



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

843H0415

## SENATE ENGROSSED NO. **HB 1221** - 02/04/2002

Introduced by: Representatives Hargens, Bartling, Burg, Elliott, Hennies (Don), Hennies (Thomas), Holbeck, Jensen, Lange, Lintz, Madsen, Olson (Mel), Peterson (Jim), Pitts, Rhoden, Sigdestad, and Van Gerpen and Senators Duxbury, Daugaard, Dennert, Koskan, Putnam, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the date for filing certain certificates of  
2 nomination.

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

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is  
6 not nominated by a primary election may be nominated by filing with the secretary of state or  
7 county auditor as prescribed by § 12-6-4, not prior to January first at eight a.m. and not later  
8 than the ~~third~~ first Tuesday in June at five p.m. prior to the election, a certificate of nomination  
9 which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by  
10 registered mail by the ~~third~~ first Tuesday in June at five p.m. prior to the election, it is timely  
11 submitted. The certificate shall specify that an independent candidate for nonjudicial public office  
12 shall designate the name of any national political party, or political party organized pursuant to  
13 chapter 12-5, with which the candidate has an affiliation. If no affiliation exists, the candidate  
14 shall be designated by the term, no party. It shall be signed by registered voters within the district



1 or political subdivision in and for which the officers are to be elected. The number of signatures  
2 required may not be less than one percent of the total combined vote cast for Governor at the  
3 last certified gubernatorial election within the district or political subdivision. An independent  
4 candidate for Governor shall certify the candidate's selection for lieutenant governor to the  
5 secretary of state prior to circulation of the candidate's nominating petition. The candidate and  
6 the candidate's selection for lieutenant governor or vice president shall sign the certification  
7 before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26  
8 prescribing the forms for the certificate of nomination and the certification for lieutenant  
9 governor.

10 Section 2. The provisions of this Act are effective on January 1, 2003.

11 Section 3. That § 3-4-6 be amended to read as follows:

12 3-4-6. Appointments to state offices shall be made in writing and shall continue for the  
13 remainder of the unexpired term of office. Unless otherwise provided by law, all other  
14 appointments shall be made in writing and shall continue until the next general election and until  
15 a successor is elected and qualified. A vacancy must occur prior to ~~June~~ May first in an  
16 even-numbered year, other than in a year when the term of office would normally expire, for the  
17 office to be filled by election for the remainder of the unexpired term. Any person elected to an  
18 office that was previously vacant shall take office in the year following the election on the day  
19 of that year when a full term for that office would normally commence.

20 Appointments to state offices shall be filed with the secretary of state. Appointments to  
21 county offices shall be filed in the office of the county auditor and entered in the minutes of the  
22 commissioners' proceedings.

23 Section 4. That § 7-7-1.9 be amended to read as follows:

24 7-7-1.9. An officer shall be nominated and elected at the next general election to the

1 combined office provided for in § 7-7-1.8. If the election submitted pursuant to § 7-7-1.5 is held  
2 at a primary election, each candidate for the vacant officer shall run as an independent candidate  
3 as provided in chapter 12-7, except that the petition filing deadline shall be the first Tuesday in  
4 August. The officer shall be voted upon by the voters of the counties that have resolved to  
5 combine ~~such~~ the office. Such officer shall hold office for a term of four years commencing on  
6 the first Monday of January following ~~his~~ the officer's election.

7 Section 5. That § 7-8-9 be amended to read as follows:

8 7-8-9. ~~Commissioners~~ Any commissioner to be elected at the next general election following  
9 a redistricting of the county under § 7-8-6 or 7-8-7 shall be nominated by petition ~~in accordance~~  
10 ~~with the provisions of this code as to nominations of~~ pursuant to the provisions for nominating  
11 independent candidates for public office by petition. However, the filing deadline shall be the first  
12 Tuesday in August.

13 Section 6. That § 23-3-43.1 be amended to read as follows:

14 23-3-43.1. Any candidate for election to the office of county sheriff shall file with the county  
15 auditor by the first Tuesday of April of the election year a certification issued by the commission  
16 that such person meets the qualifications provided in § 23-3-43. However, any such candidate  
17 appointed to fill a vacancy by a party central committee pursuant to § 12-6-56 or who files an  
18 independent nominating petition shall file ~~such~~ a certification of qualification by the ~~second~~ first  
19 Tuesday of ~~August~~ June. A sheriff appointed to fill a vacancy by the county commission shall  
20 file with the county auditor ~~such~~ a certification of qualification within thirty days of ~~such~~ the  
21 appointment. Failure to file ~~such~~ a certification shall prevent the candidate's name from being  
22 placed on the ballot.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

358H0670

## SENATE ENGROSSED NO. **HB 1283** - 02/14/2002

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

Introduced by: Representatives Eccarius and Michels and Senators Daugaard, Diedrich (Larry), and Everist

1 FOR AN ACT ENTITLED, An Act to define certain serious injuries to infants as aggravated  
2 assault and to provide a penalty therefor.

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

4 Section 1. That § 22-18-1.1 be amended to read as follows:

5 22-18-1.1. Any person who:

- 6 (1) Attempts to cause serious bodily injury to another, or causes such injury, under  
7 circumstances manifesting extreme indifference to the value of human life;
- 8 (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous  
9 weapon;
- 10 (3) Attempts to cause or knowingly causes any bodily injury to a law enforcement officer  
11 or other public officer engaged in the performance of the officer's duties;
- 12 (4) Assaults another with intent to commit bodily injury which results in serious bodily  
13 injury;
- 14 (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent



1           serious bodily harm; ~~or~~

2       (6)   Is a convicted person under the jurisdiction of the Department of Corrections and  
3           attempts to cause, or knowingly causes bodily injury to a Department of Corrections  
4           employee, or authorized visitor, volunteer, or person under contract assigned to the  
5           Department of Corrections; or

6       (7)   Attempts to cause or causes serious bodily injury to an infant, less than three years  
7           old, by causing any intracranial or intraocular bleeding, swelling, or contusion to the  
8           brain, whether caused by blows, shaking, or causing the infant's head to impact with  
9           an object or surface;

10   is guilty of aggravated assault. Aggravated assault is a Class 3 felony. However, a violation of  
11   subdivision (7) is a Class 2 felony.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0231

## HOUSE ENGROSSED NO. **SB 14** - 02/20/2002

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and responsibilities of the  
2 administrator of the Human Services Center.

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

4 Section 1. That § 27A-4-3 be amended to read as follows:

5 27A-4-3. The secretary of human services shall appoint an administrator of the South Dakota  
6 Human Services Center who shall ~~be a skilled administrator or a South Dakota licensed physician~~  
7 ~~of accepted skill and ability. Such person must have had experience of at least five years either~~  
8 ~~in public or private institutions for the mentally ill~~ have a degree in public or health services  
9 administration and two years of progressively responsible experience in a mental health clinic or  
10 a mental hospital and shall be of a good moral character. The administrator shall be the chief  
11 executive officer of the South Dakota Human Services Center. The administrator shall serve at  
12 the pleasure of the secretary of human services.

13 Section 2. That § 23A-27A-22 be amended to read as follows:

14 23A-27A-22. If a defendant confined under sentence of death appears to be mentally  
15 incompetent to proceed, the warden having ~~him~~ in custody of the defendant shall forthwith notify



1 the Governor, who shall appoint a commission of not less than three nor more than five  
2 disinterested duly licensed physicians, one of whom shall be the ~~superintendent~~ medical director  
3 of the Human Services Center or ~~his assistant~~ the director's designee, to examine the defendant  
4 and report to the Governor as to ~~his~~ the defendant's mental condition at the time of the  
5 examination.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0241

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 19** - 02/13/2002

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to create the crime of communicating a terroristic threat or  
2 hoax terroristic threat and to provide certain penalties therefor.

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

4 Section 1. Any person who intentionally communicates a threat by leaving a substance or  
5 device, thereby causing either serious public inconvenience, or the evacuation or serious  
6 disruption of a building, place of assembly, facility of public or school transport, or a school  
7 related event, is guilty of communicating a terroristic threat. For the purposes of this section, a  
8 substance or device includes, but is not limited to, an actual or apparent dangerous weapon,  
9 destructive device, dangerous chemical, biological agent, poison, or harmful radioactive  
10 substance. A violation of this section is a Class 4 felony.

11 Section 2. Any person who intentionally possesses, transports, uses, or places any hoax  
12 substance or hoax destructive device with the intent of causing anxiety, unrest, fear, or personal  
13 discomfort is guilty of a Class 5 felony. A hoax substance is any substance that would cause a  
14 person to reasonably believe that it is a dangerous chemical or biological agent, a poison, a  
15 harmful radioactive substance, or a similar substance. A hoax destructive device is any device



1 that would cause a person to reasonably believe that it is a dangerous explosive or incendiary  
2 device or a similar destructive device.

3 Section 3. The court may, after conviction or adjudication of any violation of this Act,  
4 conduct a hearing to ascertain the extent of costs incurred, damages and financial loss suffered  
5 by local, county, or state public safety agencies, and the amount of property damage caused as  
6 a result of the crime. A person found guilty of violating this Act may upon conviction, be ordered  
7 to make restitution to the local, county, or state public service agency for any cost incurred,  
8 damages and financial loss or property damage sustained as a result of the commission of the  
9 crime.

10 Section 4. That § 22-14A-22 be amended to read as follows:

11 22-14A-22. Any person who makes a false report, with intent to deceive, mislead, or  
12 otherwise misinform any person, concerning the placing or planting of any bomb, dynamite,  
13 explosive, ~~or~~ destructive device, dangerous chemical, biological agent, poison or harmful  
14 radioactive substance, is guilty of falsely reporting a ~~bomb threat~~. Falsely reporting a ~~bomb threat~~  
15 is a Class 6 felony. Any person found guilty of falsely reporting a ~~bomb threat~~ shall pay  
16 restitution for any expense incurred as a result of the crime. The person is also civilly liable for  
17 any injury to person or property from the false report and any costs related to responding to the  
18 false report. If the person making the false report prohibited by this section is a minor, the court,  
19 in addition to such other disposition as the court may impose, shall require the minor to perform  
20 at least fifty hours of public service unless tried as an adult.

21 Section 5. The provisions of this Act may not be construed to create any cause of action  
22 against any person based upon or arising out of any act or omission relating to any good faith  
23 response to a terrorist act or an attempted terrorist act.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0216

## HOUSE ENGROSSED NO. **SB 32** - 02/12/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to require photo identification for all aeronautics operations,  
2 to increase the pilot registration fee, and to declare an emergency.

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

4 Section 1. That § 50-11-24 be amended to read as follows:

5 50-11-24. Any person operating any aircraft within this state shall, except as otherwise  
6 expressly provided, biennially, on or before the thirty-first day of March, register with the  
7 secretary of transportation, ~~his~~ the person's federal ~~airman's~~ certificate issued under the authority  
8 of the United States and shall biennially pay to the secretary a fee of ~~fifteen~~ twenty dollars.  
9 Failure to register and pay the fee before the time set by this section is a Class 2 misdemeanor.  
10 ~~Certificates~~ A certificate showing ~~such~~ the registration may be issued by the ~~director~~ secretary  
11 as the Aeronautics Commission deems proper ~~and the~~. The commission may prescribe  
12 requirements for the possession and exhibition ~~thereof~~ of the certificate.

13 Section 2. That chapter 50-11 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Any airport employee, airline employee, and any employee of a fixed base operator or a



1 charter service, unless otherwise required by federal law or regulation, shall have in possession  
2 while on duty at the airport a state-issued photo identification badge. The Aeronautics  
3 Commission shall promulgate rules pursuant to chapter 1-26 specifying display of the badge;  
4 indications on the badge regarding the scope of the person's access and movement privileges at  
5 an airport; personal information including full name, employer, and identification number;  
6 procedures regarding the production, issuance, retrieval, and replacement of badges; and the  
7 length of time for which the badge is valid.

8 The commission shall, by rules promulgated pursuant to chapter 1-26, establish the fee for  
9 a badge. The fee shall be based on the cost to produce the badge but may not exceed ten dollars.  
10 Any fee collected shall be deposited into the state aeronautics fund.

11 Section 3. 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-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

325H0346

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**SB 57 - 02/19/2002**

Introduced by: Senators Sutton (Dan), Albers, Hutmacher, Koetzle, McCracken, McIntyre, Moore, Munson, and Olson (Ed) and Representatives Slaughter, Broderick, Brown (Richard), Flowers, Lange, Michels, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to allow school boards to initiate an election to change the  
2 size of the school board and to declare an emergency.

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

4 Section 1. That § 13-8-3 be amended to read as follows:

5 13-8-3. The voters of any school district may increase the number of board members to seven  
6 or to nine, or establish school board representation areas, by a majority vote of all voters voting  
7 at an election called and held as hereinafter provided. If a petition signed by ten percent of the  
8 registered voters of any school district, based upon the total number of registered voters at the  
9 last preceding general election, is presented to the board requesting that an election be called for  
10 the purpose of voting upon the question of the change of number of board members, or the  
11 establishment of school board representation areas, the board shall call an election. The school  
12 board may, by resolution, call for an election for the purpose of voting upon the question of the  
13 change of number of board members, or the establishment of school board representation areas.

14 The question shall be submitted to the voters at an election to be held not less than forty-five nor



1 more than sixty days from the date of the filing of such petition with the business manager. If  
2 such a petition is filed less than one hundred twenty days prior to the next annual election, the  
3 question shall be submitted at the annual election. Such election shall be held upon the same  
4 notice and conducted in the same manner as provided by chapter 13-7. Any increase or decrease  
5 in the number of board members shall be implemented at the next succeeding annual election.

6 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,  
7 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
8 effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

507H0276

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 81** - 02/15/2002

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

Introduced by: Senators Munson, de Hueck, Koetzle, McIntyre, and Sutton (Dan) and Representatives Olson (Mel), Bradford, Brown (Richard), Elliott, Jensen, and Kooistra

1 FOR AN ACT ENTITLED, An Act to limit the Department of Labor's authority to recommend  
2 settlements in labor disputes.

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

4 Section 1. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If its efforts as conciliator prove unsuccessful, the Department of Labor shall, if requested  
7 by either party, impartially investigate the matters in difference between the parties. The request  
8 to the department shall be mailed within twenty days after the conclusion of the conciliation  
9 procedure provided for in § 60-10-1. The department shall give each party ample opportunity  
10 for presentation of its final offer on each unresolved issue and the rationale supporting its final  
11 offer on each unresolved issue. Within twenty days following the presentations of the final offers  
12 of both parties, the department shall issue a recommendation on each unresolved issue and the  
13 rationale supporting each recommendation. The department shall recommend either the final



1 offer of the public employees or the final offer of the public employers on each unresolved issue  
2 and may not make any alternative recommendation. The department shall furnish a copy of its  
3 recommendation to each of the parties and to any local newspaper for publication for the  
4 information of the public.

5 Section 2. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Each party shall submit to the department a copy of the final offer made to the other party  
8 on each unresolved issue and the rationale supporting the final offer on each unresolved issue  
9 with proof of service of a copy upon the other party. Each party shall also submit a draft, in  
10 writing, that includes all tentative agreements reached by the parties. The parties may continue  
11 to negotiate all offers until an agreement is reached or until a recommendation and rationale are  
12 issued by the department.

13 Section 3. That § 3-18-8.1 be amended to read as follows:

14 3-18-8.1. In case of impasse or failure to reach an agreement in negotiations conducted under  
15 the provisions of this chapter, either party may request the Department of Labor to intervene  
16 under the provisions of §§ 60-10-1 to 60-10-3, inclusive. Such request shall be mailed within ten  
17 days after a written statement is delivered to the designated representative for the other party  
18 declaring an impasse. Nothing in this section prohibits the parties to an impasse from adopting  
19 any other procedure to facilitate a settlement that is mutually agreeable.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

292H0449

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 84 - 01/18/2002**

Introduced by: Senators Bogue, de Hueck, Koskan, Moore, Volesky, and Whiting and  
Representatives Madsen, Bartling, Brown (Jarvis), McCaulley, Michels, and  
Valandra

1 FOR AN ACT ENTITLED, An Act to revise certain transcript fees.

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

3 Section 1. That § 15-15-7 be amended to read as follows:

4 15-15-7. Unless ordered by the court to be supplied to an indigent or ~~his~~ an indigent's counsel

5 and paid out of the county treasury where court was held, a fee shall be charged to the person

6 ordering a typewritten transcript by filing of an order for transcript on appeal of a proceeding

7 taken by an officer of the court, which shall be certified to be a correct transcript of the reporter's

8 notes of the evidence, at the rate of two dollars and ~~forty~~ ninety cents per page for the original.

9 The fee for a ~~carbon~~ copy, furnished on request, is ~~thirty~~ fifty cents per page, to be paid to the

10 officer of the court who prepared the transcript.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

442H0358

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**SB 89** - 02/19/2002

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

Introduced by: Senators Dennert, Hutmacher, McIntyre, Moore, and Sutton (Dan) and Representatives Elliott, Olson (Mel), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to allow school boards to initiate a vote relating to the  
2 imposition of an excess tax levy and to declare an emergency.

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

4 Section 1. That § 10-12-43 be amended to read as follows:

5 10-12-43. The governing body of the school district may raise additional revenues for general  
6 fund purposes only, from property tax through the imposition of an excess tax levy. The  
7 governing body of a school district may impose the excess tax levy with an affirmative two-thirds  
8 vote of the governing body on or before July fifteenth of the year prior to the year the taxes are  
9 payable. The decision of the governing body to originally impose or subsequently increase an  
10 excess tax levy shall be published within ten days of the decision. The decision may be referred  
11 upon a resolution of the governing body of the school district or by a petition signed by at least  
12 five percent of the registered voters in the school district and filed with the governing body  
13 within twenty days of the publication of the decision. The referendum election shall be held on  
14 or before October first of the year prior to the time the taxes are payable.



1           Section 2. Whereas, this Act is necessary for the support of the state government and its  
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
3 force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

753H0412

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**SB 94 - 02/19/2002**

Introduced by: Senators Madden, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Duxbury, Everist, Greenfield, Ham, Hutmacher, Koskan, Moore, Olson (Ed), Putnam, Stagers, Sutton (Dan), and Vitter and Representatives Napoli, Adelstein, Bartling, Brown (Richard), Duenwald, Hargens, Hennies (Don), Hennies (Thomas), Lange, McCaulley, Monroe, Olson (Mel), Pederson (Gordon), Peterson (Bill), and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to permit the posting or display of the United States flag,  
2 giving the pledge of allegiance, and singing the national anthem.

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

4 Section 1. That chapter 13-24 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The right to post the United States flag shall not be limited or infringed upon in any public  
7 school classroom, public school building, at any public school event, or on any public school  
8 uniform. The right to recite the pledge of allegiance to the flag of the United States shall not be  
9 limited or infringed upon, and the national anthem may be sung during any school day or school  
10 event.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

580H0122

## HOUSE ENGROSSED NO. **SB 108** - 02/19/2002

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

Introduced by: Senators Sutton (Dan), Brown (Arnold), Diedrich (Elmer), Hutmacher, McIntyre, Reedy, and Symens and Representatives Garnos, Bartling, Pitts, Slaughter, and Teupel

1 FOR AN ACT ENTITLED, An Act to require the acceptance of certain uniform life insurance  
2 and annuity request forms and to revise certain provisions regarding the required disclosure  
3 provisions in health insurance policies.

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

5 Section 1. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 If a policyholder has made a request to cash surrender, to obtain maximum policy loans, or  
8 to make an Internal Revenue Code Section 1035 exchange under a life insurance or an annuity  
9 policy, the insurer shall forward to the policyholder or the policyholder's insurance producer,  
10 within thirty calendar days of receiving the request for the form, any required form to accomplish  
11 such transaction. If the insurer does not do so, the policyholder may utilize a uniform life  
12 insurance or annuity form for such purpose. The director shall adopt the uniform life insurance  
13 and annuity forms by rules promulgated pursuant to chapter 1-26. If the insurer has failed to  
14 submit its form to the policyholder or the policyholder's insurance producer within the time



1 period required by this section, the insurer shall accept the uniform form as adopted by the  
2 director and may not require the use of any additional form.

3 Section 2. That § 58-17-14 be amended to read as follows:

4 58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy,  
5 including the endorsements and the attached papers, if any, constitutes the entire contract of  
6 insurance. No change in this policy is valid until approved by an executive officer of the  
7 insurance company and unless such approval is endorsed or attached to this policy. No insurance  
8 producer has authority to change this policy or to waive any of its provisions. Any rider,  
9 endorsement, or application ~~which modifies, limits, or excludes coverage under this policy must~~  
10 ~~be signed by you, the insured, to be valid." This provision applies to any rider, endorsement, or~~  
11 ~~amendment of an application whether attached at the time of the application or after~~ added to  
12 a policy after the date of issue or at reinstatement or renewal which reduces or eliminates benefits  
13 or coverage in the policy requires signed acceptance by the policyholder. After the date of policy  
14 issue, any rider or endorsement which increases benefits or coverage with an accompanying  
15 increase in premium during the policy term must be agreed to in writing signed by the insured,  
16 unless the increased benefits or coverage is required by law.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

527H0262

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 110** - 02/13/2002

Introduced by: Senators Munson, Albers, Diedrich (Elmer), Hagen, Olson (Ed), and Vitter  
and Representatives Broderick, Abdallah, Brown (Richard), Flowers, Pummel,  
and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of  
2 vehicle dealers.

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

4 Section 1. That § 32-6B-49.1 be amended to read as follows:

5 32-6B-49.1. No franchisor may require a franchisee to agree to the inclusion of a franchise  
6 agreement may include any term or condition in a franchise, ~~or in any lease or agreement~~  
7 ~~ancillary or collateral to a franchise as a condition to the offer, grant or renewal of such~~  
8 ~~franchise, lease or agreement~~, that:

- 9 (1) Requires the franchisee to waive trial by jury involving the franchisor;
- 10 (2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect  
11 to the franchise, lease or agreement shall or may not be submitted for resolution or  
12 otherwise prevents a franchisee from bringing an action in a particular forum  
13 otherwise available under the law;
- 14 (3) Requires that disputes between the franchisor and franchisee be submitted to



1 arbitration or to any other binding alternate dispute resolution procedure. However,  
2 any franchise, lease or agreement may authorize the submission of a dispute to  
3 arbitration or to binding alternate dispute resolution if the franchisor and franchisee  
4 voluntarily agree to submit the dispute to arbitration or binding alternate dispute  
5 resolution at the time the dispute arises; ~~or~~

6 (4) Requires a franchisee to pay the attorney fees of a franchisor;

7 (5) Prohibits the holder of an existing franchise from being dualled with another  
8 franchisor's line that does not substantially affect the current franchisor or community;

9 (6) Prohibits the holder of an existing franchise from moving to another facility within the  
10 franchisee's community that is equal to or superior to the franchisee's former facility;

11 or

12 (7) Prohibits the holder of an existing franchise from making improvements to the  
13 franchisee's current facility within the franchisee's community.

14 An existing franchisee shall give the franchisor prior written notice of the proposed dual  
15 arrangement, relocation, or improvement described in subdivisions (5), (6), and (7). The notice  
16 shall contain sufficient information for the franchisor to evaluate the proposal. Within sixty days  
17 of receiving said notice, the franchisor shall send a letter to the franchisee either approving or  
18 disapproving the proposal. If the franchisor does not notify the franchisee of its approval or  
19 denial of the dual arrangement, relocation, or improvement within the sixty-day period, the  
20 franchisee's proposal shall be deemed to have been approved. No franchisor may unreasonably  
21 withhold its approval. Denial of a proposed dual arrangement or facility improvement shall be  
22 supported by credible evidence that it will substantially affect in an adverse way the current  
23 franchisor or community. Denial of a proposed relocation shall be supported by credible evidence  
24 that the new location is not at least equal to the franchisee's former facility.

1 This section does not apply to agreements pertaining to the lease or sale of real property.

2 Section 2. That § 32-6B-76 be amended to read as follows:

3 32-6B-76. Approval by a manufacturer or franchisor of an application filed under  
4 §§ 32-6B-73 to 32-6B-78, inclusive, may not be unreasonably withheld. It is unreasonable for  
5 a manufacturer or franchisor to reject a prospective transferee ~~who is of good moral character~~  
6 ~~and~~ who otherwise meets the manufacturer's or franchisor's written, reasonable, and uniformly  
7 applied standards or qualifications, if any, relating to the prospective transferee's business  
8 experience and financial qualifications.

9 Section 3. That § 32-6B-79 be amended to read as follows:

10 32-6B-79. In §§ 32-6B-79 to 32-6B-83, inclusive, the term, manufacturer, includes a  
11 representative or a person or entity who is ~~affiliated with a manufacturer or representative, or~~  
12 ~~who~~, directly or indirectly ~~through an intermediary~~, is controlled by, or is under common control  
13 with, the manufacturer. For purposes of this section, a person or entity is controlled by a  
14 manufacturer if the manufacturer has the authority directly or indirectly, by law or by agreement  
15 of the parties, to direct or influence the management and policies of the person or entity.

16 Section 4. That § 32-6B-84 be amended to read as follows:

17 32-6B-84. Notwithstanding the terms of any franchise agreements, the manufacturer or  
18 franchisor may exercise a right of first refusal to acquire the motor vehicle dealer's assets or  
19 ownership if all of the following conditions are met:

- 20 (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall  
21 notify the motor vehicle dealer in writing within sixty days of its receipt of the  
22 completed proposal for the sale or transfer and all related agreements;
- 23 (2) The exercise of the right of first refusal will result in the dealer receiving the same or  
24 greater consideration as the dealer has contracted to receive in connection with the

- 1 proposed change of ownership or transfer;
- 2 (3) The proposed sale or transfer of the dealership's assets does not involve the transfer
- 3 or sale to a member or members of the family of one or more dealers, or to a qualified
- 4 manager with at least two years management experience at the dealership of one or
- 5 more of these dealers, or to a partnership or corporation controlled by such persons;
- 6 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including
- 7 attorney fees which do not exceed the usual, customary, and reasonable fees charged
- 8 for similar work done for other clients, incurred by the proposed owner or transferee
- 9 prior to the manufacturer's or franchisor's exercise of its right of first refusal in
- 10 negotiating and implementing the contract for the proposed sale or transfer of the
- 11 dealership or dealership assets. Such expenses and attorney fees shall be paid to the
- 12 proposed new owner or transferee at the time of closing of the sale or transfer for
- 13 which the manufacturer or franchisor exercised its right of first refusal. No payment
- 14 of such expenses and attorney fees is required if the new owner or transferee has not
- 15 submitted an accounting of those expenses within thirty days of the dealer's receipt
- 16 of the manufacturer's or franchisor's written request for such an accounting. A
- 17 manufacturer or franchisor may request such accounting before exercising a right of
- 18 first refusal; and
- 19 (5) The dealer does not have any liability to any person as to any disclosed term,
- 20 condition, or issue as a result of a manufacturer or franchisor exercising a right of first
- 21 refusal.

22 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as

23 follows:

24 A franchisor may reasonably and periodically audit a franchisee to determine the validity of

1 paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments  
2 may apply only to the two-year period immediately preceding the date on which the dealer was  
3 notified of an impending audit. The limitations of this section do not apply if the franchisor can  
4 prove fraud.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

439H0615

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 141** - 02/13/2002

Introduced by: Senator Whiting and Representative Brown (Jarvis)

1 FOR AN ACT ENTITLED, An Act to authorize total return unitrusts.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Disinterested person," any person who is not a related or subordinate party, as  
5 defined in section 672(c) of the Internal Revenue Code (26 U.S.C. section 1, et seq.),  
6 with respect to the person then acting as trustee of the trust and excludes the trustor  
7 of the trust and any interested trustee;

8 (2) "Income trust," any trust, created by either an inter vivos or a testamentary  
9 instrument, which directs or permits the trustee to distribute the net income of the  
10 trust to one or more persons, either in fixed proportions or in amounts or proportions  
11 determined by the trustee. However, no trust that otherwise is an income trust may  
12 qualify pursuant to this subdivision, if it is subject to taxation under I.R.C. section  
13 2001 or section 2501, until the expiration of the period for filing the return therefor  
14 (including extensions);

15 (3) "Interested distributee," any person to whom distributions of income or principal can



1 currently be made who has the power to remove the existing trustee and designate as  
2 successor a person who may be a related or subordinate party, as defined in I.R.C.  
3 section 672(c), with respect to such distributee;

4 (4) "Interested trustee," (i) any individual trustee to whom the net income or principal of  
5 the trust can currently be distributed or would be distributed if the trust were then to  
6 terminate and be distributed, or (ii) any trustee who may be removed and replaced by  
7 an interested distributee, or (iii) any individual trustee whose legal obligation to  
8 support a beneficiary may be satisfied by distributions of income and principal of the  
9 trust, or (iv) any of the above;

10 (5) "Total return unitrust," any income trust which has been converted under and meets  
11 the provisions of this Act;

12 (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted  
13 otherwise, whether acting in their discretion or on the direction of one or more  
14 persons acting in a fiduciary capacity;

15 (7) "Trustor," any individual who created an inter vivos or a testamentary trust;

16 (8) "Unitrust amount," an amount computed as a percentage of the fair market value of  
17 the trust;

18 (9) "Current valuation year," the accounting period of the trust for which the unitrust  
19 amount is being determined;

20 (10) "Prior valuation year," each of the two accounting periods of the trust immediately  
21 preceding the current valuation year; and

22 (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.).

23 Section 2. A trustee, other than an interested trustee, or, if two or more persons are acting  
24 as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter

1 "trustee"), may, in its sole discretion and without the approval of any court, (i) convert an income  
2 trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii)  
3 change the percentage used to calculate the unitrust amount and the method used to determine  
4 the fair market value of the trust if:

5 (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust  
6 being administered as an income trust, that future distributions from the trust will be  
7 unitrust amounts rather than net income, (ii) in the case of a trust being administered  
8 as a total return unitrust, that future distributions from the trust will be net income  
9 rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust  
10 amount or the method used to determine the fair market value of the trust will be  
11 changed as stated in the policy;

12 (2) The trustee sends written notice of its intention to take such action, along with copies  
13 of such written policy and this chapter, to (i) the trustor, if living, (ii) all living persons  
14 who are currently receiving or eligible to receive distributions of income of the trust,  
15 (iii) all living persons who would receive principal of the trust if the trust were to  
16 terminate at the time of the giving of such notice (without regard to the exercise of  
17 any power of appointment) or, if the trust does not provide for its termination, all  
18 living persons who would receive or be eligible to receive distributions of income or  
19 principal of the trust if the persons identified in subclause (ii) of this subdivision were  
20 deceased, and (iv) all persons acting as adviser or protector of the trust;

21 (3) At least one person receiving notice under each of subclauses (ii) and (iii) of  
22 subdivision (2) is, to the best information and belief of the trustee, legally competent;  
23 and

24 (4) No person receiving such notice objects, by written instrument delivered to the

1 trustee, to the proposed action of the trustee within sixty days of receipt of such  
2 notice.

3 Section 3. If there is no trustee of the trust other than an interested trustee, the interested  
4 trustee or, if two or more persons are acting as trustee and are interested trustees, a majority of  
5 such interested trustees, may, in its sole discretion and without the approval of any court, take  
6 such action as provided in section 2 of this Act so long as the trustee appoints a disinterested  
7 person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i)  
8 the percentage to be used to calculate the unitrust amount, (ii) the method to be used in  
9 determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded  
10 in determining the unitrust amount; and complies with all of the provisions of subdivisions (1)  
11 to (4), inclusive, of section 2 of this Act.

12 Section 4. If any trustee desires to (i) convert an income trust to a total return unitrust, (ii)  
13 reconvert a total return unitrust to an income trust, or (iii) change the percentage used to  
14 calculate the unitrust amount and the method used to determine the fair market value of the trust  
15 but does not have the ability to or elects not to do it under the provisions of sections 2 and 3 of  
16 this Act, or in the event the trustee receives a written objection within the applicable period, the  
17 trustee may petition the court for such order as the trustee deems appropriate. In the event,  
18 however, there is only one trustee of such trust and such trustee is an interested trustee or in the  
19 event there are two or more trustees of such trust and a majority of them are interested trustees,  
20 the court, in its own discretion or on the petition of such trustee or trustees or any person  
21 interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity,  
22 shall present such information to the court as shall be necessary to enable the court to make its  
23 determination.

24 Section 5. The fair market value of the trust shall be determined at least annually, using such

1 valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for  
2 which a fair market value cannot be readily ascertained shall be valued using such valuation  
3 methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation,  
4 if all income received with respect to such assets is distributed to the extent distributable in  
5 accordance with the terms of the governing instrument.

6 Section 6. The unitrust amount shall be determined as follows:

7 (1) For the first three accounting periods of the trust, the unitrust amount for a current  
8 valuation year of the trust shall be three percent, or such higher percentage specified  
9 by the terms of the governing instrument or by the election of the trustee, the  
10 disinterested person, or the court, of the net fair market value of the assets held in the  
11 trust on the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a  
13 current valuation year of the trust shall be three percent, or such higher percentage  
14 specified by the terms of the governing instrument or by the election of the trustee,  
15 the disinterested person, or the court, of the average of the net fair market value of  
16 the assets held in the trust on the first business day of the current valuation year and  
17 the net fair market value of the assets held in the trust on the first business day of each  
18 prior valuation year;

19 (3) The percentage that may be elected in determining the unitrust amount shall be a  
20 reasonable current return from the trust, taking into account the intentions of the  
21 trustor of the trust as expressed in the governing instrument, the needs of the  
22 beneficiaries, general economic conditions, projected current earnings and  
23 appreciation for the trust, and projected inflation and its impact on the trust.  
24 However, if such percentage is three percent or greater, or if no percentage is

1 specified, then that percentage shall be three percent;

2 (4) The unitrust amount for the current valuation year shall be proportionately reduced  
3 for any distributions, in whole or in part, other than distributions of the unitrust  
4 amount, and for any payments of expenses, including debts, disbursements and taxes,  
5 from the trust within a current valuation year that the trustee determines to be  
6 material and substantial, and shall be proportionately increased for the receipt, other  
7 than a receipt that represents a return on investment, of any additional property into  
8 the trust within a current valuation year;

9 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount  
10 on a daily basis;

11 (6) If the net fair market value of an asset held in the trust has been incorrectly  
12 determined either in a current valuation year or in a prior valuation year, the unitrust  
13 amount shall be increased in the case of an undervaluation, or be decreased in the case  
14 of an overvaluation, by an amount equal to the difference between the unitrust amount  
15 determined based on the correct valuation of the asset and the unitrust amount  
16 originally determined;

17 (7) In determining the net fair market value of the assets held in trust, the determination  
18 may not include the value of any residential property or any tangible personal property  
19 that, as of the first business day of the current valuation year, one or more income  
20 beneficiaries of the trust have or had the right to occupy, or have or had the right to  
21 possess or control, other than in a capacity as trustee, and instead the right of  
22 occupancy or the right of possession or control shall be deemed to be the unitrust  
23 amount with respect to the residential property or the tangible personal property; or  
24 any asset specifically given to a beneficiary under the terms of the trust and the return

1 on investment on that asset, which return on investment shall be distributed to the  
2 beneficiary.

3 Section 7. The unitrust amount may not be less than the net income of the trust, determined  
4 without regard to the provisions of section 8 of this Act, for (i) a trust for which a marital  
5 deduction has been taken for federal tax purposes under I.R.C. section 2056 or 2523 (during the  
6 lifetime of the spouse for whom the trust was created), or (ii) a trust to which the generation-  
7 skipping transfer tax due under I.R.C. section 2601 does not apply by reason of any effective  
8 date or transition rule.

9 Section 8. Following the conversion of an income trust to a total return unitrust, the trustee:

10 (1) Shall treat the unitrust amount as if it were net income of the trust for purposes of  
11 determining the amount available, from time to time, for distributions from the trust;

12 and

13 (2) May allocate to trust income for each taxable year of the trust (or portions thereof)

14 (i) net short-term capital gain described in I.R.C. section 1222(5) for such year (or  
15 portion thereof) but only to the extent that the amounts so allocated together with all  
16 other amounts allocate to trust income for such year (or portion thereof) does not

17 exceed the unitrust amount for such year (or portion thereof); and (ii) net long-term  
18 capital gain described in I.R.C. section 1222(7) for such year (or portion thereof) but

19 only to the extent that the amount so allocated together with all other amounts,

20 including amounts described in clause (i) above, allocated to trust income for such  
21 year (or portion thereof) does not exceed the unitrust amount for such year (or  
22 portion thereof).

23 Section 9. In administering a total return unitrust, the trustee may, in its sole discretion but  
24 subject to the provisions of the governing instrument, determine:

- 1 (1) The effective date of the conversion;
- 2 (2) The timing of distributions (including provisions for prorating a distributions for a  
3 short year in which a beneficiary' right to payments commences or ceases);
- 4 (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in  
5 kind;
- 6 (4) If the trust is reconverted to an income trust, the effective date of such reconversion;  
7 and
- 8 (5) Such other administrative issues as may be necessary or appropriate to carry out the  
9 purposes of this Act.

10 Section 10. Conversion to a total return unitrust under the provisions of this Act does not  
11 affect any other provisions of the governing instrument, if any, regarding distributions of  
12 principal.

13 Section 11. In the case of a trust for which a marital deduction has been taken for federal tax  
14 purpose under I.R.C. section 2056 or 2523, the spouse otherwise entitled to receive the net  
15 income of the trust has the right, by written instrument delivered to the trustee, to compel the  
16 reconversion during his or her lifetime of the trust from a total return unitrust to an income trust,  
17 notwithstanding anything in this Act to the contrary.

18 Section 12. This Act shall be construed as pertaining to the administration of a trust and shall  
19 be available to any trust that is administered in South Dakota under South Dakota law unless (i)  
20 the governing instrument reflects an intention that the current beneficiary or beneficiaries are to  
21 receive an amount other than a reasonable current return from the trust, ii) the trust is a trust  
22 described in I.R.C. section 170(f)(2)(B), 6664(d), 1361(d), 2702(a)(3), or 2702(b), (iii) one or  
23 more persons to whom the trustee could distribute income have a power of withdrawal over the  
24 trust that is not subject to an ascertainable standard under I.R.C. section 2041 or 2514 or that

1 can be exercised to discharge a duty of support he or she possesses, or (iv) the governing  
2 instrument expressly prohibits use of this Act by specific reference to the chapter. A provision  
3 in the governing instrument that "The provisions of this Act, or any corresponding provision of  
4 future law, may not be used in the administration of this trust" or similar words reflecting such  
5 intent are sufficient to preclude use of this Act.

6 Section 13. Any trustee or disinterested person who in good faith takes or fails to take any  
7 action under this Act is not liable to any person affected by such action or inaction, regardless  
8 of whether such person received written notice as provided in this Act and regardless of whether  
9 such person was under a legal disability at the time of the delivery of such notice. Such person's  
10 exclusive remedy shall be to obtain an order of the court directing the trustee to convert an  
11 income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust  
12 or to change the percentage used to calculate the unitrust amount.

13 Section 14. Nothing in this Act is intended to create or imply a duty to take any action under  
14 this Act, and no trustee is liable for not considering whether to take any action or for choosing  
15 not to take any such action.

16 Section 15. This Act is effective upon enactment and is available to trusts in existence at the  
17 date of enactment or created thereafter.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

575H0681

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**SB 167** - 02/14/2002

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

Introduced by: Senators Greenfield, Apa, Bogue, Diedrich (Larry), Drake, Koskan, and McCracken and Representatives Fryslie, Jensen, Juhnke, Klaudt, Koistinen, and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise the contractor's excise tax provisions for a  
2 commercial power production facility.

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

4 Section 1. Any commercial power production facility, utilizing renewable resources, such as  
5 sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and  
6 produces more than ten megawatts of electricity as measured by nameplate rating, and is owned  
7 by a natural person, corporation, nonprofit or for profit business organization, or tribal council  
8 (if the facility is located outside the boundaries of the reservation), irrigation district, drainage  
9 district, or other political subdivision or agency of the state authorized by statute to carry on the  
10 business of developing, transmitting, utilizing, or distributing electric power is subject to the  
11 provisions of this Act for any new or expanded facility.

12 Section 2. Rural electric cooperatives developing commercial power production facilities  
13 utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject to a



1 gross receipts tax as defined in § 10-36-6.

2 Section 3. Terms used in this Act mean:

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

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

8 (3) "Project," the installation or construction of generation capacity of a new or expanded  
9 facility, excluding any associated transmission facilities;

10 (4) "Project cost," the amount of money incurred and paid after July 1, 2002, for a  
11 project;

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

13 Section 4. Notwithstanding the rate of taxation imposed by §§ 10-46A-1 and 10-46B-1, the  
14 tax imposed under chapters 10-46A and 10-46B on a new or expanded facility shall be imposed  
15 at a rate of one percent, and remitted to the state by the holder of the permit issued pursuant to  
16 section 6 of this Act.

17 Section 5. The owner shall file a tax return on or before December thirty-first of each year  
18 reporting the project costs subject to tax under chapters 10-46A or 10-46B incurred during the  
19 previous twelve months. The tax due from such return shall be paid in four equal annual  
20 payments with the first payment due no later than December thirty-first following the filing of  
21 the tax return. Each subsequent annual payment shall be made no later than December thirty-first  
22 following the last payment.

23 Section 6. A person may pay the contractor's excise tax pursuant to section 4 of this Act if  
24 the person applies for and obtains a permit from the secretary at least thirty days prior to

1 commencement of the project. The application for a permit shall be submitted on a form  
2 prescribed by the secretary. A separate application shall be made and submitted for each project.  
3 Upon approval of the application, the secretary shall issue a permit to the applicant. The permit  
4 is not assignable or transferable except as collateral or security pursuant to chapter 57A-9.

5 Section 7. Any person aggrieved by the denial of a permit, may within thirty days after  
6 service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon  
7 notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.

8 Section 8. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 9 (1) Permitting, including the permit application;
- 10 (2) The filing of returns and payment of the tax;
- 11 (3) Determining the application of the tax and exemptions;
- 12 (4) Taxpayer and owner record-keeping requirements; and
- 13 (5) Determining auditing methods.

14 Section 9. That § 10-59-1 be amended to read as follows:

15 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
16 or fees imposed by this Act and chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,  
17 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and  
18 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

19 Section 10. If the secretary of revenue finds that the assessment or collection of the tax  
20 required to be paid under this Act is in jeopardy, the secretary may immediately make an  
21 assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the  
22 payment is not made, a lien may be filed on the owner's real and personal property located in the  
23 state and a distress warrant issued.

24 Section 11. Each person subject to tax or responsible for payment of tax under this Act shall

1 keep records and books of all receipts and sales, together with invoices, bills of lading, copies  
2 of bills of sale, and other pertinent papers and documents. Such books and records and other  
3 papers and documents shall, at all times during business hours of the day, be subject to inspection  
4 by the secretary of revenue or the secretary's duly authorized agents and employees to determine  
5 the amount of tax due. Such books and records shall be preserved for a period of three years  
6 unless the secretary of revenue, in writing, authorized their destruction or disposal at an earlier  
7 date.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0729

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**SB 180** - 02/19/2002

**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 Commerce at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to regulate unsolicited electronic commerce.

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

3 Section 1. That § 37-24-6 be amended by adding thereto a NEW SUBDIVISION to read as  
4 follows:

5 Send or cause to be sent an unsolicited commercial electronic mail message that does not  
6 include in the subject line of such message "ADV:" as the first four characters. If the message  
7 contains information that consists of explicit sexual material that may only be viewed, purchased,  
8 rented, leased, or held in possession by an individual eighteen years of age and older, the subject  
9 line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited  
10 commercial electronic mail message does not include a message sent to a person with whom the  
11 initiator has an existing personal or business relationship or a message sent at the request or  
12 express consent of the recipient.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0720

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 184** - 02/15/2002

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

1 FOR AN ACT ENTITLED, An Act to protect the children of South Dakota against sexual  
2 exploitation by criminalizing certain conduct involving children and the internet, to provide  
3 for civil remedies, to require certain people to report suspected violations, and to revise  
4 certain provisions regarding the unlawful use of computers.

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

6 Section 1. That § 22-22-22 be repealed.

7 ~~— 22-22-22. Prohibited sexual act, as used in §§ 22-22-23, 22-22-23.1, and 22-22-24 means,~~  
8 ~~sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio,~~  
9 ~~cunnilingus, or incest and any other sexual activity including nudity if such sexual activity is~~  
10 ~~depicted for the purpose of sexual stimulation or gratification of any person who might view~~  
11 ~~such depiction. Encouraging, aiding, abetting, or enticing any person to commit any such~~  
12 ~~prohibited sexual act as provided in this section is a prohibited sexual act.~~

13 Section 2. That § 22-22-23 be repealed.

14 ~~— 22-22-23. Any person who causes or knowingly permits the photographing or filming of a~~  
15 ~~minor under the age of sixteen years to engage in a prohibited sexual act or in the simulation of~~



1 ~~such act is guilty of a Class 4 felony. Any person who photographs or films a minor under the~~  
2 ~~age of sixteen years engaging in a prohibited sexual act or in the simulation of such an act is~~  
3 ~~guilty of a Class 4 felony.~~

4 Section 3. That § 22-22-23.1 be repealed.

5 ~~— 22-22-23.1. Any person who knowingly possesses any depiction fixed in any tangible~~  
6 ~~medium of expression of a minor under the age of eighteen years engaging in a prohibited sexual~~  
7 ~~act or in the simulation of such act or whose knowing possession encourages, aids, abets, or~~  
8 ~~entices any person to commit a prohibited sexual act is guilty of a Class 6 felony.~~

9 ~~— For the purposes of this section, a depiction includes any depiction, representation, or~~  
10 ~~description, however perceived, and any data compilation or set of commands intended for use~~  
11 ~~to store, to retrieve, or to generate such depictions, representations, or descriptions by any~~  
12 ~~electronic means.~~

13 ~~— For the purposes of this section, the term, tangible media of expression, includes, without~~  
14 ~~limitation, printed materials, plastic media, photographs, film, and any electronic communications~~  
15 ~~systems used to display depictions.~~

16 Section 4. That § 22-22-24 be amended to read as follows:

17 22-22-24. Any person who sells, or displays for sale, any book, magazine, pamphlet, slide,  
18 photograph, or film, or electronic or digital media image depicting a minor ~~under the age of~~  
19 ~~sixteen years~~ engaging in a prohibited sexual act, or engaging in an activity that involves nudity,  
20 or in the simulation of any such act is guilty of a Class 6 felony.

21 Section 5. That § 22-19A-1 be amended to read as follows:

22 22-19A-1. Any person:

- 23 (1) Who willfully, maliciously, and repeatedly follows or harasses another person; or  
24 (2) Who makes a credible threat to another person with the intent to place that person in

1 reasonable fear of death or great bodily injury; or

2 (3) Who willfully, maliciously, and repeatedly harasses another person by means of any

3 verbal, electronic, digital media, mechanical, telegraphic, or written communication;

4 is guilty of the crime of stalking. Stalking is a Class 1 misdemeanor.

5 Section 6. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Terms used in this Act mean:

8 (1) "Adult," a person eighteen years of age or older;

9 (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited  
10 sexual acts;

11 (3) "Child" or "minor," any person under the age of eighteen years;

12 (4) "Computer," an electronic, magnetic, optical, electrochemical, or other high-speed  
13 data processing device performing logical, arithmetic, or storage functions and  
14 includes any data storage facility or communications facility directly related to or  
15 operating in conjunction with such device, including wireless communication devices  
16 such as cellular phones. The term also includes any on-line service, internet service,  
17 or internet bulletin board;

18 (5) "Deviant sexual intercourse," sexual conduct between persons not married to each  
19 other consisting of contact between the penis and the anus, the mouth and the penis,  
20 or the mouth and the vulva;

21 (6) "Digital media," any electronic storage device, including a floppy disk or other  
22 magnetic storage device or any compact disc that has memory and the capacity to  
23 store audio, video, or written materials;

24 (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual

1 depiction, exhibition, presentation, or representation, of whatever kind or form,  
2 depicting nudity, sexual conduct, or sexual excitement if it:

- 3 (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
- 4 (b) Is patently offensive to prevailing standards in the adult community as a whole  
5 with respect to what is suitable material for minors; and
- 6 (c) Taken as a whole, is without serious literary, artistic, political, or scientific  
7 value for minors.

8 This term does not include a mother's breast-feeding of her baby;

9 (8) "Masochism," sexual gratification achieved by a person through, or the association  
10 of sexual activity with, submission or subjection to physical pain, suffering,  
11 humiliation, torture, or death;

12 (9) "Nudity," the showing or the simulated showing of the human male or female genitals,  
13 pubic area, or buttocks with less than a fully opaque covering; or the showing of the  
14 female breast with less than a fully opaque covering of any portion thereof below the  
15 top of the nipple; or the depiction of covered male genitals in a discernibly turgid state  
16 for the purpose of creating sexual excitement. This term does not include a mother's  
17 breast-feeding of her baby irrespective of whether or not the nipple is covered during  
18 or incidental to feeding;

19 (10) "Obscene," the status of material which:

- 20 (a) The average person, applying contemporary community standards, would find,  
21 taken as a whole, appeals to the prurient interest;
- 22 (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and
- 23 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

24 This term does not include a mother's breast-feeding of her baby;

- 1 (11) "Person," includes individuals, children, firms, associations, joint ventures,  
2 partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and  
3 all other groups or combinations;
- 4 (12) "Sadism," sexual gratification achieved through, or the association of sexual activity  
5 with, the infliction of physical pain, suffering, humiliation, torture, or death;
- 6 (13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition  
7 of being fettered, bound, or otherwise physically restrained, for the purpose of  
8 deriving sexual satisfaction, or satisfaction brought about as a result of sadistic  
9 violence, from inflicting harm on another or receiving such harm oneself;
- 10 (14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ  
11 of another or the anal or vaginal penetration of another by any other object. This term  
12 does not include an act done for a bona fide medical purpose;
- 13 (15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an  
14 animal involving the sex organ of the one and the mouth, anus, or vagina of the other;
- 15 (16) "Prohibited sexual act," actual or simulated sexual intercourse, deviant sexual  
16 intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or  
17 sadomasochistic abuse; actual or simulated exhibition of the genitals or the pubic or  
18 rectal area in a lewd or lascivious manner; actual physical contact with a person's  
19 clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female,  
20 breast with the intent to arouse or gratify the sexual desire of either party; defecation  
21 or urination for the purpose of creating sexual excitement in the viewer; or any act or  
22 conduct which constitutes sexual battery or simulates that sexual battery is being or  
23 will be committed. The term includes encouraging, aiding, abetting or enticing any  
24 person to commit any such acts as provided in this subdivision. The term does not

- 1 include a mother's breast-feeding of her baby;
- 2 (17) "Sexual excitement," the condition of the human male or female genitals if in a state  
3 of sexual stimulation or arousal;
- 4 (18) "Sexually oriented material," any book, article, magazine, publication, visual depiction  
5 or written matter of any kind or any drawing, etching, painting, photograph, motion  
6 picture film, or sound recording that depicts sexual activity, actual or simulated,  
7 involving human beings or human beings and animals, that exhibits uncovered human  
8 genitals or the pubic region in a lewd or lascivious manner, or that exhibits human  
9 male genitals in a discernibly turgid state, even if completely and opaquely covered;
- 10 (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this  
11 section that creates the appearance of such conduct and that exhibits any uncovered  
12 portion of the breasts, genitals, or anus;
- 13 (20) "Visual depiction," any developed and undeveloped film, photograph, slide and  
14 videotape, and any photocopy, drawing, printed or written material, and any data  
15 stored on computer disk, digital media, or by electronic means that are capable of  
16 conversion into a visual image.

17 Section 7. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 A person is guilty of possessing, manufacturing, or distributing child pornography if the  
20 person:

- 21 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the  
22 simulation of such an act;
- 23 (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged  
24 in a prohibited sexual act, or in the simulation of such an act; or

1 (3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of  
2 a minor engaging in a prohibited sexual act, or in the simulation of such an act.

3 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or  
4 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

5 A violation of this section is a Class 4 felony. If a person is convicted of a second or  
6 subsequent violation of this section within fifteen years of the prior conviction, the violation is  
7 a Class 3 felony. Further, the court shall order a mental examination of the person. The examiner  
8 shall report to the court whether treatment of the person is indicated.

9 Section 8. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits  
12 a minor to engage in an activity that:

- 13 (1) Is harmful to minors, or in the simulation of such an activity;
- 14 (2) Involves nudity, or in the simulation of such an activity; or
- 15 (3) Is obscene, or in the simulation of such an activity.

16 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or  
17 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

18 A violation of this section is a Class 6 felony. If a person is convicted of a second or  
19 subsequent violation of this section within fifteen years of the prior conviction, the violation a  
20 Class 5 felony. Further, the court shall order a mental examination of the person. The examiner  
21 shall report to the court whether treatment of the person is indicated.

22 Section 9. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Terms used in section 10 of this Act mean:

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- (1) "Minor," a person fifteen years of age or younger; and
- (2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.

Section 10. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

- A person is guilty of solicitation of a minor if the person eighteen years of age or older:
- (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or
  - (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner

1 shall report to the court whether treatment of the person is indicated.

2 Section 11. That § 22-22-30 be amended to read as follows:

3 22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the  
4 following crimes regardless of the date of the commission of the offense or the date of  
5 conviction:

6 (1) Rape as set forth in § 22-22-1;

7 (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by  
8 an adult and the adult is convicted of a felony;

9 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if  
10 committed by an adult;

11 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;

12 (5) ~~Photographing a child in an obscene act as set forth in § 22-22-23~~ Possessing,  
13 manufacturing, or distributing child pornography as set forth in section 7 of this Act;

14 (6) ~~Possession of child pornography as set forth in § 22-22-23.1~~ Sale of child  
15 pornography as set forth in section 4 of this Act;

16 (7) ~~Sale of obscene pictures of a child as set forth in § 22-22-24~~ Sexual exploitation of  
17 a minor as set forth in section 8 of this Act;

18 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;

19 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);

20 (10) Criminal pedophilia as set forth in § 22-22-30.1;

21 (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set  
22 forth in § 22-24-1.2;

23 (12) Solicitation of a minor as set forth in section 10 of this Act;

24 (13) An attempt to commit any of the crimes listed in this section; or

1       ~~(13)~~(14)       Any crime committed in a place other than this state which would constitute  
2                               a sex crime under this section if committed in this state.

3       Section 12. That § 23A-27-14.1 be amended to read as follows:

4       23A-27-14.1. Notwithstanding §§ 23A-27-14 and 23A-27-17, a any person who has received  
5       an order pursuant to § 23A-27-13 for a conviction of subdivision 22-22-1(1), subdivision  
6       22-22-1(5) or § 22-22-7, or violations of sections 4, 7, 8, and 10 of this Act, who is licensed or  
7       seeks to be licensed as a certified teacher may have his or her application refused or license  
8       revoked as provided in § 13-42-10.

9       Section 13. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
10       follows:

11       Any person, not a citizen or resident of this state, whose actions or conduct constitute a  
12       violation of this Act, and whose actions or conduct involve a child residing in this state, or  
13       someone the person reasonably believes is a child residing in this state, is for the purpose of this  
14       Act deemed to be transacting business in this state and by that act:

- 15       (1)   Submits to the jurisdiction of the courts of this state in any civil proceeding  
16                commenced under this Act; and
- 17       (2)   Constitutes the secretary of state as agent for service of legal process in any civil  
18                proceeding commenced under this Act; and consents that service of legal process shall  
19                be made by serving a copy upon the secretary of state or by filing a copy in the  
20                secretary of state's office, and that this service shall be sufficient service if, within one  
21                day after service, notice of the service and a copy of the process are sent by registered  
22                mail by plaintiff to the person at the person's last-known address and proof of such  
23                mailing filed with the clerk of court within one day after mailing.

24       The service of legal process upon any person who is subject to the jurisdiction of the courts

1 of this state, as provided in this section, may also be made by personally serving the summons  
2 upon the person outside this state with the same force and effect as though summons had been  
3 personally served within this state. Such service shall be made in like manner as service within  
4 this state. No order of court is required. An affidavit of the server shall be filed stating the time,  
5 manner and place of service. The court may consider the affidavit, or any other competent  
6 proofs, in determining whether service has been properly made.

7 Section 14. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Any person, except a minor, who knowingly participates in any conduct proscribed by this  
10 Act is liable for civil damages.

11 Section 15. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any of the following persons may bring an action for damages caused by another person's  
14 conduct as proscribed by this Act:

- 15 (1) The child;
- 16 (2) A parent, legal guardian, or sibling of a victimized child;
- 17 (3) A medical facility, insurer, governmental entity, employer, or other entity that funds  
18 a treatment program or employee assistance program for the child or that otherwise  
19 expended money or provided services on behalf of the child;
- 20 (4) Any person injured as a result of the willful, reckless, or negligent actions of a person  
21 who knowingly participated in conduct proscribed by this Act.

22 If the parent or guardian is named as a defendant in the action, the court shall appoint a  
23 special guardian to bring the action on behalf of the child.

24 Section 16. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person entitled to bring an action under section 15 of this Act may seek damages from  
3 any person, except a minor, who knowingly participated in the production or in the chain of  
4 distribution of any visual depiction proscribed by this Act.

5 Section 17. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Any person entitled to bring an action under section 15 of this Act may recover all of the  
8 following damages:

- 9 (1) Economic damages, including the cost of treatment and rehabilitation, medical  
10 expenses, loss of economic or educational potential, loss of productivity, absenteeism,  
11 support expenses, accidents or injury, and any other pecuniary loss proximately  
12 caused by the proscribed conduct;
- 13 (2) Noneconomic damages, including physical and emotional pain, suffering, physical  
14 impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss  
15 of companionship, services, and consortium, and other nonpecuniary losses  
16 proximately caused by the proscribed conduct;
- 17 (3) Exemplary damages;
- 18 (4) Attorneys' fees; and
- 19 (5) Disbursements.

20 Section 18. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Two or more persons may join in one action under this Act as plaintiffs if their respective  
23 actions have at least one common occurrence of proscribed conduct under this Act and if any  
24 portion of the period of such conduct overlaps with the period for every other plaintiff. Two or

1 more persons may be joined in one action under this Act as defendants if those persons are liable  
2 to at least one plaintiff.

3 Section 19. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person against whom a judgment has been rendered under this Act is not eligible to  
6 exempt any property, of whatever kind, from process to levy or process to execute on the  
7 judgment. Any assets sought to satisfy a judgment under this Act that are named in a forfeiture  
8 action or have been seized for forfeiture by any state or federal agency may not be used to satisfy  
9 a judgment unless and until the assets have been released following the conclusion of the  
10 forfeiture action or released by the agency that seized the assets.

11 Section 20. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any action for damages under this Act shall be commenced within six years of the time the  
14 plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The  
15 knowledge of a parent, guardian, or custodian may not be imputed to the minor.

16 For a plaintiff, the statute of limitations under this section is tolled while any potential  
17 plaintiff is incapacitated by minority.

18 Section 21. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 On motion by a governmental agency involved in an investigation or prosecution, any civil  
21 action brought under this Act shall be stayed until the completion of the criminal investigation  
22 or prosecution that gave rise to the motion for a stay of the action. The statute of limitations as  
23 provided in section 20 of this Act shall be tolled for the time any such stay is in effect.

24 Section 22. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person who is convicted of an offense under this Act shall forfeit to the state the person's  
3 interest in the following and no property right exists in them:

4 (1) Any photograph, film, videotape, book, digital media or visual depiction that has been  
5 manufactured, distributed, purchased, possessed, acquired, or received in violation of  
6 this Act;

7 (2) Any material, product, and equipment of any kind that is used or intended for use in  
8 manufacturing, processing, publishing, selling, possessing, or distributing any visual  
9 depiction proscribed by this Act;

10 (3) Any property that is used, or intended for use, as a container for property described  
11 in subdivisions (1) and (2) of this section, including any computers and digital media;

12 (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or  
13 conceal, or that is used, or intended for use, to transport, or in any manner facilitate  
14 the transportation, sale, receipt, possession or concealment of any visual depiction  
15 proscribed under this Act;

16 (5) Any book, record, and research, including microfilm, tape, and data that is used, or  
17 intended for use, in violation of this Act;

18 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,  
19 attempting to purchase, distributing, or attempting to acquire or distribute any visual  
20 depiction proscribed by this Act;

21 (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful  
22 sale or purchase, attempted sale or purchase, distribution, or attempted distribution  
23 of any visual depiction proscribed by this Act.

24 Any property described in subdivision (1) of this section shall be deemed contraband and

1 shall be summarily forfeited to the state. Any other property seized and forfeited shall be used  
2 to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and  
3 above the amount necessary to reimburse for the investigation and prosecution shall be used to  
4 satisfy any civil judgments. The secretary of the Department of Social Services shall promulgate  
5 rules, pursuant to chapter 1-26, to implement the distribution of seized and forfeited assets.

6 Section 23. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Any person working at or for an internet service provider or other electronic communication  
9 service who has knowledge of or observes, within the scope of the person's professional capacity  
10 or employment, a visual depiction that depicts a minor whom the person knows or reasonably  
11 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the  
12 simulation of prohibited sexual acts, shall report the depiction to his or her employer or  
13 supervisor. The depiction shall then be reported to an appropriate law enforcement agency as  
14 soon as reasonably possible. The provider need not report to law enforcement depictions  
15 involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual  
16 acts. This section may not be construed to require a provider to review all visual depictions  
17 received by subscribers or handled by the provider within the provider's professional capacity or  
18 employment.

19 It is unlawful for any owner or operator of a computer on-line service, internet service, or  
20 local internet bulletin board service knowingly to permit a subscriber to utilize the service to  
21 produce or reproduce visual depictions of prohibited sexual acts with a minor.

22 A violation of this section is a Class 1 misdemeanor. However, a violation of this section  
23 does not constitute grounds for a civil action for damages against any person.

24 Section 24. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person working at or for a commercial film and photograph print processor who has  
3 knowledge of or observes, within the scope of the processor's professional capacity or  
4 employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts  
5 a minor whom the processor knows or reasonably should know to be under the age of eighteen,  
6 engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the  
7 depiction to his or her employer or supervisor. The depiction shall then be reported to an  
8 appropriate law enforcement agency as soon as reasonably possible. The processor need not  
9 report to law enforcement depictions involving mere nudity of the minor, but shall report visual  
10 depictions involving prohibited sexual acts. This section may not be construed to require a  
11 processor to review all films, photographs, videotapes, negatives, or slides delivered to the  
12 processor within the processor's professional capacity or employment.

13 It is unlawful for any owner or operator of a photography or film studio, photograph or film  
14 developing service, photograph or film reproducing service, or video to film reproducing service  
15 knowingly to permit any person to utilize photograph or film reproduction or development  
16 services to produce or reproduce visual depictions of prohibited sexual acts with a minor.

17 A violation of this section is a Class 1 misdemeanor. However, a violation of this section  
18 does not constitute grounds for a civil action for damages against any person.

19 Section 25. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 Any commercial computer repair technician who has knowledge of or observes, within the  
22 scope of the technician's professional capacity or employment, a film, photograph, video tape,  
23 negative, slide or other visual depiction of a minor whom the technician knows or reasonably  
24 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the

1 simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement  
2 agency as soon as reasonably possible. The computer repair technician need not report to law  
3 enforcement depictions involving mere nudity of the minor, but shall report visual depictions  
4 involving prohibited sexual acts. This section may not be construed to require a computer repair  
5 technician to review all data, disks, or tapes delivered to the computer repair technician within  
6 the computer repair technician's professional capacity or employment.

7 A violation of this section is a Class 1 misdemeanor. However, a violation of this section  
8 does not constitute grounds for a civil action for damages against any person.

9 Section 26. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 This Act does not apply to the performance of official duties by any law enforcement officer,  
12 court employee, attorney, licensed physician, psychologist, social worker, or any person acting  
13 at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide  
14 treatment or professional education program.

15 Section 27. That § 43-43B-1 be amended to read as follows:

16 43-43B-1. A person is guilty of unlawful use of a computer system, software, or data if he  
17 the person:

18 (1) Knowingly obtains the use of, ~~or~~ accesses or exceeds authorized access to, a  
19 computer system, or any part thereof, without the consent of the owner;

20 (2) Knowingly ~~alters or destroys computer programs or data without the consent of the~~  
21 ~~owner; or~~ obtains the use of, accesses, or exceeds authorized access to, a computer  
22 system, or any part thereof, without the consent of the owner, and the access or use  
23 includes access to confidential data or material;

24 (3) Knowingly ~~obtains use of, alters, accesses or destroys a computer system, or any part~~

1 ~~thereof, as part of a deception for the purpose of obtaining money, property or~~  
2 ~~services from the owner of a computer system or any third party; or copies or obtains~~  
3 ~~information from a computer system, or compromises any security controls for the~~  
4 ~~computer system, or uses or discloses to another, or attempts to use or disclose to~~  
5 ~~another, the numbers, codes, passwords, or other means of access to a computer~~  
6 ~~system without the consent of the owner;~~

7 (4) ~~Knowingly uses or discloses to another or attempts to use or disclose to another the~~  
8 ~~numbers, codes, passwords or other means of access to a computer, computer~~  
9 ~~program or computer system without the consent of the owner disrupts, denies, or~~  
10 ~~inhibits access to software or data without the consent of the owner;~~

11 (5) ~~Knowingly disrupts, denies, or inhibits access to a computer system, without consent~~  
12 ~~of the owner;~~

13 (6) ~~Knowingly modifies, changes, or alters software or data, without the consent of the~~  
14 ~~owner;~~

15 (7) ~~Knowingly obtains use of, alters, accesses, or exceeds authorized access to, destroys,~~  
16 ~~disables, or inhibits access to a computer system, as part of a deception for the~~  
17 ~~purpose of obtaining money, property, or services from the owner of a computer~~  
18 ~~system, or any third party;~~

19 (8) ~~Knowingly destroys or disables a computer system, without consent of the owner; or~~

20 (9) ~~Knowingly destroys or disables software or computer data, without consent of the~~  
21 ~~owner.~~

22 Section 28. That § 43-43B-2 be amended to read as follows:

23 43-43B-2. Terms used in this chapter, ~~unless the context requires otherwise,~~ mean:

24 (1) "Access," to instruct, communicate with, store data in, retrieve data from a ~~computer,~~

1 computer system ~~or computer network~~;

2 (2) "Computer," an internally programmed, general purpose digital device capable of  
3 automatically accepting data, processing data and supplying the results of the  
4 operation;

5 (3) ~~"Computer program Software,"~~ a series of coded instructions or statements in a form  
6 acceptable to a computer system, which causes the computer system to process data  
7 in order to achieve a certain result;

8 (4) "Computer system," ~~a set of related, connected devices, including a computer and~~  
9 ~~other devices, including but not limited to~~ includes any computer, computer network,  
10 other related device, data input and output and storage devices, and data  
11 communications links, ~~and computer programs and data, that make the system capable~~  
12 ~~of performing the special purpose data processing tasks for which it is specified;~~

13 (5) "Computer network," a set of related, connected network electronics and  
14 communications links that allows any computer system to communicate with any  
15 other computer system;

16 (5A) "Data," digitized information in any form that may be accessed by a computer system,  
17 regardless of whether the information is in transmission or stored on a computer  
18 system, diskette, compact diskette, cd-rom, tape, or in any other medium;

19 (6) "Destroy," to make unusable, render inoperable, render unable to accept or process  
20 data, or supply results, render unable to perform data processing tasks or cause  
21 computer networks to be unable to transfer data between computer systems for any  
22 amount of time.

23 Section 29. That § 43-43B-3 be amended to read as follows:

24 43-43B-3. ~~A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~

1 ~~the value of the use, alteration, destruction, access or disclosure is one thousand dollars or less~~  
2 ~~is guilty of~~ Violations of the provisions of § 43-43B-1 are punishable as follows:

- 3     (1) For a violation of subdivision (1), a Class 1 misdemeanor;
- 4     (2) For a violation of subdivision (2) or (3), a Class 6 felony;
- 5     (3) For a violation of subdivision (4), a Class 5 felony;
- 6     (4) For a violation of subdivision (5) or (6), a Class 4 felony;
- 7     (5) For a violation of subdivision (8) or (9), a Class 3 felony;
- 8     (6) For a violation of subdivision (7), a Class 2 felony.

9     Section 30. That § 43-43B-4 be repealed.

10 ~~—43-43B-4. A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~  
11 ~~the value of the use, alteration, destruction, access or disclosure is more than one thousand~~  
12 ~~dollars is guilty of a Class 6 felony.~~

13     Section 31. That § 43-43B-5 be repealed.

14 ~~—43-43B-5. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~  
15 ~~the money, property or services obtained is one thousand dollars or less is guilty of a Class 1~~  
16 ~~misdemeanor.~~

17     Section 32. That § 43-43B-6 be repealed.

18 ~~—43-43B-6. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~  
19 ~~the money, property or services obtained is more than one thousand dollars shall be guilty of a~~  
20 ~~Class 4 felony.~~

21     Section 33. That § 22-22-25 be amended to read as follows:

22     22-22-25. Sections 22-22-23 and Section 22-22-24 shall and sections 7, 8, and 10 of this Act  
23 do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing,  
24 or making of films, photographs, or other materials involving only nudity, if such the materials

1 are made for and have a serious literary, artistic, educational, or scientific value.