

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0230

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1024** - 02/23/2001

Introduced by: The Committee on State Affairs at the request of the Department of
Corrections

1 FOR AN ACT ENTITLED, An Act to authorize the release of certain information about adult
2 inmates and parolees to victims, the community, and governmental entities.

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

4 Section 1. That § 23-5-7 be amended to read as follows:

5 23-5-7. All photographs, impressions, measurements, descriptions, or records including
6 confidential criminal investigative information, taken or made as provided for in § 23-5-6 shall
7 be filed and preserved ~~in~~ by the department or institution where made or taken and shall not be
8 published, transferred, or circulated outside such department or institutions, nor exhibited to the
9 public or any person or persons except duly authorized ~~peace~~ law enforcement officers unless
10 the subject of such photograph, measurement, description, or other record ~~shall have become~~
11 becomes a fugitive from justice, or ~~shall have escaped~~ escapes from a penal ~~or reformatory~~
12 institution. However, this section shall not apply to the release of information allowed pursuant
13 to § 24-2-20.

14 Section 2. That § 24-15-1 be amended to read as follows:

1 24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections
2 shall develop a file which shall contain a complete history of the defendant. The executive
3 director of the Board of Pardons and Paroles shall generate an adequate case history of each
4 inmate of the state penitentiary to enable him to make recommendations to the Board of Pardons
5 and Paroles. The case history shall be transferred and kept as a permanent record of the
6 Department of Corrections, solely for the proper supervision of the inmate by the Department
7 of Corrections and as a guide to his needs. ~~Such~~ Except for the information authorized for
8 release pursuant to § 24-2-20, such file may shall not be inspected by anyone other than members
9 of the Board of Pardons and Paroles, its executive director, the secretary of corrections and any
10 person specifically delegated for such access by the secretary of corrections, unless otherwise
11 ordered by a circuit court.

12 Section 3. That § 24-15A-14 be amended to read as follows:

13 24-15A-14. If a defendant is sentenced to prison, the department shall develop a file which
14 shall contain a complete history of the defendant. ~~The~~ Except for the information authorized for
15 release pursuant to § 24-2-20, the record shall be a permanent record of the department, solely
16 for the proper supervision of the inmate by the department and as a guide to the inmate's needs.
17 The file may not be inspected by anyone other than members of the board, its executive director,
18 the secretary and any person specifically delegated for such access by the secretary, unless
19 otherwise ordered by a circuit court.

20 Section 4. That § 24-2-20 be amended to read as follows:

21 24-2-20. Notwithstanding the provisions of § 24-1-26, the records and any other facts that
22 may have come to the knowledge of the warden and ~~his~~ the warden's opinion, when requested,
23 regarding the fitness of any inmate, sentenced as an adult, for a modification of sentence, parole,
24 pardon, or early release shall be furnished only to the sentencing court, the secretary of

1 corrections, the Board of Pardons and Parole, or the Governor. The Department of Corrections
2 may release the following information on any inmate or parolee sentenced as an adult for
3 purposes of community and victim notification pursuant to subdivisions 23A-28C-1(10) and
4 (12), §§ 23A-28C-5, 24-15-8.1, 24-15-8.2, and 24-15A-22, and to other governmental entities
5 as defined in section 5 of this Act:

- 6 (1) Name and any known aliases;
- 7 (2) Date of birth;
- 8 (3) Race and gender;
- 9 (4) Location of incarceration;
- 10 (5) Community of residence;
- 11 (6) Custody status and conditions of supervision;
- 12 (7) Any Department of Corrections sentence identification number;
- 13 (8) Any crime of conviction;
- 14 (9) Number of felony convictions;
- 15 (10) Sentence, time suspended, jail time credit, and revoked good-time credits;
- 16 (11) Offense, sentence, admission, release, and parole eligibility dates;
- 17 (12) Dates of pending hearings and final determinations of parole, suspended sentence,
18 pardon, and commutation hearings;
- 19 (13) Status as an inmate, parolee, or person who has completed a prison term;
- 20 (14) County of conviction;
- 21 (15) Plea;
- 22 (16) Citizenship status; and
- 23 (17) Birth town, state, and country.

24 Section 5. That chapter 24-2 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 As used in section 4 of this Act, the term, governmental entities, means any department,
3 division, or other public agency of a municipality, county, state, or nation.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

809E0569

SENATE ENGROSSED NO. **HB 1203** - 02/26/2001

Introduced by: Representatives Richter, Bartling, Begalka, Bradford, Broderick, Brown (Jarvis), Brown (Richard), Burg, Clark, Duenwald, Elliott, Flowers, Frost, Fryslie, Gillespie, Hansen (Tom), Hanson (Gary), Hargens, Heineman, Hunhoff, Jaspers, Jensen, Juhnke, Klaudt, Kloucek, Konold, Lange, Lintz, Madsen, McCaulley, McCoy, Monroe, Murschel, Nachtigal, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Jim), Pitts, Pummel, Rhoden, Sebert, Sigdestad, Slaughter, Smidt, Solum, Sutton (Duane), Teupel, Valandra, Van Gerpen, and Van Norman and Senators Putnam, Albers, Apa, Bogue, Brosz, Brown (Arnold), Daugaard, de Hueck, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Duxbury, Greenfield, Hainje, Hutmacher, Kleven, Koetzle, Koskan, Madden, McCracken, McIntyre, Moore, Munson, Olson (Ed), Reedy, Sutton (Dan), Symens, Vitter, and Volesky

1 FOR AN ACT ENTITLED, An Act to appropriate money for the Northern Crops Institute and
2 to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of fifty thousand
5 dollars (\$50,000), or so much thereof as may be necessary, to the Department of Agriculture for
6 a grant to the Northern Crops Institute.

7 Section 2. The secretary of the Department of Agriculture shall approve vouchers and the
8 state auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by

1 June 30, 2002, shall revert in accordance with § 4-8-21.

2 Section 4. Whereas, this Act is necessary for the support of the state government and its
3 existing public institutions, 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

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

841E0747

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1218 - 02/23/2001

Introduced by: Representatives Derby and Peterson (Bill) and Senator Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to prohibit directed suretyship.

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

3 Section 1. No state, county, or municipal employee, and no person acting or purporting to
4 act on behalf of such employee, or any state, county, or municipal agency, may, with respect to
5 any public building or construction contract which is about to be or which has been competitively
6 bid or negotiated, require the bidder to make application to or furnish financial data to any
7 particular insurance or surety company or producer, or to obtain, or procure, any surety bond
8 that is procured in any owner-controlled insurance program, or that is specified in connection
9 with such contract or by law from any particular insurance or surety company or producer.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

451E0693

SENATE ENGROSSED NO. **HB 1227** - 02/26/2001

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

Introduced by: Representatives Teupel, Derby, and Rhoden and Senators Apa and Kleven

1 FOR AN ACT ENTITLED, An Act to appropriate money to Black Hills Forest High School.

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

3 Section 1. There is hereby appropriated from the general fund the sum of one hundred
4 thousand dollars (\$100,000), or so much thereof as may be necessary, to the Department of
5 Education and Cultural Affairs for a one-time grant to Black Hills Forest High School as
6 payment in lieu of average daily membership support via state aid to education.

7 Section 2. The secretary of the Department of Education and Cultural Affairs shall approve
8 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
10 June 30, 2002, shall revert in accordance with § 4-8-21.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

472E0638

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1253 - 02/23/2001

Introduced by: Representatives Begalka, Fryslie, Jaspers, Konold, Lange, and Pummel and
Senators Koskan, Brosz, Brown (Arnold), Greenfield, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding dealer franchises and
2 to include outdoor power equipment.

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

4 Section 1. That § 37-5-5 be amended to read as follows:

5 37-5-5. If any person, firm, or corporation, or their successors, engaged in the business of
6 selling and retailing farm implements or machinery and repair parts for farm implements or
7 machinery, or in the business of selling and retailing industrial and construction equipment and
8 repair parts for industrial and construction equipment, or in the business of selling and retailing
9 outdoor power equipment and repair parts for outdoor power equipment, or in the business of
10 selling and retailing office furniture, equipment, and supplies and repair parts for office furniture,
11 equipment, and supplies, or in the business of selling and retailing automobiles, trucks,
12 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles or repair parts for
13 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles
14 enters into a written contract evidenced by franchised agreement, sales agreement, dealer

1 agreement, or security agreement, or other form of agreement or arrangement of like effect, the
2 term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the foregoing and their
3 successors. If such person, firm, or corporation, or their successors maintains a stock of parts
4 or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor
5 of farm implements or machinery or repair parts therefor, or industrial and construction
6 equipment or repair parts therefor, or outdoor power equipment or repair parts therefor, or
7 office furniture, equipment, and supplies or repair parts therefor, or automobiles, trucks,
8 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts
9 therefor, and either the wholesaler, manufacturer, or distributor, or their successors, or the
10 retailer, or successor, desires to cancel or discontinue the contract, such wholesaler,
11 manufacturer, or distributor, or successor, shall pay to the retailer, or successor, unless the
12 retailer, or successor, should desire to keep the merchandise, a sum equal to one hundred percent
13 of the net cost of all current unused complete farm implements, machinery and attachments,
14 industrial and construction equipment and attachments, outdoor power equipment and
15 attachments, office furniture, equipment, and supplies, and attachments, and automobiles, trucks,
16 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including
17 transportation and reasonable assembly charges which have been paid by the retailer and ~~eighty-~~
18 ~~five~~ ninety-five percent of the current net prices on repair parts, including superseded parts, listed
19 in a current price list or catalog which parts had previously been purchased from the wholesaler,
20 manufacturer, or distributor, or predecessor, and held by the retailer on the date of the
21 cancellation or discontinuance of the contract. The wholesaler, manufacturer, or distributor, or
22 successor, shall also pay the retailer a sum equal to five percent of the current net price of all
23 parts returned for the handling, packing, and loading of the parts back to the wholesaler,
24 manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the

1 net cost of the farm implements, machinery and attachments, industrial and construction
2 equipment and attachments, outdoor power equipment and attachments, office furniture,
3 equipment, and supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal
4 watercraft, all-terrain vehicles, and snowmobiles, plus transportation and reasonable assembly
5 charges and ~~eighty-five~~ ninety-five percent of the current net prices on repair parts, plus five
6 percent handling and loading costs on repair parts only, plus freight charges which have been
7 paid by the retailer, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain
8 vehicles, or snowmobiles, plus freight charges, or repair parts therefor, plus five percent handling
9 and loading costs on repair parts only, the title to the farm implements, farm machinery, industrial
10 and construction equipment, outdoor power equipment, office furniture, equipment, and
11 supplies, and repair parts, or automobiles, trucks, motorcycles, boats, personal watercraft,
12 all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the manufacturer, wholesaler,
13 or distributor making the payment, and the manufacturer, wholesaler, or distributor, is entitled
14 to the possession of the farm implements, industrial and construction equipment, outdoor power
15 equipment, office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,
16 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor.

17 Section 2. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A wholesaler, manufacturer, or distributor shall also repurchase from the retailer and the
20 retailer shall sell any specialized computer hardware or software, specialized tool, or signage
21 which the wholesaler, manufacturer, or distributor required the retailer to purchase or lease as
22 part of the retail agreement. Upon delivery to the wholesaler, manufacturer, or distributor of any
23 such specialized computer hardware or software, tool, or signage, the wholesaler, manufacturer,
24 or distributor shall pay to the retailer:

- 1 (1) For such computer hardware and software specifically required by the wholesaler,
2 manufacturer, or distributor purchased within the last five years, the net cost less
3 twenty percent per year depreciation. For purposes of this subdivision, the term,
4 software, means software that is sourced from the wholesaler, manufacturer, or
5 distributor, or its approved vendor, to meet the minimum requirements of the
6 wholesaler, manufacturer, or distributor;
- 7 (2) For current logoed signage constituting the principal outdoor signage required by the
8 wholesaler, manufacturer, or distributor, identifying the retailer as its representative,
9 the original net cost to the dealer less fifteen percent per year, but in no case less than
10 twenty percent of the original net cost to the dealer;
- 11 (3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer,
12 or distributor which is unique to the product line and in complete, usable condition,
13 seventy-five percent of the original net cost to the dealer if within ten years of
14 purchase by the retailer, provided that new, unused specialized repair tools applicable
15 to the products of the wholesaler, manufacturer, or distributor shall be purchased at
16 one hundred percent of the original net cost to the dealer.

17 Section 3. That § 37-5-7 be amended to read as follows:

18 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial
19 and construction equipment and repair parts therefor, and outdoor power equipment and repair
20 parts thereof, and of office furniture, equipment, and supplies and repair parts therefor, and of
21 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or
22 snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in
23 § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements,
24 machinery, and attachments, industrial and construction equipment; and attachments, outdoor

1 power equipment and attachments, office furniture, equipment, and supplies; and attachments,
2 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
3 snowmobiles, and ~~eighty-five~~ ninety-five percent of the current net price of repair parts therefor
4 as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect
5 at the time the contract is canceled or discontinued and specialized computer hardware and
6 software, specialized tools, or signage as specified in section 2 of this Act. For purposes of
7 §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts
8 therefor, industrial and construction equipment and repair parts therefor, and outdoor power
9 equipment and repair parts therefor, has actual proof of purchase of any repair parts or other
10 merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair
11 parts even though not currently listed in any price list or catalog and all other merchandise,
12 purchased within ten years of the dealership cancellation or termination shall be repurchased at
13 the original purchase price.

14 Section 4. That § 37-5-7.1 be amended to read as follows:

15 37-5-7.1. The payments to be made to the retailer pursuant to §§ 37-5-5 to 37-5-9, inclusive,
16 shall be made ~~not~~ no later than ~~six months~~ sixty days from the date the ~~contract is canceled or~~
17 ~~discontinued~~; merchandise is received by the wholesaler, manufacturer, or distributor and shall
18 be accompanied by a final detailed statement of account thereon.

19 Section 5. That § 37-5-8 be amended to read as follows:

20 37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements,
21 and repair parts for farm machinery, and farm implements, or of industrial and construction
22 equipment and repair parts for industrial and construction equipment, outdoor power equipment
23 and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies
24 and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks,

1 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts
2 therefor, or their successors, upon cancellation of a contract by either a retailer or a
3 manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to
4 the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and
5 repair parts for farm machinery and farm implements, or industrial and construction equipment,
6 and repair parts for industrial and construction equipment, outdoor power equipment and repair
7 parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair
8 parts for office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,
9 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer
10 of the products, who may have a retail sales contract dated after July 1, 1969, in the case of
11 contracts covering farm machinery, implements and attachments or automobiles and trucks, or
12 after July 1, 1970, in the case of contracts covering industrial and construction equipment and
13 attachments, or after July 1, 2001, in the case of the contracts covering outdoor power
14 equipment and attachments, or after July 1, 1995, in the case of contracts covering office
15 furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering
16 motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft,
17 all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing
18 contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery,
19 implements and attachments or automobiles and trucks, or in force and effect on July 1, 1970,
20 in the case of contracts covering industrial and construction equipment and attachments, or in
21 force and effect on July 1, 1995, in the case of contracts covering office furniture, equipment,
22 and supplies, or in force and effect on July 1, 2001, in the case of the contracts covering outdoor
23 power equipment and attachments, or in force and effect on July 1, 1973, in the case of contracts
24 covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal

1 watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or
2 distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil
3 action to be brought by the retailer for one hundred percent of the net cost of the farm
4 implements, machinery and attachments, industrial and construction equipment and attachments,
5 outdoor power equipment and attachments, office furniture, equipment, and supplies and
6 attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of
7 contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus
8 transportation charges which have been paid by the retailer and ~~eighty-five~~ ninety-five percent
9 of the current net price of repair parts, plus five percent for handling and loading plus freight
10 charges which have been paid by the retailer, plus charges for any specialized computer hardware
11 and software, specialized tool, and signage as specified in section 2 of this Act.

12 Section 6. That § 37-5-9 be amended to read as follows:

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repair parts
17 therefor, or in the business of selling and retailing office furniture, equipment, and supplies or
18 repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles,
19 boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the
20 wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall
21 repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at
22 a sum equal to one hundred percent of the net cost of all current unused complete farm
23 implements, machinery and attachments, industrial and construction equipment and attachments,
24 outdoor power equipment and attachments, office furniture, equipment, and supplies and

1 attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain
2 vehicles, and snowmobiles, including transportation and reasonable assembly charges which have
3 been paid by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair
4 parts, including superseded parts, listed in current price lists or catalogues, plus a sum equal to
5 five percent of the current net price of all parts returned for handling, packing, and loading of
6 the parts, and any specialized computer hardware or software, specialized tool, or signage as
7 specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail
8 dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is
9 deemed a cancellation or discontinuance of contract by the retailer under the provisions of
10 § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5
11 to 37-5-9, inclusive.

12 Section 7. That § 37-5-9 be amended to read as follows:

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repairs therefor,
17 or in the business of selling and retailing office furniture, equipment, and supplies or repair parts
18 therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats,
19 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler,
20 distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase
21 from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal
22 to one hundred percent of the net cost of all current unused complete farm implements,
23 machinery and attachments, industrial and construction equipment and attachments, outdoor
24 power equipment and attachments, office furniture, equipment, and supplies and attachments,

1 and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
2 snowmobiles, including transportation and reasonable assembly charges which have been paid
3 by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair parts,
4 including superseded parts, listed in current price lists or catalogues, plus a sum equal to five
5 percent of the current net price of all parts returned for handling, packing, and loading of the
6 parts any specialized computer hardware or software, specialized tool, or signage as specified
7 in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership.
8 If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a
9 cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and
10 as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9,
11 inclusive.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

145E0792

SENATE ENGROSSED NO. **HB 1294** - 02/26/2001

Introduced by: Representatives Teupel, Garnos, Juhnke, and McCoy and Senators Apa, Kleven, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide a financial incentive for school districts to
2 consolidate.

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

4 Section 1. If two or more school districts consolidate after July 1, 2001, the new school
5 district is entitled to an additional three hundred dollars per average daily membership as defined
6 in § 13-13-10.1, up to a maximum of four hundred average daily membership from each school
7 district or partial school district as it existed prior to consolidation for the first year after
8 consolidation. If two or more school districts consolidate after July 1, 2001, the new school
9 district is entitled to an additional two hundred dollars per average daily membership as defined
10 in § 13-13-10.1, up to a maximum of four hundred average daily membership from each school
11 district or partial school district as it existed prior to consolidation for the second year after
12 consolidation. If two or more school districts consolidate after July 1, 2001, the new school
13 district is entitled to an additional one hundred dollars per average daily membership as defined
14 in § 13-13-10.1, up to a maximum of four hundred average daily membership from each school
15 district or partial school district as it existed prior to consolidation for the third year after

1 consolidation.

2 Section 2. For the purposes of this Act, no student may be counted more than once.

3 Section 3. The entitlement provided by this Act shall be paid by the Department of Education
4 and Cultural Affairs out of any money appropriated for the purposes of this Act.

5 Section 4. The restriction on transfers imposed by § 13-16-26.2 does not apply to any money
6 received by a school district under the provisions of this Act.

7 Section 5. The Department of Education and Cultural Affairs may promulgate rules pursuant
8 to chapter 1-26 to implement the provisions of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

712E0013 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 14 - 02/27/2001

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

Introduced by: Senators Brosz, Diedrich (Larry), Everist, Hutmacher, McIntyre, Munson, and Reedy and Representatives Juhnke, Brown (Richard), Heineman, and Pummel at the request of the Interim Education Committee

1 FOR AN ACT ENTITLED, An Act to amend the General Appropriations Act for fiscal year
2 2001.

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

4 Section 1. That certain programs in chapter 14 of the 2000 Session Laws be amended to read
5 as follows:

6 DEPARTMENT OF HEALTH

7 Health Systems Development and Regulation

8 Operating Expenses, delete "\$45,555" and insert "\$145,555"

9 Health and Medical Services

10 Operating Expenses, delete "\$1,567,358" and insert "\$2,067,358"

11 DEPARTMENT OF HUMAN SERVICES

12 Rehabilitation Services

13 Operating Expenses, delete "\$479,160" and insert "\$1,479,160"

1 Adjust all totals accordingly.

2 Section 2. The fund source used to support the other fund expenditure authority appropriated
3 by this Act shall be the intergovernmental transfer fund established in § 28-6-33. Any expenditure
4 authority and cash appropriated by this Act which are unspent at the end of fiscal year 2001 shall
5 be carried over to fiscal year 2002.

6 Section 3. This Act is effective June 22, 2001.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0325 HOUSE APPROPRIATIONS COMMITTEE ENGROSSED
NO. **SB 52** - 02/27/2001

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

1 FOR AN ACT ENTITLED, An Act to repeal an annual appropriation from the children's trust
2 fund and to repeal a statute that terminates an additional charge for birth records that is
3 deposited in the fund.

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

5 Section 1. That § 26-14-3 be amended to read as follows:

6 26-14-3. ~~There is hereby annually appropriated the sum of sixty thousand dollars to the~~
7 ~~Department of Social Services from the children's trust fund.~~ The funds so appropriated
8 children's trust fund may be used with any other money otherwise annually appropriated or
9 contributed to nonprofit organizations to establish or continue community-based education
10 programs to prevent the occurrence and recurrence of child abuse and neglect. The department
11 may not assess administrative fees or charges against the fund. ~~No money may be appropriated~~
12 ~~from the children's trust fund unless there is at least sixty thousand dollars in the fund.~~

13 Section 2. That § 26-14-4 be repealed.

14 ~~26-14-4. If the fund exceeds one million dollars, the additional charge for supplying a~~

1 ~~certified copy of the record of any birth shall be terminated.~~

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0316

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 58** - 02/27/2001

Introduced by: The Committee on Commerce at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to establish certain fees for filing and indexing records

2 pursuant to the Uniform Commercial Code, to establish a fund, and to appropriate the fund.

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

4 Section 1. That § 57A-9-525 be amended to read as follows:

5 57A-9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and indexing
6 a record under this part, other than an initial financing statement of the kind described in
7 subsection (b), is (the amount specified in subsection (c), if applicable, plus):

8 (1) \$ _____ [X] _____ Thirteen dollars if the record is communicated in writing and
9 consists of one ~~or two pages~~ page, and four dollars for each additional page. One dollar of this
10 fee shall be deposited into the financing statement filing fee fund;

11 (2) \$ _____ [2X] _____ Eleven dollars if the record is communicated ~~in writing and~~
12 ~~consists of more than two pages~~ by internet. One dollar of this fee shall be deposited into the
13 financing statement filing fee fund; and

14 (3) \$ _____ [1/2X] _____ Twenty dollars if the record is communicated by another
15 medium authorized by filing-office rule.

1 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial
2 financing statement of the following kind is ~~(the amount specified in subsection (c), if applicable,~~
3 plus):

4 (1) \$_____ Thirty dollars if the financing statement indicates that it is filed in connection
5 with a public-finance transaction;

6 (2) \$_____ Thirty dollars if the financing statement indicates that it is filed in connection
7 with a manufactured-home transaction.

8 ~~{Alternative A}~~

9 ~~—(c) The number of names required to be indexed does not affect the amount of the fee in~~
10 ~~subsections (a) and (b).~~

11 ~~{Alternative B}~~

12 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing
13 or electronically, the fee for each name more than ~~two~~ one required to be indexed is \$_____
14 two dollars.

15 (d) The fee for responding to a request for information from the filing office, including for
16 ~~(issuing a certificate showing)~~ ~~(communicating)~~ whether there is on file any financing statement
17 naming a particular debtor, is:

18 (1) \$_____ Twelve dollars if the request is communicated in writing; and

19 (2) \$_____ Ten dollars if the request is communicated by another medium authorized by
20 filing-office rule.

21 Upon request the filing officer shall furnish a copy of any filed financing statement or
22 statement of assignment for a uniform fee of one dollar per page.

23 (e) This section does not require a fee with respect to a record of a mortgage which is
24 effective as a financing statement filed as a fixture filing or as a financing statement covering

1 as-extracted collateral or timber to be cut under § 57A-9-502(c). However, the recording and
2 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

3 Section 2. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 57A-9-527. There is hereby created, within the state treasury, the financing statement filing
6 fee fund, which is continuously appropriated, to provide funds for the operation of the uniform
7 commercial code program within the Office of the Secretary of State.

8 Section 3. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 57A-9-528. For each effective financing statement filed pursuant to this chapter, three dollars
11 of the fee collected pursuant to § 57A-9-525, and the computer search fee assessed pursuant to
12 § 57A-9-525, shall be deposited in the financing statement filing fee fund.

13 Section 4. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 57A-9-529. At the end of each fiscal year, any funds in the financing statement filing fee
16 fund, not otherwise appropriated, in excess of twenty-five thousand dollars, shall revert to the
17 general fund.

18 Section 5. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 57A-9-530. If a filed financing or continuation statement covers farm products or accounts,
21 or livestock, or general intangibles arising from or relating to the sale of farm products by a
22 farmer, or crops growing or to be grown, the secured party may file a standard form to be
23 prescribed by the secretary of state, which may be a combined effective financing statement and
24 a uniform commercial code financing statement.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0260

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 60** - 02/27/2001

Introduced by: The Committee on Appropriations at the request of the Department of
Education and Cultural Affairs

1 FOR AN ACT ENTITLED, An Act to expand the uses of the special education extraordinary
2 cost fund.

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

4 Section 1. That § 13-37-48.1 be amended to read as follows:

5 13-37-48.1. In addition to the purposes specified in § 13-37-40, money set aside pursuant
6 to § 13-37-40 may be used by the Department of Education and Cultural Affairs to establish and
7 maintain a program to assist school districts with legal matters relating to special education, to
8 employ personnel to audit school districts for compliance with the provisions of §§ 13-37-36.1
9 to 13-37-52, to establish and maintain state protocols to assist school districts in developing
10 individualized education plans, to support activities under Part C of the Individuals with
11 Disabilities Education Act, Infants and Toddlers with Disabilities, or to purchase assistive
12 technology for students with a level two, three, four, or five disability.

13 Any approved K-12 application under the extraordinary cost fund must be funded prior to
14 funding the Part C requests.

1 Section 2. That § 13-37-35.1 be amended to read as follows:

2 13-37-35.1. Terms used in chapter 13-37 mean:

3 (1) "Level one disability," a mild disability;

4 (2) "Level two disability," a mental retardation or emotional disorder;

5 (3) "Level three disability," hearing impairment, deafness, visual impairment,
6 deaf-blindness, orthopedic impairment, or traumatic brain injury;

7 (4) "Level four disability," autism;

8 (5) "Level five disability," multiple disabilities;

9 (5A) "Level six disability," prolonged assistance;

10 (6) "Index factor," is the annual percentage change in the consumer price index for urban
11 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
12 the United States Department of Labor for the year before the year immediately
13 preceding the year of adjustment or three percent, whichever is less;

14 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
15 education fund of a school district of one dollar and thirty cents per thousand dollars
16 of taxable valuation;

17 (8) "Allocation for a student with a level one disability," for the school fiscal year
18 beginning July 1, 1999, is \$3,504. For each school year thereafter, the allocation for
19 a student with a level one disability shall be the previous fiscal year's allocation for
20 such child increased by the lesser of the index factor or three percent;

21 (9) "Allocation for a student with a level two disability," for the school fiscal year
22 beginning July 1, 1999, is \$7,914. For each school year thereafter, the allocation for
23 a student with a level two disability shall be the previous fiscal year's allocation for
24 such child increased by the lesser of the index factor or three percent;

1 (10) "Allocation for a student with a level three disability," for the school fiscal year
2 beginning July 1, 1999, is \$10,116. For each school year thereafter, the allocation for
3 a student with a level three disability shall be the previous fiscal year's allocation for
4 such child increased by the lesser of the index factor or three percent;

5 (11) "Allocation for a student with a level four disability," for the school fiscal year
6 beginning July 1, 1999, is \$14,705. For each school year thereafter, the allocation for
7 a student with a level four disability shall be the previous fiscal year's allocation for
8 such child increased by the lesser of the index factor or three percent;

9 (12) "Allocation for a student with a level five disability," for the school fiscal year
10 beginning July 1, 1999, is \$15,808. For each school year thereafter, the allocation for
11 a student with a level five disability shall be the previous fiscal year's allocation for
12 such child increased by the lesser of the index factor or three percent;

13 (12A) "Allocation for a student with a level six disability," for the school fiscal year
14 beginning July 2001, is \$1,608. For each school year thereafter, the allocation for a
15 student with a level six disability shall be the previous fiscal year's allocation for such
16 child increased by the lesser of the index factor or three percent;

17 (13) "Child count," is the number of students in need of special education or special
18 education and related services according to criteria set forth in rules promulgated
19 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education
20 and Cultural Affairs in accordance with rules promulgated pursuant to § 13-37-1.1;

21 (14) "Average daily membership," the average number of kindergarten through twelfth
22 grade pupils enrolled in all schools operated by the school district during the previous
23 regular school year plus the average number of pupils for whom the district pays
24 tuition;

1 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
2 secretary of education and cultural affairs for the purpose of instructing children of
3 compulsory school age. This definition excludes any school that receives a majority
4 of its revenues from public funds;

5 (16) "Nonpublic average daily membership," the average number of children under age
6 sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the
7 previous school year plus:

8 (a) For nonpublic schools located within the boundaries of a public school district
9 with an average daily membership of six hundred or more during the previous
10 school year, the average number of kindergarten through twelfth grade pupils
11 enrolled during the previous regular school year in all nonpublic schools
12 located within the boundaries of the public school district;

13 (b) For nonpublic schools located within the boundaries of a public school district
14 with an average daily membership of less than six hundred during the previous
15 school year, the average number of resident kindergarten through twelfth grade
16 pupils enrolled during the previous school year in all nonpublic schools located
17 within the State of South Dakota;

18 (17) "Special education average daily membership," average daily membership plus
19 nonpublic average daily membership;

20 (18) "Local need," an amount to be determined as follows:

21 (a) Multiply the special education average daily membership by 0.089 and multiply
22 the result by the allocation for a student with a level one disability;

23 (b) Multiply the number of students having a level two disability as reported on the
24 child count for the previous school fiscal year by the allocation for a student

- 1 with a level two disability;
- 2 (c) Multiply the number of students having a level three disability as reported on
- 3 the child count for the previous school fiscal year by the allocation for a
- 4 student with a level three disability;
- 5 (d) Multiply the number of students having a level four disability as reported on the
- 6 child count for the previous school fiscal year by the allocation for a student
- 7 with a level four disability;
- 8 (e) Multiply the number of students having a level five disability as reported on the
- 9 child count for the previous school fiscal year by the allocation for a student
- 10 with a level five disability;
- 11 (f) Multiply the number of students having a level six disability as reported on the
- 12 child count for the previous school fiscal year by the allocation for a student
- 13 with a level six disability;
- 14 (g) Sum the results of (a) through ~~(e)~~ (f);
- 15 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
- 16 divided by \$1.30. The maximum effort factor is 1.0.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0223 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 64 - 01/17/2001

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 authorize the Department of Agriculture and the
2 Department of Game, Fish and Parks to designate certain species as needing both control and
3 protection.

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

5 Section 1. Terms used in this chapter mean:

6 (1) "Departments," the Department of Game, Fish, and Parks and the Department of
7 Agriculture;

8 (2) "Species of management concern," a species designated by the secretary of the
9 Department of Agriculture and the Game, Fish and Parks Commission as a species
10 which shares the dual status of requiring both control and protection.

11 Section 2. The secretary of the Department of Agriculture and the Game, Fish and Parks
12 Commission shall establish, by rules promulgated pursuant to chapter 1-26, a list of species of
13 management concern. In determining whether a species should be listed, the following factors
14 are to be considered:

1 (1) Whether the species or its habitat, or both are of value ecologically and aesthetically
2 and at the same time burdensome for property owners; and

3 (2) Whether the species may warrant protection at times and control at others depending
4 on the rate of reproduction, climate, disease, population viability, and other factors.

5 Section 3. Rules promulgated pursuant to section 2 of this Act shall be conducted jointly by
6 both the Department of Agriculture and the Game, Fish and Parks Commission, including joint
7 notice, publication, hearings, and decision-making.

8 Section 4. If so requested, the departments may render assistance and advice regarding
9 species of management concern including:

10 (1) Providing information to the public and property owners regarding the species of
11 management concern and its characteristics, ecosystem values, and habitat; and

12 (2) Providing assistance in the development of conservation plans or control projects
13 regarding the species of management concern.

14 Section 5. The following acts or omissions constitute nuisances:

15 (1) Engaging in practices which allow or cause a species of management concern to
16 encroach upon the property of another or injure or endanger the property of another;
17 or

18 (2) Failure to control the species of management concern thereby causing encroachment
19 on the property of another or causing injury to or endangering the property of
20 another.

21 Section 6. In addition to any other remedies at law, the remedies set forth in chapter 21-10
22 apply to the nuisances described in section 5 of this Act. These remedies include civil action,
23 including injunctive relief and recovery of damages, and abatement. Abatement, if ordered by the
24 court, shall include reimbursement for any reasonable and necessary costs incurred in abating the

1 nuisance.

2 Section 7. Designation as a species of management concern abrogates any previous

3 designation as a weed or pest.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

773E0484

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **SB 118** - 02/27/2001

Introduced by: Senators Diedrich (Larry), Albers, Daugaard, Duxbury, Greenfield, Hainje, Hutmacher, Koetzle, McIntyre, Moore, Olson (Ed), Putnam, Sutton (Dan), and Volesky and Representatives Derby, Begalka, Brown (Richard), Fryslie, Jaspers, Juhnke, Kloucek, Peterson (Bill), Peterson (Jim), and Slaughter

1 FOR AN ACT ENTITLED, An Act to make an appropriation to the ethanol fuel fund and to
2 declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of eight hundred
5 seventy-four thousand dollars (\$874,000), or so much thereof as may be necessary, to the
6 ethanol fuel fund for production incentive payments pursuant to § 10-47B-162.

7 Section 2. The secretary of the Department of Revenue shall approve vouchers and the state
8 auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
10 June 30, 2002, shall revert in accordance with § 4-8-21.

11 Section 4. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
13 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

273E0566

HOUSE ENGROSSED NO. **SB 149** - 02/21/2001

Introduced by: Senators Kleven, Albers, Bogue, Drake, and Vitter and Representatives Napoli, Brown (Jarvis), Derby, Hennies (Thomas), Klaudt, McCoy, Pederson (Gordon), Pummel, and Van Etten

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the housing of
2 prisoners from other jurisdictions.

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

4 Section 1. That § 24-11-3 be amended to read as follows:

5 24-11-3. If there is no jail or juvenile detention facility in the county, or if the jail or juvenile
6 detention facility in the county is crowded, unsafe, or otherwise insufficient to conform to the
7 requirements of this chapter, every judicial or executive officer of the county who has the power
8 to order, sentence, or deliver any person to the county jail or juvenile detention facility may
9 order, sentence, or deliver such person to the jail or juvenile detention facility of any near or
10 adjoining state, Indian reservation, county, organized township, or municipality. The county from
11 which the prisoner was committed shall pay to the agency housing the prisoner all expenses of
12 keeping and maintaining the prisoner in the jail or juvenile detention facility, including the cost
13 of building depreciation, administration, and a reasonable charge for obsolescence of the facility
14 and all other tangible and intangible costs, ~~to the county.~~

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

307E0387

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

SB 153 - 02/27/2001

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

Introduced by: Senators Olson (Ed), de Hueck, Dennert, Duxbury, Ham, Hutmacher, Koetzle, McIntyre, Moore, Munson, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Brown (Richard), Davis, Elliott, Flowers, Gillespie, Hennies (Don), Hennies (Thomas), Holbeck, Kooistra, Lintz, Madsen, McCoy, Murschel, Nesselhuf, Olson (Mel), and Pederson (Gordon)

1 FOR AN ACT ENTITLED, An Act to subject uncertified school administrators to a code of
2 professional ethics and to allow for the publication of violations of the code of professional
3 ethics.

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

5 Section 1. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Individuals employed in an administrative capacity, but who do not hold a valid South
8 Dakota certificate pursuant to chapter 13-42, are subject to the code of professional ethics as
9 established under § 13-43-45.

10 Section 2. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The Professional Administrators Practices and Standards Commission may publish a

1 summary of the findings of fact, conclusions of law, and the decisions of the commission as they
2 relate to violations of the code of professional ethics in the designated legal newspaper of the
3 school system where the respondent is currently employed or was last employed. The findings
4 shall be published for three consecutive weeks.

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

177E0658

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 165 - 02/27/2001

Introduced by: Senators Koskan, Diedtrich (Elmer), and Volesky and Representatives Lange, Hargens, Kloucek, and Smidt

1 FOR AN ACT ENTITLED, An Act to provide for incentives for development of certain
2 commercial small power production facilities.

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

4 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any commercial small power production facility, utilizing renewable resources, such as sun,
7 wind, geothermal, or biomass, that begins generating electricity after June 30, 2001, produces
8 ten megawatts or less of electricity as measured by nameplate rating, and is located within one
9 county and owned by a natural person, corporation, nonprofit or for profit business organization,
10 or tribal council (if the facility is located outside the boundaries of the reservation), irrigation
11 district, drainage district, or other political subdivision or agency of the state authorized by
12 statute to carry on the business of developing, transmitting, utilizing, or distributing electric
13 power is subject to the provisions of this Act for any new or expanded facility.

14 Section 2. Rural electric cooperatives developing commercial small power production

1 facilities utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject
2 to a gross receipts tax as defined in § 10-36-6.

3 Section 3. Terms used in this Act mean:

4 (1) "Department," the Department of Revenue;

5 (2) "New or expanded facility," a new commercial small power production facility as
6 defined in section 1 of this Act or an addition to an existing commercial small power
7 production facility, the construction or installation of which is subject to contractors'
8 excise tax pursuant to chapter 10-46A or 10-46B;

9 (3) "Project," the installation or construction of the first ten megawatts of generation
10 capacity of a new or expanded facility;

11 (4) "Project cost," the amount paid in money for a project;

12 (5) "Secretary," the secretary of the Department of Revenue.

13 Section 4. Any person may apply for and obtain a refund or credit for contractors' excise
14 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
15 of a new or expanded facility that is a commercial small power production facility that is defined
16 in section 1 of this Act.

17 Section 5. The refund pertains only to project costs incurred and paid after July 1, 2001. The
18 refund pertains only to project costs that were incurred and paid within thirty-six months of the
19 approval of the application required by this Act. No refund may be made unless:

20 (1) The project costs exceed five hundred thousand dollars; and

21 (2) The person applying for the refund obtains a permit from the secretary as set forth in
22 section 7 of this Act.

23 Section 6. The amount of the tax refund shall be one hundred percent of the contractor's
24 excise taxes attributed to the project cost, excluding any associated transmission facilities.

1 Section 7. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
2 from the secretary at least thirty days prior to commencement of the project. The application for
3 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
4 be made and submitted for each project. Upon approval of the application, the secretary shall
5 issue a permit entitling the applicant to submit refund claims as provided by this Act. The permit
6 or refund claims are not assignable or transferable except as collateral or security pursuant to
7 chapter 57A-9.

8 Section 8. Any claim for refund shall be submitted on forms prescribed by the secretary and
9 shall be supported by such documentation as the secretary may require. The secretary may deny
10 any claim where the claimant has failed to provide information or documentation requested or
11 considered necessary by the secretary to determine the validity of the claim.

12 Section 9. Any claim for refund shall be submitted to the department on or before the last day
13 of the month following each quarterly period. The secretary shall determine the amount of the
14 tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance
15 with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department. No interest
16 shall be paid on the refund amount.

17 Section 10. The amounts withheld by the department in accordance with section 9 of this Act
18 shall be retained until the project has been completed and the claimant has met all the conditions
19 of this Act, at which time all sums retained shall be paid to claimant.

20 Section 11. If any claim has been fraudulently presented or supported as to any item in the
21 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be rejected
22 in its entirety and all sums previously refunded to the claimant shall constitute a debt to the state
23 and a lien in favor of the state upon all property and rights to property whether real or personal
24 belonging to the claimant and may be recovered in an action of debt.

1 Section 12. Any person aggrieved by the denial in whole or in part of a refund claimed under
2 this Act, may within thirty days after service of the notice of a denial by the secretary, demand
3 and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted
4 pursuant to chapter 1-26.

5 Section 13. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
6 procedures for filing refund claims and the requirements necessary to qualify for a refund.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

834E0094

SENATE ENGROSSED NO. **SB 166** - 02/16/2001

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

Introduced by: Senator Koskan and Representatives Juhnke, Jensen, and Napoli

1 FOR AN ACT ENTITLED, An Act to provide for a Streamlined Sales Tax Project Task Force,
2 to make an appropriation therefor, and to declare an emergency.

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

4 Section 1. There is established the Streamlined Sales Tax Project Task Force. The task force
5 shall study the final report of the Streamlined Sales Tax Project to determine how the
6 requirements found in the report impact the sales and use tax laws of South Dakota. The study
7 shall include an analysis on how the requirements found in the report will impact the businesses
8 and citizens of South Dakota. The task force shall report its findings to the Legislature and
9 Governor by December 1, 2001. The task force shall have fifteen members. The Executive Board
10 of the Legislative Research Council shall appoint four bipartisan senators and four bipartisan
11 representatives to serve on the task force. The Governor shall appoint four individuals
12 representing business and commerce, two individuals representing municipalities, and one
13 individual representing the public at large to serve on the task force.

14 Section 2. There is hereby appropriated from the general fund the sum of twenty thousand
15 dollars (\$20,000), or so much thereof as may be necessary, to the Executive Board of the

1 Legislative Research Council for the purpose of the task force authorized by section 1 of this
2 Act.

3 Section 3. The director of the Legislative Research Council shall approve vouchers and the
4 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 by
6 June 30, 2002, shall revert in accordance with § 4-8-21.

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 full
9 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

474E0470

SENATE ENGROSSED NO. **SB 179** - 02/16/2001

Introduced by: Senator de Hueck and Representative Monroe

1 FOR AN ACT ENTITLED, An Act to revise the appeal procedure concerning the factor used
2 for valuing agricultural and nonagricultural property.

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

4 Section 1. That § 10-13-37.1 be amended to read as follows:

5 10-13-37.1. For purposes of §§ 10-3-41, 10-12-31.1, and 10-13-37, the secretary of revenue
6 shall calculate a factor for each county for the agricultural and nonagricultural valuations. The
7 factor shall be calculated by using the sales of arms-length transactions and the assessments from
8 the preceding assessment year. The secretary shall take into consideration any reappraisals
9 completed by the director of equalization. If there are less than fifteen sales of either class, the
10 secretary shall use the preceding year's sales of that class with current assessments. In the case
11 of agricultural land, sales may also be bridged in from adjoining counties if there are less than
12 fifteen sales. The secretary of revenue shall calculate all factors pursuant to this section no later
13 than March first.

14 Section 2. That § 10-11-43 be amended to read as follows:

15 10-11-43. An appeal from the Office of Hearing Examiners to circuit court may be taken by

1 the parties to the appeal and interveners before the Office of Hearing Examiners. The appeal shall
2 be taken and conducted pursuant to the provisions of chapter 1-26.

3 The venue of the appeal shall be in the circuit court for the county in which the property
4 subject to the appeal is situated. The venue of appeals taken from 10-13-37.2 shall be in either
5 the county in which the property subject to the appeal is situated or to the circuit court for
6 Hughes County, as the appellant may elect.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

527E0529

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 204 - 02/27/2001

Introduced by: Senators Hagen and Volesky and Representatives Valandra and Bradford

1 FOR AN ACT ENTITLED, An Act to permit tribal identification cards in lieu of other
2 identification when applying for a driver's license.

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

4 Section 1. That § 32-12-3.1 be amended to read as follows:

5 32-12-3.1. Every applicant under this chapter shall, on making application for an operator's
6 license, restricted permit, instruction permit, or nondriver identification card, present to the
7 driver's license examiner a certified copy of a United States birth certificate issued in or by a city,
8 county, or state, ~~a federal census record~~ a tribal identification card that provides evidence that
9 a certified birth certificate issued by a city, county, or state was used to obtain the tribal
10 identification card and is in a form and content acceptable to the Department of Commerce and
11 Regulation, a naturalization and immigration record authorizing the applicant's presence in the
12 United States, or a valid passport. The examiner may accept other evidence of birth only if the
13 examiner is satisfied that the applicant cannot, for good reason beyond the applicant's control,
14 produce such primary documents. The Department of Commerce and Regulation may not require
15 new evidence of birth at the time an application is made for an operator's permit by a person

1 holding an operator's license, restricted permit, or instruction permit, if that person's operator's
2 license, restricted permit, or instruction permit is turned in to the department with the
3 application. Any person who obtains a license, permit, or identification card pursuant to this
4 section fraudulently or by use of a fraudulently obtained document is guilty of a Class 2
5 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

708E0621

HOUSE ENGROSSED NO. **SB 209** - 02/22/2001

Introduced by: Senators Olson (Ed), Diedrich (Elmer), and Sutton (Dan) and
Representatives Brown (Richard), Derby, Flowers, Jaspers, and Sebert

1 FOR AN ACT ENTITLED, An Act to permit certain businesses to remit sales and use tax after
2 the machinery is under production.

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

4 Section 1. That § 10-45-27 be amended to read as follows:

5 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts
6 are subject to sales tax in this state during the periods specified by this section shall make a return
7 and remittance to the Department of Revenue on forms prescribed and furnished by the
8 department in the following manner:

9 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the
10 return and remit the tax on or before the twentieth day of the month following each
11 monthly period;

12 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the
13 return and remit the tax on or before the last day of the month following each
14 two-month period;

15 (3) Any person whose tax liability is one thousand dollars or more annually and who

1 remits the tax by electronic transfer to the state, shall file the return by electronic
2 means on or before the twenty-third day of the month following each monthly period
3 and remit the tax on or before the second to the last day of the month following each
4 monthly period.

5 The secretary of revenue may grant an extension of not more than five days for filing a return
6 and remittance. However, the secretary of revenue may grant an extension for remitting the tax
7 to a qualified business as provided in sections 2 to 10, inclusive, of this Act for six months.

8 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return
9 or remittance is not made on time.

10 Section 2. Terms used in this Act mean:

- 11 (1) "Department," the Department of Revenue;
- 12 (2) "Business," a business that has purchased and is installing tangible personal property
13 in the form of equipment or machinery for direct use in an electrical generation,
14 electrical transmission, digital television broadcast, manufacturing, fabricating, or
15 processing business, which is subject to sales or use tax pursuant to chapter 10-45 or
16 10-46;
- 17 (3) "Project," the purchase and installation of equipment or machinery;
- 18 (4) "Project cost," the amount paid in money for a project;
- 19 (5) "Secretary," the secretary of the Department of Revenue.

20 Section 3. Any electrical generation, electrical transmission, digital television broadcast,
21 manufacturing, fabricating, or processing business may apply for and obtain an extension for
22 remitting the sales and use tax imposed and due under the provisions of chapter 10-45 or 10-46
23 for equipment or machinery that will be for direct use in an electrical generation, electrical
24 transmission, digital television broadcast, manufacturing, fabricating, or processing business. The

1 extension shall end after six months.

2 Section 4. The extension pertains only to equipment and machinery purchased and installed
3 after July 1, 2001. No extension may be made unless:

4 (1) The project cost exceeds twenty thousand dollars; and

5 (2) The business applying for the extension obtains a permit from the secretary as set
6 forth in section 6 of this Act.

7 Section 5. The amount of the tax extension shall apply to one hundred percent of the
8 equipment and machinery costs and installation fees.

9 Section 6. Any business desiring an extension pursuant to this Act shall apply for a permit
10 from the secretary at least thirty days prior to commencement of the project. The application for
11 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
12 be made and submitted for each project. Upon approval of the application, the secretary shall
13 issue a permit entitling the applicant to an extension as provided by this Act. The permit or
14 extension is not assignable or transferable.

15 Section 7. Any extension shall be submitted on forms prescribed by the secretary and shall
16 be supported by such documentation as the secretary may require. The secretary may deny any
17 extension where the business has failed to provide information or documentation requested or
18 considered necessary by the secretary to determine the validity of the extension.

19 Section 8. If any extension has been fraudulently presented or supported as to any item in the
20 claim, or if the business fails to meet all the conditions of this Act, then the business may be
21 rejected in its entirety and any tax due from the business shall constitute a debt to the state and
22 a lien in favor of the state upon all property and rights to property whether real or personal
23 belonging to the business and may be recovered in an action of debt.

24 Section 9. Any business aggrieved by the denial in whole or in part of a extension requested

1 under this Act, may within thirty days after service of the notice of a denial by the secretary,
2 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be
3 conducted pursuant to chapter 1-26.

4 Section 10. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
5 procedures for filing extensions and the requirements necessary to qualify for an extension.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0600 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 223 - 02/26/2001

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

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund tax refunds for elderly and
2 disabled persons.

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

4 Section 1. There is hereby appropriated from the general fund the sum of one million dollars
5 (\$1,000,000), or so much thereof as may be necessary, to the Department of Revenue to provide
6 refunds for real property tax and sales tax to elderly and disabled persons pursuant to chapters
7 10-18A and 10-45A. An amount not to exceed ten thousand dollars in fiscal 2002 may be used
8 for the administrative costs of this Act.

9 Section 2. The secretary of revenue shall approve vouchers and the state auditor shall draw
10 warrants to pay expenditures authorized by this Act.

11 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
12 June 30, 2002, shall revert in accordance with § 4-8-21.

13 Section 4. Whereas, this Act is necessary for the support of the state government and its
14 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
15 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

355E0789

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 225 - 02/27/2001

Introduced by: Senators Everist and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to insurance taxes, cash
2 surrender values of insurances policies, and the payment of insurance benefits.

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

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

5 10-44-2. Any company doing insurance business in this state shall pay a tax at the rates
6 specified in this section. The tax shall be paid to the Division of Insurance at the time the
7 company files its annual statement, or, if no annual statement is required, then before March first
8 of each year.

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

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

8 (1) On each domestic company, two and one-half percent of premiums and one and one-
9 fourth percent of the consideration for annuity contracts. However, the rate for life
10 insurance and annuities shall be computed as follows:

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

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

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

24 (2) On each foreign company, ~~two~~ the rate shall be computed as follows:

1 (a) Two and one-half percent of premiums, and one. However, for that portion of
 2 the life insurance premiums exceeding one hundred thousand dollars annually,
 3 the rate shall be eight one-hundredths of a percent; and

4 (b) One and one-fourth percent of the consideration for annuity contracts on the
 5 first five hundred thousand dollars of consideration for annuity contracts, and
 6 eight one-hundredths of a percent for that portion of the consideration on
 7 annuity contracts exceeding five hundred thousand dollars;

8 (3) On each insurer not licensed or not authorized to do business in this state, ~~two~~ the
 9 rate shall be computed as follows:

10 (a) Two and one-half percent of premiums and one. However, for that portion of
 11 the life insurance premiums exceeding one hundred thousand dollars annually,
 12 the rate shall be eight one-hundredths of a percent; and one

13 (b) One and one-fourth percent of the consideration for annuity contracts on the
 14 first five hundred thousand dollars of consideration for annuity, and eight one-
 15 hundredths of a percent for that portion of the consideration on annuity
 16 contracts exceeding five hundred thousand dollars;

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

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

23 Section 2. That § 58-6-70 be amended to read as follows:

24 58-6-70. If any other state or foreign country imposes any taxes, licenses, and other fees, in

1 the aggregate, or fines, penalties, deposit requirements, or other material obligations,
2 prohibitions, or restrictions upon South Dakota insurers, or upon the agents or representatives
3 of such insurers, which are, pursuant to the laws of that other state or country, in excess of those
4 directly imposed upon similar insurers, or upon the agents or representatives of such insurers,
5 of that other state or country under the statutes of this state, then, so long as the laws of that
6 other state or country continue in force or are so applied, the director of the Division of
7 Insurance shall impose the same taxes, licenses, and other fees, in the aggregate, or fines,
8 penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of
9 whatever kind upon the insurers, or upon the agents or representatives of the insurers, of the
10 other state or country doing business or seeking to do business in South Dakota. Any tax,
11 license, or other fee or obligation imposed on South Dakota insurers or their agents or
12 representatives by any first or second class municipality, county, or other political subdivision
13 or agency of the other state or country is considered to be imposed by such state or country
14 within the meaning of this section. The time and period of payment of the retaliatory tax is the
15 same, in all cases, as that of the gross premiums tax provided for in § 10-44-2. No interest
16 charges or credits may be made or allowed for the use or loss of the use of funds due to any
17 difference in the time or period of payment used in this state and the time or period used in a
18 foreign state or country.

19 This provision does not apply to life policies where the total first year premium is equal to
20 or greater than one million dollars and to annuity contracts where the total first year
21 consideration is equal to or greater than one million dollars.

22 Section 3. That § 58-15-17 be amended to read as follows:

23 58-15-17. In the case of policies issued on or after the operative date specified in § 58-15-42,
24 the loan value referred to in § 58-15-15 shall be the cash surrender value at the end of the current

1 policy year as required by § 58-15-33. The policy shall reserve to the insurer the right to defer
2 the granting of a loan, other than for the payment of any premium to the insurer, for six months
3 after application therefor. For policies where the cash surrender value pursuant to § 58-15-33
4 is in excess of one million dollars, the loan value shall be equal to the portion of the cash
5 surrender value that can immediately be converted to cash, pursuant to the policyholder's
6 consent. The consent of the policyholder shall be on a form prescribed by the director in rules
7 promulgated pursuant to chapter 1-26.

8 Section 4. That § 58-15-26 be amended to read as follows:

9 58-15-26. There shall be a provision that when a policy ~~shall become~~ becomes a claim by the
10 death of the insured, settlement shall be made upon receipt of due proof of death and, at the
11 insurer's option, surrender of the policy ~~and/or or~~ or proof of the interest of the claimant, or both.
12 If an insurer shall specify a particular period prior to the expiration of which settlement shall be
13 made, such period ~~shall~~ may not exceed two months from the receipt of such proof. For policies
14 where the cash surrender value pursuant to § 58-15-33 is in excess of one million dollars at the
15 date of death, settlement may be made in cash or, if allowed under the policy, by distributing
16 assets of the separate account to the claimant with the consent of the policyholder. The consent
17 of the policyholder shall be on a form prescribed by the director in rules promulgated pursuant
18 to chapter 1-26.

19 Section 5. That § 58-15-26.2 be amended to read as follows:

20 58-15-26.2. Interest payable pursuant to § 58-15-26.1 shall be computed from the date of
21 death of the insured until the date of payment and shall be at the rate of four percent per annum
22 or not less than the current rate of interest on death proceeds left on deposit with the insurer
23 under an interest settlement option, whichever rate is greater. For policies where the cash
24 surrender value pursuant to § 58-15-33 is in excess of one million dollars at the date of death,

1 and with the consent of the policyholder, the interest shall be computed commencing the latter
2 of sixty days succeeding the date of death of the insured or the date proof of death has been
3 received by the insurer in good order until the date of payment. The consent of the policyholder
4 shall be on a form prescribed by the director in rules promulgated pursuant to chapter 1-26.

5 Section 6. That § 58-15-33 be amended to read as follows:

6 58-15-33. Any cash surrender value available under the policy in the event of default in a
7 premium payment due on any policy anniversary, whether or not required by § 58-15-31 shall
8 be an amount not less than the excess, if any, of the present value on such anniversary, of the
9 future guaranteed benefits which would have been provided for by the policy, including any
10 existing paid-up additions, if there had been no default, over the sum of the then present value
11 of the adjusted premiums as defined in §§ 58-15-35 to 58-15-38, inclusive, and §§ 58-15-43.1
12 to 58-15-43.11, inclusive, corresponding to premiums which would have fallen due on and after
13 such anniversary, and the amount of any indebtedness to the insurer on the policy. Any cash
14 surrender value available within thirty days after any policy anniversary under any policy paid up
15 by completion of all premium payments or any policy continued under any paid-up nonforfeiture
16 benefit, whether or not required by § 58-15-31, shall be an amount not less than the present
17 value, on such anniversary, of the future guaranteed benefits provided for by the policy, including
18 any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

19 However, for any policy issued on or after the operative date of §§ 58-15-43.1 to
20 58-15-43.11, inclusive, which provides supplemental life insurance or annuity benefits at the
21 option of the insured and for an identifiable additional premium by rider or supplemental policy
22 provision, the cash surrender value referred to in the first paragraph of this section shall be an
23 amount not less than the sum of the cash surrender value as defined in that paragraph for an
24 otherwise similar policy issued at the same age without a rider or supplemental policy provision

1 and the cash surrender value as defined in that paragraph for a policy which provides only the
2 benefits otherwise provided by a rider or supplemental policy provision.

3 Further, for any family policy issued on or after the operative date of §§ 58-15-43.1 to
4 58-15-43.11, inclusive, which defines a primary insured and provides term insurance on the life
5 of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash
6 surrender value referred to in the first paragraph of this section shall be an amount not less than
7 the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy
8 issued at the same age without term insurance on the life of the spouse and the cash surrender
9 value as defined in that paragraph for a policy which provides only the benefits otherwise
10 provided by term insurance on the life of the spouse.

11 Any cash surrender value available within thirty days after any policy anniversary under any
12 policy paid-up by completion of all premium payments or any policy continued under any paid-up
13 nonforfeiture benefit, whether or not required by § 58-15-31, shall be an amount not less than
14 the present value, on such anniversary of the future guaranteed benefits provided for by the
15 policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on
16 the policy.

17 If the cash surrender value is in excess of one million dollars, the term, cash surrender value,
18 may include payment of assets to the policyholder as well as payment of cash, if allowed under
19 the policy, with the consent of the policyholder. The consent of the policyholder shall be on a
20 form prescribed by the director in rules promulgated pursuant to chapter 1-26.

21 Section 7. That § 58-15-46 be amended to read as follows:

22 58-15-46. A policy which contains any exclusion or restriction pursuant to § 58-15-45 shall
23 also provide that in the event of death under the circumstances to which any such exclusion or
24 restriction is applicable, the insurer will return all premiums received under the policy with

1 adjustment for indebtedness and dividend credits. If the policy is a variable policy, the insurer
2 may, if the policy so provides, return all premiums received under the policy with adjustment for
3 indebtedness and adjustment to reflect the investment experience of the separate account.

4 Section 8. The amendments in section 1 of this Act are repealed on July 1, 2002.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0768

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 226** - 02/23/2001

Introduced by: Senators Everist and Brown (Arnold) and Representatives Peterson (Bill)
and Eccarius

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority, to provide for the establishment of a corporation by the South
3 Dakota Building Authority for the purpose of raising funds for specified purposes, to provide
4 for transfer and sale at any one time or from time to time of a portion of or all future right,
5 title, and interest of the State of South Dakota to certain amounts payable to the state by
6 various tobacco companies under a master settlement agreement in exchange for the deposit
7 of the net proceeds of such sale into the state permanent tobacco settlement development
8 trust fund, to establish certain funds, and to declare an emergency.

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

10 Section 1. Terms used in this Act, mean:

- 11 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
12 organized and existing under chapter 5-12;
- 13 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
14 indebtedness, or other obligations issued, incurred, or otherwise created under the

1 authority of this Act and payable directly or indirectly out of or representing an
2 interest in tobacco settlement revenues or other rights under or with respect to the
3 master settlement agreement;

4 (3) "Corporation," the special purpose body corporate and politic established by the
5 authority by resolution as provided in section 3 of this Act;

6 (4) "Development programs," any program described in section 13 of this Act;

7 (5) "Master settlement agreement," the master settlement agreement entered into on
8 November 23, 1998, by attorneys general from the several states (including the State
9 of South Dakota) and various tobacco companies, as now or hereafter amended,
10 supplemented, or restated;

11 (6) "Master settlement escrow agent," the escrow agent under the master settlement
12 agreement;

13 (7) "Net proceeds of bonds," the original proceeds of bonds issued under this Act less any
14 amounts applied or to be applied to pay transaction and administrative expenses and
15 to fund any reserves deemed necessary or appropriate by the corporation, but does
16 not include any investment earnings realized thereon;

17 (8) "Net proceeds of sale of tobacco settlement revenues," the net proceeds of bonds plus
18 any residual interest in tobacco settlement revenues received or to be received by the
19 State of South Dakota from time to time as a result of any sale, conveyance, or other
20 transfer authorized in section 2 of this Act, but does not include any investment
21 earnings realized thereon;

22 (9) "Permanent tobacco settlement development trust fund," the State of South Dakota
23 permanent tobacco settlement development trust fund created by section 10 of this
24 Act;

1 (10) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
2 with noncollateralized direct obligations of any bank or savings institution, insurance
3 company, or bank or insurance holding company if the institution or holding company
4 is rated in the highest four classifications by at least one standard rating service and
5 any bond, note, or other obligation of any state or any agency, authority, or other
6 instrumentality of any state or political subdivision thereof if the bond, note, or other
7 obligation is rated in the four highest classifications established by at least one
8 standard rating service;

9 (11) "Residual interest in tobacco settlement revenues," any tobacco settlement revenues
10 not required to pay principal or interest on bonds or administrative or transaction
11 expenses of the corporation or authority or to fund reserves or other requirements
12 relating to bonds issued, incurred, or otherwise created under this Act;

13 (12) "Tobacco settlement residual fund," the tobacco settlement residual fund created by
14 section 11 of this Act;

15 (13) "Tobacco settlement revenues," all of the amounts now or hereafter payable to the
16 State of South Dakota under or in connection with the master settlement agreement;

17 (14) "Tobacco development interest fund" the fund created by section 12 of this Act.

18 Section 2. At any one time or from time to time, all or any portion of the right, title, and
19 interest of the State of South Dakota in, to, and under the master settlement agreement,
20 including the right to receive and collect tobacco settlement revenues, may be sold, conveyed,
21 or otherwise transferred by the state to the authority or to a corporation established by the
22 authority under this Act in exchange for the net proceeds of bonds and a right to the residual
23 interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the
24 permanent tobacco settlement development trust fund, and the residual interest in tobacco

1 settlement revenues shall be deposited to the tobacco settlement residual fund. Any sale,
2 conveyance, or other transfer authorized by this section shall be evidenced by an instrument or
3 agreement in writing signed on behalf of the state by the Governor. The Governor shall file a
4 certified copy of the instrument or agreement with the Legislature promptly upon execution and
5 delivery thereof. The instrument or agreement may include an irrevocable direction to the master
6 settlement escrow agent to pay all or a specified portion of amounts otherwise due to the State
7 of South Dakota under or in connection with the master settlement agreement, including, without
8 limitation, all or any portion of tobacco settlement revenues directly to or upon the order of the
9 authority or corporation, as the case may be, or to any escrow agent or any trustee under an
10 indenture or other agreement securing any bonds issued, incurred, or created under this Act. The
11 irrevocable direction to the master settlement escrow agent may include the direction to pay any
12 residual interest in tobacco settlement revenues initially to or upon the order of the authority or
13 corporation or to any escrow agent or any trustee under an indenture or other agreement
14 securing any bonds. Upon the filing of a certified copy of the instrument or agreement by the
15 Governor, the sale, conveyance, or other transfer of rights under or with respect to the master
16 settlement agreement, including the right to receive the tobacco settlement revenues, shall, for
17 all purposes, be a true sale and absolute conveyance of all right, title, and interest therein
18 described in accordance with the terms thereof, valid, binding, and enforceable in accordance
19 with the terms thereof and such instrument or agreements and any related instrument, agreement,
20 or other arrangement, including any pledge, grant of security interest, or other encumbrance
21 made by the corporation or the authority to secure any bonds issued, incurred, or created by the
22 corporation or the authority, are not subject to disavowal, disaffirmance, cancellation, or
23 avoidance by reason of insolvency of any party, lack of consideration, or any other fact,
24 occurrence, or rule of law. The procedures and requirements set forth in this section shall be the

1 sole procedures and requirements applicable to the sale of the state's rights under the master
2 settlement agreement, including the sale of tobacco settlement revenues, and it is not necessary
3 to satisfy or comply with any other existing law which would otherwise apply to the sale of
4 assets of the state or impose procedures or restrictions with respect thereto.

5 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The authority may establish by resolution a special purpose corporation which shall be body
8 corporate and politic and instrumentality of, but having a legal existence independent and
9 separate from, the State of South Dakota and the authority. The corporation shall be established
10 for the express limited public purposes set forth in this Act and no part of the net earnings of the
11 corporation shall inure to any private individual.

12 The corporation shall be governed by a board consisting of the members of the authority and
13 two additional persons appointed by the Governor, which two additional members shall be
14 independent from the state. The resolution establishing the corporation shall serve as the charter
15 of the corporation and may be amended from time to time by the authority, but the resolution
16 shall at all times provide that the power and the authority of the corporation shall be subject to
17 the terms, conditions, and limitations of this Act and any applicable covenants or agreements of
18 the corporation in any indenture or other agreement relating to any then outstanding bonds. The
19 corporation may enter into contracts regarding any matter connected with any corporate purpose
20 within the objects and purposes of this Act.

21 The authority and corporation may delegate by resolution to one or more officers or
22 employees of the authority or corporation such powers and duties as it may deem proper.

23 The corporation may issue bonds and secure repayment of the bonds with amounts payable
24 out of tobacco settlement revenues or any other property or funds of the corporation.

1 The corporation may pledge as security for any bonds any rights under the master settlement
2 agreement held by the corporation, including the right to receive or collect tobacco settlement
3 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
4 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
5 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
6 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
7 or agreement described in section 2 of this Act and signed on behalf of the state by the Governor.
8 Any such pledge made by the corporation shall be valid and binding from the time the pledge is
9 made. The property, revenues, moneys, and other funds so pledged and thereafter held or
10 received by or on behalf of the corporation shall immediately be subject to the lien of the pledge
11 without any physical delivery thereof or further act; and, subject only to the provisions of prior
12 pledges or agreements of the corporation, the lien of the pledge shall be valid and binding as
13 against the state and all parties having claims of any kind in tort, contract, or otherwise against
14 the corporation irrespective of whether such parties have notice thereof. No ordinance,
15 resolution, trust agreement, or other instrument by which such pledge is created need be filed or
16 recorded except in the records of the corporation.

17 In connection with the issuance of bonds or, at any time with respect to bonds, the
18 corporation may enter into arrangements to provide additional security and liquidity for bonds.
19 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
20 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
21 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
22 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
23 persons providing the arrangements, including from bond proceeds.

24 The resolution authorizing the issuance of bonds or the indenture or other agreement

1 approved by the resolution may provide that interest rates may vary from time to time depending
2 upon criteria established by the corporation, which may include, without limitation, a variation
3 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
4 price equal to their principal amount, and may provide for appointment of a national banking
5 association, bank, trust company, investment banking firm, or other financial institution to serve
6 as a remarketing agent in that connection. The indenture or other agreement with respect to
7 bonds may provide that alternative interest rates or provisions will apply during such times as
8 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
9 for bonds.

10 In connection with bonds under this Act or the investment of proceeds, bonds, or other funds
11 of the corporation, the corporation may enter into contracts that it determines necessary or
12 appropriate to permit it to manage payment or interest rate risk. These contracts may include,
13 but are not limited to, interest rate exchange agreements; contracts providing for payment or
14 receipt of funds based on levels of or changes in interest rates; contracts to exchange cash flows
15 or series of payments; and contracts incorporating interest rate caps, collars, floors, or locks.

16 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
17 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
18 moratorium law or statute as may, from time to time, be in effect and neither any public officer
19 nor any organization, entity, or other person shall authorize the corporation to be or become a
20 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
21 insolvency, or moratorium law or statute, as may, from time to time be in effect.

22 The corporation may not guarantee the debts of another.

23 The corporation may not be required to file any reports with the state other than those
24 required to be filed with the Legislature by authorities which issue bonds.

1 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
2 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
3 may be or become a lien, charge, or liability against the corporation or the property or funds of
4 the corporation.

5 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The purposes of the corporation established by the authority pursuant to this Act are:

- 8 (1) To purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
9 interest of the state in, to, and under the master settlement agreement, including,
10 without limitation, all right, title, and interest to receive or collect tobacco settlement
11 revenues;
- 12 (2) To raise funds through the issuance of bonds or other obligations or evidences of
13 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
14 securitization, factoring, or other conveyance of the rights described above in
15 subdivision (1) of this section for the purposes of establishing the permanent tobacco
16 settlement development trust fund and as otherwise described in this Act;
- 17 (3) To serve the Legislature by making reports concerning the foregoing;
- 18 (4) To sue and be sued and to prosecute and defend, at law or in equity, in any court
19 having jurisdiction of the subject matter and of the parties;
- 20 (5) To have and to use a corporate seal and to alter the same at pleasure;
- 21 (6) To maintain an office at such place or places as the authority by resolution may
22 designate;
- 23 (7) To receive funds transferred to it by the authority, the state, or others; and
- 24 (8) To do all things necessary and convenient to carry out the purposes of this chapter.

1 The corporation shall also be vested with the same power and authority, and shall be subject
2 to the same limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1,
3 5-12-4, 5-12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3,
4 5-12-27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and
5 authority shall be exercised with respect to and shall be limited to the purposes of the corporation
6 set forth in section 4 of this Act, the final maturity date of any bonds issued, incurred, or created
7 hereunder may not be in excess of forty years for the date of delivery thereof, and the
8 corporation may not engage in any unrelated activities. In addition, the corporation may invest
9 any of its funds in permitted investments.

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

12 No bond of the corporation issued, incurred, or created under this Act may be or become a
13 lien, charge, or liability against the State of South Dakota or the authority, nor against the
14 property or funds of the State of South Dakota or the authority within the meaning of the
15 Constitution or statutes of South Dakota. In no event may any of the funds deposited into the
16 permanent tobacco settlement development trust fund, the tobacco settlement interest fund, or
17 the tobacco settlement residual fund be pledged to secure payment of any bonds issued under the
18 authority of this Act.

19 Section 6. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred,
22 or created under this Act that the state will not limit or alter the rights and powers vested in the
23 corporation and the authority by this Act so as to impair the terms of any contract made by the
24 corporation or the authority with those holders or in any way impair the rights and remedies of

1 those holders until such bonds, together with interest thereon, interest on any unpaid installments
2 of interest, and all costs and expenses in connection with any action or proceedings by or on
3 behalf of those holders are fully met or discharged. In addition, the state pledges to and agrees
4 with the holders of bonds issued, incurred, or created under this Act that the state will not limit
5 or alter the basis on which tobacco settlement revenues that have been sold pursuant to this Act
6 are to be paid to the corporation or the authority so as to impair the terms of any such contract.
7 The corporation and authority each may include these pledges and agreements of the state in any
8 contract with the holders of bonds issued, incurred, or created under this Act.

9 Neither the State of South Dakota nor the authority is liable on bonds issued, incurred, or
10 created under this Act, those bonds may not be a debt of the state or the authority, and this Act
11 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
12 The bonds shall contain a statement to this effect on the face of the bonds.

13 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond issued, incurred, or created by the corporation under
16 this Act or for any act or failure to act of the corporation. The corporation may not be liable for
17 any obligation of the South Dakota Building Authority or for any act or failure to act by the
18 building authority.

19 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. The income of the authority and the corporation,
23 and all properties at any time owned by the authority and the corporation, are exempt from all
24 taxation in the State of South Dakota. In addition, the corporation is exempt from all filing,

1 reporting, and similar requirements otherwise applicable to nonprofit and other corporations.

2 For purposes of chapter 47-31A and any amendment thereto and substitution therefor, bonds,
3 notes, certificates, or other obligations issued, incurred or created by the corporation under this
4 Act shall be deemed to be securities issued by a public instrumentality of the State of South
5 Dakota.

6 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The corporation may employ attorneys, accountants, tobacco industry consultants, and
9 financial experts, managers, and such other employees and agents as may be necessary in its
10 judgment and to fix their compensation.

11 Section 10. The permanent tobacco settlement development trust fund is hereby established
12 in the state treasury as a special trust fund. That portion of the net proceeds of sale of tobacco
13 settlement revenues which is derived from the net proceeds of bonds shall be deposited in the
14 permanent tobacco settlement development trust fund. In addition, any residual interest in
15 tobacco settlement revenues shall, upon receipt by the state, be deposited in the tobacco
16 settlement residual fund. The principal of the permanent tobacco settlement development trust
17 fund may not be expended except for costs and expenses incurred in investing or otherwise
18 administering the permanent tobacco settlement development trust and its assets. The amounts
19 in the permanent tobacco settlement development trust fund shall be state public funds within the
20 meaning of chapter 4-4 and shall be invested in permitted investments and otherwise in
21 accordance with §§ 4-5-23 and 4-5-26. All investment earnings from the permanent tobacco
22 settlement development trust fund shall be transferred to and deposited in the tobacco
23 development interest fund on a period basis no less frequently than annually.

24 Section 11. The tobacco settlement residual fund is established in the state treasury. The

1 amounts received by the state pursuant to any residual interest in tobacco settlement revenues
2 shall, upon receipt, be transferred to and deposited in the tobacco settlement residual fund. The
3 amounts in the tobacco settlement residual fund shall be state public funds within the meaning
4 of chapter 4-4 and shall remain in such fund until appropriated by the Legislature. The amounts
5 in the tobacco settlement residual fund shall be invested in permitted investments or otherwise
6 in accordance with §§ 4-5-23 and 4-5-26.

7 Section 12. The tobacco development interest fund is established in the state treasury. The
8 amounts in the tobacco development interest fund shall be state public funds within the meaning
9 of chapter 4-4 and shall remain in the fund until appropriated by the Legislature. The amounts
10 in the tobacco development interest fund shall be invested in permitted investments or otherwise
11 in accordance with §§ 4-5-23 and 4-5-26.

12 If in order to obtain or preserve any exclusion of interest on bonds from gross income of the
13 holders thereof for purposes of federal income taxation, the corporation or authority enters into
14 any agreement or covenant with the holders of bonds (or the trustee or other fiduciary acting on
15 behalf of or for the benefit of holders of bonds) that imposes restrictions or conditions on the
16 investment, use, expenditure, or other application of the proceeds of bonds issued, incurred, or
17 created under this Act, including any investment earnings thereon (whether while on deposit in
18 the permanent tobacco settlement development trust fund, the tobacco development interest fund
19 or otherwise), then the state and each agency, authority, or other body politic of the state or
20 acting on behalf of the state, shall observe and fully honor each such agreement, covenant, or
21 other restriction or condition with respect to investment, use, expenditure, or application thereof.
22 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred, or
23 created under this Act that the state will not invest, use, expend, or otherwise apply such
24 proceeds of bonds and any other amounts so as to impair the terms of any such agreement or

1 covenant made by the corporation or authority with any such holders (or trustee or other
2 fiduciary) or in any way impair the exemption or exclusion of interest on any such bonds from
3 federal income taxation. The corporation and authority each may include these pledges and
4 agreements of the state in any contract with the holders of bonds issued, incurred, or created
5 under this Act.

6 Section 13. It is the intention of this Legislature that funds deposited in the tobacco
7 development interest fund and the tobacco settlement residual fund be expended pursuant to
8 separately enacted statutes which will implement development programs intended to provide for
9 the health, welfare, and prosperity of the State of South Dakota and its residents. Any such
10 development program shall be established by a separately enacted statute which makes express
11 reference to this Act and the terms and conditions of such program shall be specified in such
12 statute. Any such statute shall expressly incorporate any agreements, covenants, or restrictions
13 described or referred to in or by sections 6 and 12 of this Act and any investment, use,
14 expenditure, or other application of moneys described in section 12 of this Act shall be expressly
15 subject to and in full compliance with the agreements, covenants, restrictions, and conditions
16 imposed by the terms of section 12 of this Act.

17 Section 14. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
19 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

445E0642

SENATE ENGROSSED NO. **SB 231** - 02/16/2001

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

Introduced by: Senators Reedy, Dennert, Duxbury, Ham, Hutmacher, Koetzle, McIntyre, Moore, Sutton (Dan), Symens, and Volesky and Representatives Nesselhuf, Bartling, Bradford, Burg, Davis, Elliott, Flowers, Hanson (Gary), Hargens, Lange, Monroe, Nachtigal, Olson (Mel), Peterson (Jim), Sigdestad, and Van Norman

1 FOR AN ACT ENTITLED, An Act to provide for the prompt payment of certain uncontested
2 health care claims.

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

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 As used in this Act, the term, clean claim, means a claim for which there is no need for
7 additional information to determine eligibility or adjudicate the claim. The term, clean claim, does
8 not include a claim for payment of expenses incurred during a period of time for which premiums
9 are delinquent, except to the extent otherwise required by law or a claim for which fraud is
10 suspected.

11 Section 2. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Each clean claim shall be paid to the person entitled thereto, denied, or settled within thirty

1 calendar days after receipt by the carrier if submitted electronically and within forty-five calendar
2 days after receipt by the carrier and if the claim is payable under the plan. If the resolution of an
3 otherwise clean claim requires additional information, the carrier shall, within thirty calendar days
4 after receipt of the claim, give the provider, policyholder, insured, or patient, as appropriate, a
5 full explanation of what additional information is needed in order to determine eligibility or
6 adjudicate the claim. The person receiving a request for additional information shall submit all
7 additional information requested by the carrier within thirty calendar days after receipt of such
8 request.

9 Section 3. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 This Act applies to any health insurer or health maintenance organization that issues health
12 insurance coverage pursuant to chapters 58-17, 58-18, 58-18B, 58-37A, 58-38, 58-39, 58-40,
13 and 58-41. Nothing in this Act applies to disability income policies or certificates, accident only,
14 credit health, workers' compensation, long-term care, medicare supplement, automobile medical
15 payment, or other types of health insurance that are not medical expense policies or certificates.
16 Nothing in this Act grants a private right of action.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

714E0465

SENATE ENGROSSED NO. **SB 234** - 02/12/2001

Introduced by: Senators Sutton (Dan), Brown (Arnold), Daugaard, Hutmacher, and
McCracken and Representatives Garnos and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide for the development and administration of certain
2 standardized academic achievement tests.

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

4 Section 1. That § 13-3-55 be amended to read as follows:

5 13-3-55. Every school district shall administer the same national norm-referenced academic
6 achievement test to all students in grades two, four, eight, and eleven. ~~In addition, and~~ every
7 school district shall administer to all students in grades five and nine an achievement test to
8 assess writing skills. ~~These~~ In addition, every school district shall administer the same criterion-
9 referenced academic achievement test, once in the fall semester and once again in the spring
10 semester, to all students in grades three, six, and ten. The criterion-referenced tests shall be
11 designed by the state. All of the tests shall be provided by the Department of Education and
12 Cultural Affairs and shall assess proficiency in meeting state standards. ~~These~~ The tests shall be
13 administered starting ~~during the 1998-1999~~ in the spring of the 2001-2002 school year. Each
14 state-designed test for each grade level to be tested shall be a single statewide criterion-
15 referenced test, which shall be highly correlated with the state's graduation requirements, course

1 guidelines, and academic content standards. The requirements of this section pertaining to
2 criterion-referenced tests to be administered to students in grades three, six, and ten do not apply
3 to students who are receiving alternative instruction pursuant to § 13-27-3.

4 Section 2. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The South Dakota Academic Achievement Test Advisory Council is hereby established. The
7 council shall advise the Department of Education and Cultural Affairs, the South Dakota Board
8 of Education, education-related organizations, and other education groups on issues related to
9 statewide academic achievement tests required pursuant to this Act. The council shall meet at
10 least annually with the Department of Education and Cultural Affairs to discuss, develop, and
11 make recommendations concerning testing issues, results, mechanics, and other relevant student
12 achievement test issues in this state. The council shall consist of nine members appointed by the
13 Governor from the following categories:

- 14 (1) Two teachers and one counselor;
- 15 (2) One school board member;
- 16 (3) Two school administrators;
- 17 (4) One employee of the Department of Education and Cultural affairs;
- 18 (5) One member of the South Dakota Board of Education; and
- 19 (6) One Parent Teacher Association member.

20 Members of the council shall be appointed for two-year terms, except that five of the
21 members of the initial council shall be appointed to two-year terms, and four of the members of
22 the initial council shall be appointed for one year. All subsequent appointments shall be for terms
23 of two years. Any vacancy on the council that occurs before the incumbent's term has expired
24 shall be filled by appointment to serve the remainder of the unexpired term. The number of terms

1 that a council member may serve is not limited. The council shall receive per diem compensation
2 and allowable expense reimbursement in an amount set pursuant to § 4-7-10.4 for all time
3 actually spent while attending council meetings. The provisions of this section shall be
4 implemented using funds from the normal operating budget of the Department of Education and
5 Cultural Affairs.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0804

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 239** - 02/27/2001

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

1 FOR AN ACT ENTITLED, An Act to establish the regents scholarship program and provide
2 for its funding.

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

4 Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There is established the regents scholarship program to be administered by the Board of
7 Regents. The Board of Regents may establish such policies and procedures as it deems necessary
8 to carry out the purposes of this program. The purpose of the program is to allow South
9 Dakota's most academically accomplished high school graduates to receive an affordable
10 education at one of South Dakota's universities, colleges, or technical schools.

11 Section 2. In order to be eligible for a regents scholarship award, a student shall:

- 12 (1) Be a resident of South Dakota at the time of graduation from high school;
13 (2) Meet the high school graduation requirements as provided in Board of Regents Policy
14 2:3.2.F as in effect on January 25, 2001;
15 (3) Attend one of the accredited universities, colleges, or technical institutes located in

1 South Dakota;

2 (4) Enter into the program within one year of graduation from high school.

3 A student is eligible to participate in the regents scholarship program for the equivalent of
4 four academic years or until the attainment of a baccalaureate or technical degree, whichever
5 comes first.

6 Section 3. If it is determined that a student cannot complete the course requirements as
7 provided in Board of Regents policy 2:3.2.F as in effect on January 25, 2001, due to the
8 unavailability of the courses of study at the student's high school, the student may be admitted
9 into the regents scholarship program.

10 Section 4. Scholarship payments shall be made on a semester-by-semester basis. The amount
11 of award shall be as follows:

- 12 (1) One thousand five hundred dollars for the first year of attendance;
- 13 (2) Two thousand dollars for the second year of attendance;
- 14 (3) Two thousand five hundred dollars for the third year of attendance;
- 15 (4) Three thousand dollars for the fourth year of attendance.

16 The total amount of the scholarship may not exceed nine thousand dollars.

17 Section 5. In order to maintain eligibility, a student shall:

- 18 (1) Maintain a cumulative 3.0 grade point average on a 4.0 scale. Cumulative grade point
19 average shall be calculated after the second semester and every semester thereafter.

20 The student shall complete consecutive spring and fall terms in order to remain
21 eligible for continuation of the scholarship program from term to term. Once a
22 student's cumulative grade point average falls below 3.0 on a 4.0 scale, the student
23 permanently loses eligibility for continuation in the scholarship program;

- 24 (2) Complete fifteen credit hours of instruction per semester. The student must enroll in

1 and complete at least fifteen credit hours of instruction in each consecutive spring and
2 fall term. If the executive director of the Board of Regents determines that a student's
3 failure to enroll or to maintain continued enrollment occurred as a direct result of
4 legitimate factors outside the student's control, or has resulted from the student's
5 participation in an activity that in the executive director's judgment provides
6 knowledge or experience that will enhance the student's academic pursuits, the
7 executive director may extend the student's eligibility to participate in the program for
8 up to two additional years, if the student does not enroll in a noneligible institution;

9 (3) Sit for and pass the college proficiency exam as required by Board of Regents Policy
10 2.28 as in effect on October 6, 2000, at the end of the sophomore year. If the student
11 fails to pass the proficiency exam the first time, eligibility is forfeited for continuation
12 in the scholarship program;

13 (4) All eligible students shall certify not to use tobacco products for the entire term in
14 which they will be participating in the regents scholarship. Failure to comply shall
15 result in loss of eligibility.

16 Section 6. That § 10-50B-11 be amended to read as follows:

17 10-50B-11. The people's trust fund is established in the state treasury. Any money received
18 from the Master Settlement Agreement signed on November 23, 1998, by attorneys general from
19 several states and various tobacco companies shall be deposited in the people's trust fund. The
20 principal in the trust fund may not be expended, except for dollars appropriated by the
21 Legislature for the regents scholarship program. The fund shall be invested according to
22 §§ 4-5-23 and 4-5-26. Interest earned on money in the fund shall be deposited in the people's
23 interest fund created in § 10-50B-12.

24 Section 7. Section 3 of this Act is repealed on July 1, 2003.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0808

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 242** - 02/27/2001

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

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

1 FOR AN ACT ENTITLED, An Act to affect the sale and pricing of prescription drugs in the
2 State of South Dakota.

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

4 Section 1. Any manufacturer of pharmaceutical drugs sold in the state shall file with the
5 Board of Pharmacy the manufacturer's definition and method of determining average wholesale
6 price (AWP) for pharmaceutical drugs sold for consumption or use in this state. The
7 manufacturer shall report the information as determined by the secretary of health in rules
8 promulgated pursuant to chapter 1-26.

9 Section 2. Any manufacturer of pharmaceutical drugs sold in this state shall offer such drugs
10 to wholesale purchasers licensed to do business in this state at prices equivalent to those prices
11 charged by the manufacturer for equivalent drugs in Canada. This section does not apply to any
12 drug that is not actually sold in Canada and to any equivalent drug that is sold in the state at a
13 lower price. The secretary of health shall promulgate rules pursuant to chapter 1-26 to establish
14 procedures to be used in the determination of equivalent drugs and equivalent prices.

1 Section 3. Notwithstanding § 36-11A-5, the state and its citizens and businesses may
2 purchase or receive any prescription drug from Canada or any other foreign source pursuant to
3 the laws of the United States or any rules, regulations, standards, or policies as prescribed by the
4 United States Secretary of Health and Human Services or the Food and Drug Administration.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

644E0640

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 245** - 02/16/2001

Introduced by: Senators Brown (Arnold), Brosz, Daugaard, Drake, Ham, Hutmacher,
McCracken, Olson (Ed), and Sutton (Dan) and Representatives Heineman,
Pitts, and Smidt

1 FOR AN ACT ENTITLED, An Act to create a health care access and preservation trust fund
2 and to provide that earnings from the fund be used for certain health care purposes.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4 Section 1. That § 28-6-33 be amended to read as follows:
5 28-6-33. There is hereby established in the state treasury a fund known as the
6 ~~intergovernmental transfer~~ health care access and preservation trust fund. The fund shall include
7 revenue received from publicly owned and operated nursing facilities for remittance to the fund
8 under § 28-6-31. The department shall administer the fund and shall adopt procedures for
9 participation by publicly owned and operated nursing facilities. All moneys designated for the
10 fund from whatever source derived shall be deposited with the state treasurer in the
11 ~~intergovernmental transfer~~ health care access and preservation trust fund, except for dollars
12 appropriated by the Legislature for fiscal year 2002 for the neuromuscular program, the diabetes
13 screening program, and the purchase of public access defibrillation equipment. The ~~amounts in~~
14 ~~the intergovernmental transfer~~ fund shall be invested pursuant to §§ 4-5-23 and 4-5-26 and the

1 earnings shall be deposited in the ~~intergovernmental transfer~~ health care access and preservation
2 interest fund.

3 Section 2. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The health care access and preservation interest fund is established in the state treasury. The
6 fund shall be invested according to §§ 4-5-23 and 4-5-26. The investment earnings of the fund
7 shall be credited to the fund. The money in the fund shall be appropriated by the Legislature to
8 fund health care related uses.

9 Section 3. That § 28-6-31 be amended to read as follows:

10 28-6-31. Each publicly owned and operated nursing facility participating under the provisions
11 of §§ 28-6-28 to 28-6-36, inclusive, immediately upon receiving a payment under § 28-6-30,
12 shall remit the amount of that payment, less a transaction fee, to the department for credit to:

13 (1) The ~~intergovernmental transfer~~ health care access and preservation trust fund in an
14 amount equal to the applicable federal medical assistance percentage times the total
15 remittance to the department, less the transaction fee; and

16 (2) The department's other funds for all remaining amounts.

17 Section 4. That § 28-6-35 be amended to read as follows:

18 28-6-35. The department may promulgate rules pursuant to chapter 1-26 for the
19 administration of §§ 28-6-28 to 28-6-36, inclusive. The rules may include criteria for
20 establishing, funding, and administering the pool, criteria for participation in the
21 intergovernmental transfer, penalties for failing to immediately remit the funds to the department,
22 criteria for the transfer of funds, the establishment of transaction fees, and other policies to
23 facilitate the administration of the ~~intergovernmental transfer~~ health care access and preservation
24 trust fund ~~or~~, the funding pool, and the health care access and preservation interest fund.

1 Section 5. That § 28-6-36 be amended to read as follows:

2 28-6-36. Sections 28-6-28 to ~~28-6-36~~ 28-6-35, inclusive, and section 2 of this Act do not
3 create an entitlement to any funds. The department may disburse funds to the extent funds are
4 available and, within its discretion, to the extent such appropriations are approved.