.

13 Section 5. The result of any testing ordered under this Act shall be fully disclosed to the
14 person filing the petition and the state's attorney.

15 Section 6. Any law enforcement agency of the state shall retain any biological material
16 secured in connection with a criminal case for the period of time that any person remains
17 incarcerated in connection with that case. The agency may determine how the evidence is
18 retained. However, the evidence shall be retained in a condition suitable for further DNA testing.