

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0384

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1053** - 02/06/2004

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

1 FOR AN ACT ENTITLED, An Act to increase liquidated court costs.

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

3 Section 1. That § 23-3-52 be amended to read as follows:

4 23-3-52. In addition to any other penalty, assessment, or fine provided by law, there shall
5 be levied liquidated costs in the amount of ~~twenty-seven~~ thirty dollars for partial reimbursement
6 to state government and its subdivisions for law enforcement and judicial expenses incurred in
7 providing the personnel, training, and facilities relative to the criminal justice system and to the
8 911 emergency reporting system, on each conviction for the following:

9 (1) Violation of state statutes or regulations having criminal penalties; or

10 (2) Violation of county or municipal ordinances.

11 If a fine is suspended in whole or in part, the liquidated costs for law enforcement and
12 training may not be reduced, except that the judge may waive all or any part of the payment of
13 liquidated costs which would work a hardship on the person convicted or on the person's
14 immediate family.

15 Section 2. That § 23-3-53 be amended to read as follows:



1 23-3-53. After a determination by the court of the amount due, the clerk of courts shall
2 collect the amount due and transmit such amount monthly to the state treasurer. The state
3 treasurer shall place ~~seventeen~~ twenty dollars of the ~~twenty-seven-dollar~~ thirty dollar fee into
4 the law enforcement officers training fund, six dollars of the ~~twenty-seven-dollar~~ thirty dollar
5 fee into the court appointed attorney and public defender payment fund, two dollars of the
6 ~~twenty-seven-dollar~~ thirty dollar fee into the court appointed special advocates fund, one dollar
7 of the ~~twenty-seven-dollar~~ thirty dollar fee into the 911 telecommunicator training fund, and one
8 dollar of the ~~twenty-seven-dollar~~ thirty dollar fee into the abused and neglected child defense
9 fund.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0299

SENATE ENGROSSED NO. **HB 1062** - 02/06/2004

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

1 FOR AN ACT ENTITLED, An Act to revise the rule-making authority regarding the mowing
2 of ditches on the state trunk highway system.

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

4 Section 1. That § 31-5-21 be amended to read as follows:

5 31-5-21. The Transportation Commission may, ~~by rule adopted~~ rules promulgated pursuant
6 to chapter 1-26, authorize the ~~issuance of permits for the~~ mowing of ditches on the state trunk
7 highway ~~and interstate highway systems, to fix fees for issuance of such permits, to~~ system. The
8 rules shall establish when mowing may be done, by whom mowing may be done, how and
9 where mowing may be done, ~~and the time limit for removal of hay if mowing is done for hay~~
10 production. However, ~~such the rules and regulations~~ shall provide that the original owner or
11 assigns of land abutting the ditches on the state trunk highway ~~and interstate highway systems~~
12 system shall be given priority ~~in the issuance of such permits for mowing. In addition, no rules~~
13 may be promulgated that would prohibit the mowing of a ditch on the state trunk highway
14 system after June fifteenth of each year.

15 Section 2. That § 31-5-22 be amended to read as follows:



1 31-5-22. Any person who ~~shall violate~~ violates any of the ~~terms or conditions of the mowing~~
2 ~~permits~~ rules authorized pursuant to § 31-5-21 ~~shall be~~ is guilty of a ~~Class 1~~ Class 2
3 misdemeanor.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

804J0146

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1091** - 02/04/2004

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

Introduced by: Representatives Wick, Adelstein, Buckingham, Burg, Cutler, Fryslie, Garnos, Novstrup, Peterson (Bill), Peterson (Jim), Schafer, Valandra, Van Gerpen, and Weems and Senators Schoenbeck, Albers, Apa, Brown, Dennert, and Moore

1 FOR AN ACT ENTITLED, An Act to extend the fifty percent tuition privilege for National
2 Guard members to include graduate study.

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

4 Section 1. That § 33-6-5 be amended to read as follows:

5 33-6-5. Any member of the National Guard of the State of South Dakota ~~who is a resident~~
6 ~~of the State of South Dakota shall~~ is, upon compliance with all the requirements for admission;
7 and subject to the provisions of § 33-6-7, be entitled to a benefit as prescribed by this Act to
8 attend and pursue any ~~undergraduate~~ course or courses in any state educational institution under
9 the control and management of the Board of Regents ~~upon the payment of only fifty percent of~~
10 ~~the charges for tuition. In no event shall eligible national guardsmen be entitled to more than~~
11 ~~four academic years under §§ 33-6-5 to 33-6-8, inclusive. The Board of Regents shall maintain~~
12 ~~an annual record of the number of participants and the tuition dollar value of such participation.~~
13 Any resident enrolled in a program leading towards a baccalaureate degree is entitled to a



1 benefit of fifty percent of the in-state resident tuition to be paid or otherwise credited by the
2 Board of Regents. Any resident enrolled in a program leading towards a graduate degree or any
3 nonresident enrolled in a program leading towards a baccalaureate or graduate degree is entitled
4 to a benefit of fifty percent of the in-state resident tuition to be paid to the institution by the
5 Department of Military and Veterans Affairs. The benefits established under §§ 33-6-5 to 33-6-
6 8, inclusive, and the provisions of this Act may not exceed one hundred twenty-eight credit
7 hours towards a baccalaureate degree and thirty-two credit hours towards a graduate degree.

8 Section 2. That chapter 33-6 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Notwithstanding the provisions of § 13-55-23, eligible national guard members enrolled in
11 courses under the control and management of the Board of Regents not subsidized by the
12 general fund are entitled to a benefit of fifty percent of the in-state resident tuition to be paid to
13 the institution by the Department of Military and Veterans Affairs.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

168J0486

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1182 - 02/04/2004

Introduced by: Representatives Schafer, Hennies, Kraus, McLaughlin, Nesselhuf, Rave, Rounds, Sebert, Solum, and Teupel and Senators Vitter, Albers, Duniphan, Kelly, Kooistra, Nachtigal, Olson (Ed), Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the use of general
2 occupation tax revenue.

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

4 Section 1. That § 9-55-13 be amended to read as follows:

5 9-55-13. A municipality may levy a special assessment against the real property located in
6 a district, to the extent of the special benefit on such property, for the purpose of paying all or
7 any part of the total costs and expenses of any project authorized by this chapter; within ~~such~~
8 the district. The amount of each special assessment shall be determined by the governing body.
9 Assessments shall be levied in accordance with the method of assessment proposed in the
10 ordinance creating the district. If the governing body finds that the proposed method of
11 assessment does not provide a fair and equitable method of apportioning costs, then it the
12 governing body may assess the costs under ~~such a~~ method as the governing body finds to be fair
13 and equitable. If ~~the~~ a public improvement consists of convention facilities or the levy is for the
14 convention visitor's bureau and its promotional programs, ~~the~~ a general occupation tax may be



1 levied based on rented hotel and motel rooms and units offered and let for overnight
2 occupancies of less than thirty continuous calendar days, which tax may not exceed two dollars
3 per occupied room per night. Notice of a hearing on any special assessments to be levied under
4 this chapter shall be given to the landowners in ~~such~~ the district by publication of the description
5 of the land, the amount proposed to be assessed, and the general purpose for which ~~such~~ the
6 assessment is to be made, once a week for two weeks in a daily or weekly newspaper of general
7 circulation published in the municipality. The notice shall be published at least thirty days prior
8 to the hearing and shall provide the date, time, and place of the hearing to hear any objections
9 or protests by landowners in the district as to the amount of assessment made against their
10 property. All special assessments levied under this chapter ~~shall be~~ constitute liens on the
11 property and shall be certified for collection and collected in the same manner as other special
12 assessments.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

348J0574

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1183** - 02/05/2004

Introduced by: Representatives Novstrup, Kraus, LaRue, McCaulley, Rhoden, and Weems
and Senator Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide the temporary replacement of any elected official
2 incapacitated by illness or accident.

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

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

6 If any member of a governing body of a county, municipality, school district, township, or
7 special purpose district, who is incapacitated by illness or an accident which causes the member
8 to be unable to attend meetings of the governing body, the member may elect to temporarily
9 resign from the governing body. Notice of temporary resignation may be given in the same
10 manner as giving notice of resignation from such governing body. If the member is unable to
11 give notice, the member's spouse or guardian or any person who has durable power of attorney
12 for the member may give notice of resignation from such governing body. A temporary
13 replacement may be made in accordance with the provisions of statute applying to the governing
14 body. The temporary member shall serve until the member is able to fulfill the requirements of
15 office or until the expiration of the member's term, whichever occurs first.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

490J0422

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1184 - 02/06/2004

Introduced by: Representatives Novstrup, Elliott, Hackl, Kraus, LaRue, McCaulley, Rhoden,
and Weems and Senators Dennert and Kelly

1 FOR AN ACT ENTITLED, An Act to authorize a payor to make a deduction for transmitting
2 an amount of an obligor's income pursuant to a child support order for withholding.

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

4 Section 1. That § 25-7A-34 be amended to read as follows:

5 25-7A-34. Any payor who has been served with an order for withholding of income shall
6 deduct and pay over income or assets as provided in this section. The payor shall deduct the
7 amount designated in the order for withholding. The first payment shall be deducted from the
8 payment of income which is payable to the obligor following service of the order. The payor
9 shall transmit the amount withheld to the department in accordance with the order for
10 withholding within seven business days after the date the obligor is paid or ~~his~~ the obligor's
11 property withheld and in accordance with any subsequent notification received from the
12 department redirecting payment. In addition to the amount designated in the order for
13 withholding, the payor may deduct an amount not to exceed three dollars per month from the
14 obligor's income to cover the expenses involved in transmitting the amount withheld.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

439J0700

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1191** - 02/06/2004

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

Introduced by: Representatives McCaulley, Bartling, Begalka, Christensen, Davis, Deadrick (Thomas), Dykstra, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Hanson, Haverly, Heineman, Hennies, Hunhoff, Juhnke, Klaudt, Koistinen, Konold, Kraus, Lange, Lintz, Madsen, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Peterson (Bill), Peterson (Jim), Rave, Rhoden, Rounds, Schafer, Sebert, Smidt, Solum, Teupel, Van Etten, Van Gerpen, Weems, Wick, and Williamson and Senators Schoenbeck, Abdallah, Albers, Apa, Bogue, Earley, Greenfield, Jaspers, Kelly, Kleven, Kloucek, Koetzle, Koskan, McCracken, Moore, Napoli, Sutton (Duane), and Vitter

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings, to reinstate the
2 prohibition against certain acts causing the termination of an unborn human life, and to
3 prescribe a penalty therefor.

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

5 Section 1. The Legislature finds that the State of South Dakota has a compelling and
6 paramount interest in the preservation and protection of all human life within and subject to its
7 jurisdiction and that the preservation and protection of human life applies to all human beings,
8 born or unborn.

9 Section 2. The Legislature finds that since neither constitutional law nor Supreme Court
10 decision has resolved the question of the beginning of life, it is within the proper sphere of state
11 legislative enactment to determine the question of fact in light of the best scientific and medical



1 evidence. The Legislature finds that the life of a human being begins when the ovum is fertilized
2 by male sperm. The Legislature finds that the explosion of knowledge derived from new
3 recombinant DNA technologies over the past twenty-five years has reinforced the validity of the
4 finding of this scientific fact.

5 Section 3. The Legislature finds that, based upon the evidence derived from thirty years of
6 legalized abortions in this country, the interests of pregnant mothers protected under the South
7 Dakota Bill of Rights have been adversely affected as abortions terminate the constitutionally
8 protected fundamental interest of the pregnant mother in her relationship with her child and
9 abortions are performed without a truly informed or voluntary consent or knowing waiver of the
10 woman's rights and interests. The Legislature finds that the state has a duty to protect the
11 pregnant mother's fundamental interest in her relationship with her unborn child.

12 Section 4. The Legislature finds that abortion procedures impose significant risks to the
13 health and life of the pregnant mother, including subjecting women to significant risk of severe
14 depression, suicidal ideation, suicide, attempted suicide, post traumatic stress disorders, adverse
15 impact in the lives of women, physical injury, and a greater risk of death than risks associated
16 with carrying the unborn child to full term and childbirth.

17 Section 5. The Legislature finds that the guarantee of due process of law under the South
18 Dakota Bill of Rights applies equally to born and unborn human beings and that there is no
19 justification for the taking of a guiltless human life by the state or by any person within and
20 subject to the jurisdiction of the state.

21 Section 6. The Legislature finds that a pregnant mother possesses her own natural and
22 inalienable right to life under the South Dakota Bill of Rights, and therefore has a right to seek
23 treatment necessary to protect her own life, subject to the requirements imposed upon a doctor
24 treating such pregnant mother set forth in this Act.

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

3 No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant
4 woman any medicine, drug, or other substance with the specific intent of causing or abetting the
5 termination of the life of an unborn human being. No person may knowingly use or employ any
6 instrument or procedure upon a pregnant woman with the specific intent of causing or abetting
7 the termination of the life of an unborn human being. Any licensed physician who provides
8 health care to a pregnant woman shall, in all cases, make every effort to preserve both the life
9 of the mother and the life of her unborn child. Medical treatment provided to the mother by a
10 licensed physician which results in the accidental or unintentional injury or death of the unborn
11 child is not a violation of this statute.

12 Any violation of this section is a Class 5 felony.

13 Section 8. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Nothing in this Act may be construed to prohibit the sale, use, prescription, or administration
16 of a contraceptive measure, drug or chemical, if it is administered prior to the time when a
17 pregnancy could be determined through conventional medical testing and if the contraceptive
18 measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

19 Section 9. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Subject to the provisions of section 7 of this Act, no licensed physician who performs a
22 medical procedure designed or intended to prevent the death of a pregnant mother is guilty of
23 violating section 5 of this Act. Nothing in this Act may be construed to subject the pregnant
24 mother upon whom any abortion is performed or attempted to any criminal conviction and

1 penalty.

2 Section 10. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Terms used in this Act mean:

5 (1) "Pregnant," the human female reproductive condition, of having a living unborn
6 human being within her body throughout the entire embryonic and fetal ages of the
7 unborn child from fertilization to full gestation and child birth;

8 (2) "Unborn human being," an individual living member of the species homo sapiens
9 throughout the entire embryonic and fetal ages of the unborn child from fertilization
10 to full gestation and childbirth;

11 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
12 pellucida of a female human ovum.

13 Section 11. If any provision of this Act is found to be unconstitutional, the provision is
14 severable; and the other provisions of this Act remain effective.

15 Section 12. Nothing in this Act may be construed to repeal, by implication or otherwise, any
16 provision not explicitly repealed.

17 Section 13. If any provision of this Act is ever temporarily or permanently restrained or
18 enjoined by judicial order, the provisions of chapters 34-23A and 22-17 shall be enforced.
19 However, if such temporary or permanent restraining order or injunction is subsequently stayed
20 or dissolved, or otherwise ceases to have effect, all provisions of this Act that are not restrained
21 shall have full force and effect.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

617J0190

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1194** -

02/05/2004

Introduced by: Representatives Lintz, Burg, Deadrick (Thomas), Gassman, Hanson, Hargens, Hundstad, Juhnke, Olson (Mel), Olson (Ryan), Pederson (Gordon), Peterson (Jim), Sigdestad, and Teupel and Senators Duenwald, Bogue, Koskan, and Symens

1 FOR AN ACT ENTITLED, An Act to limit the terms of certain conservation easements.

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

3 Section 1. That § 1-19B-57 be amended to read as follows:

4 1-19B-57. A conservation easement may be created, conveyed, recorded, assigned, released,

5 modified, terminated, or otherwise altered or affected in the same manner as other easements.

6 However, no conservation easement created after July 1, 2004, except for a wetlands easement,

7 may be for a period of more than thirty years. No right or duty in favor of or against a holder and

8 no right in favor of a person having a third-party right of enforcement arises under a

9 conservation easement before its acceptance by the holder and recording the acceptance. An

10 interest in real property in existence at the time a conservation easement is created is not

11 impaired by it unless the owner of the interest is a party to the conservation easement or

12 consents to it.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

465J0626

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1214** -
02/06/2004

Introduced by: Representatives Weems, Begalka, Christensen, Deadrick (Thomas), Frost, Gillespie, Heineman, Kraus, Lange, LaRue, Miles, Rave, Schafer, Teupel, Van Etten, Van Gerpen, and Wick and Senators Koskan, Albers, Brown, Dempster, Duenwald, Ham-Burr, Olson (Ed), Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to require certain prenatal information to be provided when
2 a pregnancy test has been performed and there has been a positive result.

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

4 Section 1. That chapter 34-23B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If any physician, physician assistant, nurse practitioner, or primary health care provider has
7 performed a pregnancy test on a patient and there has been a positive result, such physician,
8 physician assistant, nurse practitioner, or health care provider shall provide educational
9 materials to the patient on prenatal care. The Department of Health shall offer educational
10 materials and guidance to such physicians, physician assistants, nurse practitioners, and health
11 care providers for the purpose of assuring accurate and appropriate patient education.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

942J0696

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1239 - 02/05/2004

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

Introduced by: Representative Hennies

1 FOR AN ACT ENTITLED, An Act to regulate short-term vehicle secured loans.

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

3 Section 1. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A short-term vehicle secured loan is any nonpurchase money regulated consumer loan with
6 an original term of not more than one month wherein, at consummation, a consumer provides
7 to the creditor, as security for the loan, physical possession of the consumer's title to a motor
8 vehicle and a security interest in such motor vehicle. The term does not include any loan with
9 an original term greater than one month, nor does the term include any loan made for the
10 purchase of a motor vehicle.

11 Section 2. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any creditor that makes short-term vehicle secured loans shall immediately take into
14 possession evidence of the consumer's ownership in the motor vehicle being used as collateral
15 and shall note on the face of the loan agreement the vehicle's make, model, year of manufacture,



1 and vehicle identification number.

2 Section 3. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Within twenty-four hours of receiving payment in full of the amount due under a short-term
5 vehicle secured loan, the creditor shall release any filed or recorded liens, provide evidence of
6 the release of lien to the consumer, and return the title to the consumer. If payment has been
7 made by a personal or business check, the creditor may delay the release of lien or return of title
8 by five business days for the purpose of confirming availability of funds.

9 Section 4. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any creditor shall issue the proceeds of any short-term vehicle secured loan in the form of
12 a check drawn on the creditor's bank account, or in cash, or by money order, or by debit card.
13 If the proceeds are issued in the form of a check drawn on the creditor's bank account or by
14 money order, the creditor may not charge a fee for cashing the check or money order if a cashing
15 service is offered by the lender. If the proceeds are issued in cash, the creditor shall provide the
16 consumer with a written verification of the cash transaction and shall maintain a record of the
17 transaction.

18 Section 5. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The creditor shall document each short-term vehicle secured loan transaction by a written
21 agreement signed by the consumer. The written agreement shall contain the name of the
22 creditor, the transaction date, and a statement of the total amount of fees charged, expressed
23 both as a dollar amount and as an annual percentage rate. The written agreement shall also
24 contain a description of the motor vehicle being used as collateral, including its year, make,

1 model, and vehicle identification number.

2 Section 6. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any creditor providing a short-term vehicle secured loan shall display a notice in a
5 prominent place on each short-term vehicle secured loan agreement, in at least 10-point bold
6 type, and post a notice in a prominent place at the location where the short-term vehicle secured
7 loan is transacted, in at least 20-point bold type, in substantially the following form:

8 (1) A SHORT-TERM VEHICLE SECURED LOAN IS NOT INTENDED TO MEET
9 LONG-TERM FINANCIAL NEEDS.

10 (2) YOU SHOULD USE A SHORT-TERM VEHICLE SECURED LOAN ONLY TO
11 MEET SHORT-TERM CASH NEEDS.

12 (3) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF YOU RENEW
13 THE SHORT-TERM VEHICLE SECURED LOAN RATHER THAN PAY THE
14 DEBT IN FULL WHEN DUE.

15 (4) A SHORT-TERM VEHICLE SECURED LOAN IS A HIGHER INTEREST LOAN.
16 YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS ARE
17 AVAILABLE TO YOU.

18 (5) YOU ARE PLACING CONTINUED OWNERSHIP OF YOUR MOTOR VEHICLE
19 AT RISK BY TAKING OUT THIS LOAN.

20 Section 7. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Any consumer may void any short-term vehicle secured loan agreement at no cost if the
23 consumer returns the full amount of the loan no later than the close of business on the day
24 following the transaction.

1 Section 8. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No consumer may have more than one short-term vehicle secured loan agreement
4 outstanding on any one vehicle. No creditor may make a subsequent short-term vehicle secured
5 loan on a second vehicle as long as the consumer has any previous short-term vehicle secured
6 loan which is still outstanding with the creditor.

7 Section 9. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 No creditor may lend any consumer more than one-third of the value of the vehicle secured
10 by the short-term vehicle secured loan.

11 Section 10. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 No creditor may charge interest after obtaining, upon default, possession of the motor
14 vehicle securing the short-term vehicle secured loan.

15 Section 11. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any short-term vehicle secured loan shall be for an original term of no less than one month.
18 A creditor may allow a short-term vehicle secured loan to be renewed no more than eleven
19 additional periods each equal to the original term. However, at each such renewal the consumer
20 must pay at least five percent of the loan's original principal balance, in addition to any finance
21 charge owed, to reduce the principal balance outstanding. If the consumer cannot pay this
22 principal reduction at any renewal, the creditor may either declare the consumer in default or
23 allow the loan to be renewed. If the loan is renewed, the creditor shall reduce the current
24 principal amount of the loan by five percent of the original principal amount for the purpose of

1 calculating interest thereafter. This reduction in principal shall continue to be owed by the
2 consumer, but such amount may not accrue interest thereafter.

3 For the purpose of this section, a renewal is any extension of a short-term vehicle secured
4 loan for an additional period without any change to the short-term vehicle secured loan or its
5 terms other than a reduction in principal. No accrued interest may be capitalized or added to the
6 principal of a short-term vehicle secured loan at the time of any renewal. A renewal may either
7 be in a separate written agreement, or the original loan agreement may allow for renewals to
8 occur automatically or as otherwise agreed between the parties.

9 Section 12. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any creditor offering short-term vehicle secured loans shall post a notice of the charges
12 imposed by the creditor on such loans at the location where the short-term vehicle secured loan
13 is transacted. The notice shall disclose the charges imposed, as a dollar amount and an annual
14 percentage rate, using as an example a five hundred dollar loan for a thirty-day period. The
15 notice shall also provide the following statement: "Should you wish to file a complaint against
16 this lender, you may contact the South Dakota Division of Banking at (telephone number)." The
17 Division of Banking shall inform all creditors offering short-term vehicle secured loans of the
18 telephone number that they must use on this notice.

19 Section 13. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 With respect to a short-term vehicle secured loan, any interest or fees which are undisclosed
22 or in excess of those agreed upon by the parties may be recovered by the consumer in a private
23 civil action or other proceeding as may be agreed upon by the parties.

24 Before pursuing any action or proceeding against a creditor related to a short-term vehicle

1 secured loan, each consumer shall provide the creditor with a written notice via certified mail
2 that such an action or proceeding is contemplated, identifying with specificity, including the
3 dollar amount thereof, the interest, fees, or charges of the loan which the consumer contends
4 were undisclosed or excessive. Upon receipt of this notice from the consumer, the creditor shall
5 respond in writing, via certified mail, within fifteen days with either an explanation of the
6 method of charging and disclosure and the creditor's response or a full refund of all excessive
7 or undisclosed charges along with an explanation of the calculation of such refund. If the
8 creditor shall, within fifteen days of receipt of the notice from the consumer, tender to the
9 consumer the allegedly excessive or undisclosed interest, fees, or charges such tender shall be
10 a complete defense to any further action or proceeding.

11 Each creditor shall include information regarding the notice provided within this section,
12 and the creditor's obligation to respond, in the short-term vehicle secured loan agreement.

13 Section 14. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 No creditor may consummate any short-term vehicle secured loan until the creditor has
16 drawn the attention of the consumer to the information displayed pursuant to section 6 of this
17 Act and to the disclosures posted pursuant to section 12 of this Act. All such information and
18 disclosures shall be reduced to writing, and the consumer shall sign such writing, attesting that
19 he or she has read and understands the information and disclosures.

20 The signed document provided for in this section shall be separate from the written
21 agreement provided for in section 5 of this Act.

22 Section 15. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any creditor who makes short-term vehicle secured loans shall maintain and make available

1 for inspection by the Division of Banking all documentation required to evidence compliance
2 with the provisions of this Act.

3 Section 16. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 No person who is a licensed motor vehicle dealer, or otherwise engages in the business of
6 selling motor vehicles to the general public, may offer or make short-term vehicle secured loans.
7 Nothing in this section restricts or prohibits a creditor's right to sell any motor vehicle serving
8 as collateral for a short-term vehicle secured loan, possession of which is obtained after default
9 according to law, if the creditor sells the vehicles in a commercially reasonable manner and does
10 not sell the vehicles from the same office or location at which the loans are offered or made.

11 Section 17. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Except in the event of fraud by the consumer, if a consumer defaults in the repayment of a
14 short-term vehicle secured loan, the creditor's sole remedy is to seek possession and sale of the
15 motor vehicle securing the loan, and the creditor may not pursue the consumer personally in any
16 action or proceeding for repayment of the loan or for any deficiency after sale. Notwithstanding
17 this section, the creditor shall still return to the consumer any surplus obtained after sale in
18 excess of the amount owed on the loan and any reasonable expenses of repossession, storage,
19 and sale, including court costs and attorney's fees.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

184J0094

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1275 - 02/04/2004

Introduced by: Representatives Kraus, Adelstein, Gillespie, Hennies, McCaulley, Michels, Novstrup, Olson (Mel), Peterson (Bill), Sebert, Teupel, and Van Etten and Senators Abdallah, Bogue, de Hueck, Duenwald, Duniphan, Ham-Burr, McCracken, and Moore

1 FOR AN ACT ENTITLED, An Act to require chemical tests of drivers involved in accidents
2 resulting in serious bodily injury.

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

4 Section 1. That § 32-23-10 be amended to read as follows:

5 32-23-10. Any person who operates any vehicle in this state is considered to have given
6 consent to the withdrawal of blood or other bodily substance and chemical analysis of the
7 person's blood, breath, or other bodily substance to determine the amount of alcohol in the
8 person's blood and to determine the presence of marijuana or any controlled drug or substance.

9 The person shall be requested by the officer to submit to the withdrawal of blood or other
10 bodily substance for chemical analysis or chemical analysis of the person's breath and shall be
11 advised by the officer that:

12 (1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal
13 or chemical analysis may be required unless the person has been arrested for a third,
14 fourth, or subsequent violation of § 32-23-1, constituting a felony offense under



1 § 32-23-4 or 32-23-4.6 ~~or~~ has been arrested for vehicular homicide under § 22-16-41
2 or vehicular battery under § 22-16-42; or has been involved in an accident resulting
3 in death or serious bodily injury of another person;

4 (2) If the person refuses to submit to the withdrawal or chemical analysis, the person's
5 driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the
6 person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation
7 order being issued; and

8 (3) The person has the right to have a chemical analysis performed by a technician of the
9 person's own choosing at the person's own expense, in addition to the test requested
10 by the officer.

11 Section 2. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 For purposes of § 32-23-10, serious bodily injury is such injury as is grave and not trivial,
14 and gives rise to apprehension of danger to life, health, or limb.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

459J0618

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1298 - 02/04/2004

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

Introduced by: Representatives Olson (Ryan), Cutler, Kraus, and Rave and Senators Ham-Burr, Abdallah, de Hueck, Jaspers, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding implied consent for
2 withdrawal of bodily substances and chemical tests when operating a motor vehicle.

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

4 Section 1. That § 32-23-10 be repealed.

5 ~~— 32-23-10. Any person who operates any vehicle in this state is considered to have given~~
6 ~~consent to the withdrawal of blood or other bodily substance and chemical analysis of the~~
7 ~~person's blood, breath, or other bodily substance to determine the amount of alcohol in the~~
8 ~~person's blood and to determine the presence of marijuana or any controlled drug or substance.~~

9 ~~— The person shall be requested by the officer to submit to the withdrawal of blood or other~~
10 ~~bodily substance for chemical analysis or chemical analysis of the person's breath and shall be~~
11 ~~advised by the officer that:~~

12 ~~— (1) — If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~
13 ~~or chemical analysis may be required unless the person has been arrested for a third,~~
14 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~



1 ~~§ 32-23-4 or 32-23-4.6 or has been arrested for vehicular homicide under § 22-16-41~~
2 ~~or vehicular battery under § 22-16-42;~~

3 ~~(2) If the person refuses to submit to the withdrawal or chemical analysis, the person's~~
4 ~~driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the~~
5 ~~person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation~~
6 ~~order being issued, and~~

7 ~~(3) The person has the right to have a chemical analysis performed by a technician of the~~
8 ~~person's own choosing at the person's own expense, in addition to the test requested~~
9 ~~by the officer.~~

10 Section 2. That § 32-23-10.1 be repealed.

11 ~~32-23-10.1. If a person refuses to submit to chemical analysis of the person's blood, urine,~~
12 ~~breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for~~
13 ~~chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for~~
14 ~~violation of § 32-23-1 or 32-23-21, such refusal may be admissible into evidence at the trial.~~

15 Section 3. That § 32-23-11 be repealed.

16 ~~32-23-11. Any person subject to license revocation for failure to submit to the withdrawal~~
17 ~~and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall~~
18 ~~demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the~~
19 ~~secretary of public safety finds that the law enforcement officer complied with the law and the~~
20 ~~refusal was made by the person, the secretary shall revoke that person's license to drive and any~~
21 ~~nonresident operating privileges for one year. The secretary shall determine if the person is~~
22 ~~eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter~~
23 ~~1-26 for determining that eligibility.~~

24 ~~The secretary of public safety may promulgate rules for restricted licenses as follows:~~

- 1 ~~—(1)— Eligibility;~~
- 2 ~~—(2)— Application;~~
- 3 ~~—(3)— Determination;~~
- 4 ~~—(4)— Limitations; and~~
- 5 ~~—(5)— Grounds for revocation.~~

6 Section 4. That § 32-23-11.1 be repealed.

7 ~~—32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11~~
8 ~~or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating~~
9 ~~§ 32-23-1 is dismissed by the state prior to the departmental hearing and the person is not~~
10 ~~convicted of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a~~
11 ~~revocation order being issued.~~

12 Section 5. That § 32-23-13 be repealed.

13 ~~—32-23-13. If any operator of a motor vehicle in this state who has been requested to submit~~
14 ~~to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to~~
15 ~~submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test~~
16 ~~shall constitute consent and authority to administer a test notwithstanding the age of the operator~~
17 ~~of the motor vehicle.~~

18 Section 6. That § 32-23-18 be repealed.

19 ~~—32-23-18. The Department of Public Safety shall revoke the license of any person arrested~~
20 ~~for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed~~
21 ~~by a law enforcement officer pursuant to § 32-23-10.~~

22 Section 7. That § 32-23-19 be repealed.

23 ~~—32-23-19. A law enforcement officer shall serve the notice of intent to revoke, on behalf of~~
24 ~~the Department of Public Safety and shall take possession of any driver's license issued by this~~

1 ~~state held by the person if the arrested driver refuses to submit to a chemical analysis as directed~~
2 ~~by the officer pursuant to § 32-23-10. A copy of the completed notice of intent to revoke form,~~
3 ~~and any South Dakota driver's license taken into possession shall be forwarded to the~~
4 ~~department by the officer. If a valid South Dakota driver's license is surrendered, the notice of~~
5 ~~intent to revoke shall function as a temporary license which is valid for one hundred twenty~~
6 ~~days. Upon receipt of a petition for a hearing, the department may extend the temporary license~~
7 ~~thirty days following the scheduled date of the hearing.~~

8 Section 8. That § 32-23-20 be repealed.

9 ~~— 32-23-20. The department shall revoke the person's license to drive and any nonresident~~
10 ~~operating privileges pursuant to § 32-23-11.~~

11 Section 9. That § 19-13-28.1 be repealed.

12 ~~— 19-13-28.1. Notwithstanding the provisions of § 19-13-28, when a person stands trial for~~
13 ~~driving while under the influence of alcohol or drugs, as provided under § 32-23-1, and that~~
14 ~~person has refused chemical analysis, as provided in § 32-23-10, such refusal is admissible into~~
15 ~~evidence. Such person may not claim privilege against self-incrimination with regard to~~
16 ~~admission of refusal to submit to chemical analysis.~~

17 Section 10. That § 32-12A-36 be amended to read as follows:

18 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period
19 of not less than one year:

20 (1) If convicted of a first violation of driving or being in actual physical control of a
21 commercial motor vehicle while under the influence of alcohol, or any controlled
22 drug or substance, in violation of § 32-23-1;

23 (2) If convicted of a first violation of driving or being in actual physical control of a
24 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol

1 in that person's blood as shown by chemical analysis of that person's breath, blood
2 or other bodily substance, in violation of § 32-12A-44;

3 (3) If convicted of a first violation of leaving the scene of an accident while operating a
4 commercial motor vehicle, in violation of § 32-34-5 or 32-34-6;

5 (4) If convicted of a first violation of using a commercial motor vehicle in the
6 commission of any felony; or

7 (5) For refusing to submit to a chemical analysis for purposes of determining the amount
8 of alcohol in that person's blood while driving a commercial motor vehicle in
9 violation of § ~~32-23-11~~, 32-12A-43; or 32-12A-46.

10 If any of these violations or refusal occurred while transporting hazardous material required
11 to be placarded, the person is disqualified for a period of not less than three years.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

447J0247

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 13** - 02/05/2004

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise the residency requirements for voting purposes
2 and to revise the criteria for determining if any person has voted more than once at any
3 election.

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

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

6 12-1-4. For the purposes of this title, the term, residence, means the place in which a person
7 has fixed his or her habitation and to which the person, whenever absent, intends to return.

8 A person who has left home and gone into another state or territory or county of this state
9 for a temporary purpose only has not changed his or her residence.

10 A person is considered to have gained a residence in any county or municipality of this state
11 in which the person actually lives, if the person has no present intention of leaving ~~and has~~
12 ~~actually resided in South Dakota for at least thirty consecutive days.~~

13 If a person moves to another state, or to any of the other territories, with the intention of
14 making it his or her permanent home, the person thereby loses residence in this state.

15 Section 2. That § 12-26-8 be amended to read as follows:



1 12-26-8. A person who votes more than once at any election or who offers to vote after
2 having once voted, either in the same or in another election precinct in South Dakota or
3 elsewhere, is guilty of a Class 1 misdemeanor.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

447J0252

SENATE ENGROSSED NO. **SB 15** - 01/27/2004

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain miscellaneous procedures at the polling
2 place and to provide certain penalties.

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

4 Section 1. That § 12-15-9 be amended to read as follows:

5 12-15-9. Before performing election day duties, each precinct superintendent and precinct
6 deputy of the election and counting boards shall severally take an oath in the following form:

7 I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct
8 superintendent (or precinct deputy) according to law and the best of my ability and that I will
9 studiously endeavor to prevent fraud, deceit, and abuse and that I will act in an impartial manner
10 in conducting the election about to be held.

11 The members of the precinct election board may administer the oath to each other. The
12 person administering the oaths shall cause an entry thereof to be made and signed by the person
13 and prefixed to the pollbook. A violation of this oath is a Class 1 misdemeanor.

14 Section 2. That § 12-17B-7 be amended to read as follows:

15 12-17B-7. Before entering the voting booth, ~~each~~ any voter ~~shall be offered~~ may request



1 instruction in the proper procedure for marking the ballot to ensure that the tabulating equipment
2 is able to read the vote cast. No instructions may be given after the voter has entered the voting
3 booth. No precinct official or person assisting a voter may in any manner request, suggest, or
4 seek to persuade or induce any voter to cast a vote for any particular ticket, candidate, or
5 measure to be voted on. All instructions shall be given in such a manner that it may be observed
6 by other persons in the polling place.

7 Section 3. That § 12-18-6.1 be amended to read as follows:

8 12-18-6.1. ~~Before a person makes an application for ballots~~ When a voter is requesting a
9 ballot, the voter shall present a valid form of personal identification. The personal identification
10 that may be presented shall be either:

- 11 (1) A South Dakota driver's license or nondriver identification card;
- 12 (2) A passport or an identification card, including a picture, issued by an agency of the
13 United States government;
- 14 (3) A tribal identification card, including a picture; or
- 15 (4) An identification card, including a picture, issued by a high school or an accredited
16 institution of higher education, including a university, college, or technical school,
17 located within the State of South Dakota.

18 Section 4. That § 12-18-9 be amended to read as follows:

19 12-18-9. Any person, ~~except a candidate who is on the ballot being voted on at that polling~~
20 place, may be present at any polling place for the purpose of observing the voting ~~and counting~~
21 process. Any person may be present to observe the counting process. A candidate who is on the
22 ballot being voted on at a polling place may only be present to cast the candidate's vote during
23 voting hours. A number of poll watchers shall be permitted for each candidate at a primary
24 election or political party and independent candidate at a general election pursuant to

1 § 12-18-8.1. ~~Poll watchers shall be allowed to position themselves~~ Each polling place shall be
2 arranged in a manner that permits each poll watcher to be positioned in a location where they
3 the poll watcher can plainly see and hear what is done within the polling place, ~~and such polling~~
4 ~~place shall be arranged that poll watchers shall be so accommodated.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0263

SENATE ENGROSSED NO. **SB 18** - 02/02/2004

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

1 FOR AN ACT ENTITLED, An Act to update certain provisions pertaining to motor carrier
2 safety and transportation of hazardous materials.

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

4 Section 1. That § 49-28A-3 be amended to read as follows:

5 49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B,
6 chapter I, subchapter C, parts 107 (subparts F and G only) and 171 to 180, inclusive, as amended
7 through January 1, ~~2003~~ 2004, and Title 49 of the Code of Federal Regulations, subtitle B,
8 chapter III, subchapter B, parts 390 to 397, inclusive, as amended through January 1, ~~2003~~ 2004,
9 with the following modifications:

10 (1) All references to interstate operations shall also include intrastate operations except
11 that drivers and motor carriers operating intrastate vehicles and combinations of
12 vehicles with three axles or less or with a gross vehicle weight rating of not more
13 than twenty-six thousand pounds which are not used to transport hazardous materials
14 requiring placarding under part 177, or designed to transport more than fifteen
15 passengers, including the driver, are not subject to parts 390-397;



1 (2) For the purposes of part 391.11(b)(1), a driver shall be at least twenty-one years old
2 if engaged in interstate commerce, or transporting hazardous material of a type or
3 quantity requiring placarding under part 177, or operating a vehicle designed to
4 transport more than fifteen passengers, including the driver. All other drivers shall
5 be at least sixteen years of age;

6 (3) Intrastate drivers are exempt from the physical requirements of part 391.41.

7 Any violation of parts 390 to 396, inclusive, the motor carrier safety requirements governing
8 the qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe
9 operation, notification and reporting of accidents, assistance with investigations and special
10 studies, hours of service of drivers, inspection, repair, and maintenance is a Class 2
11 misdemeanor. Any violation of the hazardous materials regulations pertaining to registration of
12 cargo tank motor vehicles, registration of persons who offer or transport hazardous materials,
13 general information, regulations and definitions, hazardous materials tables, hazardous materials
14 communication regulations, and test and inspection marking requirements found in parts 107
15 (subparts F and G only), 171, 172, and 178 to 180, inclusive, is a Class 2 misdemeanor. Any
16 violation of the hazardous materials regulations pertaining to packaging, prohibited shipments,
17 loading and unloading, segregation and separation, retesting and inspection of cargo tanks, and
18 other carriage by regulations found in parts 173 to 180, inclusive, or violation of the driving and
19 parking rules in part 397, is a Class 1 misdemeanor.

20 Section 2. That chapter 49-28A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Hours-of-service regulations promulgated by the United States Department of
23 Transportation at 68 Federal Register 22456, in April 2003, (Federal hours-of-service
24 amendments) shall apply to utility service vehicles owned or operated by gas or electric utilities

1 while engaged in intrastate commerce within this state, on or after January 1, 2006. However,
2 hours-of-service regulations that were applicable in the State of South Dakota immediately prior
3 to January 4, 2004, shall remain applicable to gas or electric utility service vehicles until
4 January 1, 2006.

5 Section 3. That chapter 49-28A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 If the United States Department of Transportation issues an official formal finding that one
8 or more portions of this statute may result in the loss of Federal Motor Carrier Safety Assistance
9 Program funding, the Department of Public Safety may, by rule promulgated pursuant to chapter
10 1-26, implement the 2004 federal hours-of-service amendment as may be appropriate to
11 preserve such federal funding.

12 If federal law or regulations are amended, or otherwise altered under law, at any time to
13 cause to be exempted a class or group of vehicles, which class or group would include such gas
14 or electric utility service vehicles within this state, from the hours-of-service requirements, any
15 exemption shall be effective in this state immediately for the duration of the federal exemption.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0443

SENATE ENGROSSED NO. **SB 40** - 01/22/2004

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

1 FOR AN ACT ENTITLED, An Act to prohibit certain snowmobiles from being operated on a
2 state snowmobile trail or area.

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

4 Section 1. That chapter 32-20A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 No person may operate a snowmobile on a state snowmobile trail or area established
7 pursuant to the provisions of chapter 41-19 unless the snowmobile has a curb weight of less than
8 fourteen hundred pounds, is driven by track contact with the snow, and is steered by ski contact
9 with the snow. A violation of this section is a Class 2 misdemeanor.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0331

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 51** - 01/21/2004

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Certification Board for Alcohol
2 and Drug Professionals and to provide for its powers and duties.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the South Dakota Certification Board for Alcohol and Drug Professionals;
6 and

7 (2) "Practitioner," a person certified under this Act in the practice of chemical
8 dependency counseling or prevention services who holds himself or herself out to the
9 public by any title or description of services which uses the words certified chemical
10 dependency counselor or certified prevention specialist or derivatives thereof.

11 Section 2. That § 36-32-11 be amended to read as follows:

12 36-32-11. No person may represent himself or herself as a licensed or certified chemical
13 dependency counselor (CCDC) or certified prevention specialist unless he the person is certified
14 by the South Dakota ~~Chemical Dependency Counselor~~ Certification Board for Alcohol and Drug
15 Professionals.



1 Section 3. There is hereby created the South Dakota Certification Board for Alcohol and
2 Drug Professionals that consists of nine members. One member shall be a lay member and
3 resident of the state; one member shall be an educator from an addiction studies postsecondary
4 education program; four members shall be certified chemical dependency counselors in active
5 practice within the state and broadly representing a cross section of the profession of chemical
6 dependency counseling; one member shall be a certified prevention specialist; one member shall
7 be an attorney licensed to practice law in the State of South Dakota; and one member shall be
8 a certified practitioner who is an enrolled member of a tribe. This board replaces the functions
9 previously performed by the South Dakota Chemical Dependency Counselor Certification
10 Board, a private nonprofit entity doing business as the Certification Board for Alcohol and Drug
11 Professionals.

12 Section 4. The Governor shall appoint the members to the board. Initial appointments to the
13 board shall be staggered for terms of one, two, and three years, with three members appointed
14 for one year, three members appointed for two years, and three members appointed for three
15 years. Thereafter, appointments shall be for terms of three years beginning on the first day of
16 July.

17 Section 5. The Governor may remove any member of the board for cause. If there is a
18 vacancy on the board caused by the death, resignation, removal from the state of any member,
19 or for any other reason, the Governor shall appoint a new member to serve the unexpired term.
20 No member of the board may serve for more than two successive full terms.

21 Section 6. The initial meeting of the board shall occur at Pierre, South Dakota, within one
22 month after the appointment of the ninth member. The board shall elect a chair, vice-chair, and
23 a secretary-treasurer from its members. Thereafter the board shall elect officers annually. The
24 board shall meet at least once a year at a place and time determined by the chair. However, a

1 majority of the board may call a meeting without the assent of the chair.

2 Section 7. The secretary of the board shall provide for taking and keeping the minutes of all
3 board meetings.

4 Section 8. A majority of board members constitutes a quorum. A majority vote of those
5 present constitutes a decision of the entire board.

6 Section 9. The board is within the Department of Human Services. The department shall
7 provide all administrative functions other than those of the board member serving as secretary.
8 The expenses of the department shall be paid from the account established in section 10 of this
9 Act, on vouchers approved by the secretary of human services. The board shall submit an annual
10 report and such records, information, and reports in the form and at such times as required by
11 the secretary of human services.

12 Section 10. The board may accept any funds which may be made available to it from any
13 source. All funds received by the board shall be paid to the state treasurer on or before the tenth
14 day of the next month. The state treasurer shall keep the money in a separate account for the
15 board. The money in that account is continuously appropriated to the board for administering
16 and enforcing this Act. The board may expend funds for administrative, consultant, secretarial,
17 clerical, and stenographic services for the board. No expense may be incurred by the board
18 exceeding the total money collected by the board under the provisions of this Act. The board
19 shall transfer preexisting funds of the South Dakota Chemical Dependency Counselor
20 Certification Board the entity doing business as the Certification Board for Alcohol and Drug
21 Professionals into the account established in this Act.

22 Section 11. The board members shall be paid pursuant to § 3-9-2.

23 Section 12. No member of the board is civilly liable for any act taken while acting within
24 the scope of the member's official duties as a board member.

1 Section 13. The board shall:

- 2 (1) Through its policies and activities, and by rules promulgated pursuant to chapter 1-
3 26, establish standards for, and promote, the qualified practice of chemical
4 dependency prevention and counseling services;
- 5 (2) Be responsible for all disciplinary proceedings under this Act;
- 6 (3) Establish, by rules promulgated pursuant to chapter 1-26, educational, training and
7 competency, and ethical standards governing the examination and practice of
8 practitioners under this Act;
- 9 (4) Examine, or cause to be examined, for competency, eligible applicants, for
10 certification to practice chemical dependency prevention and counseling services;
- 11 (5) Issue certificates to those applicants who successfully complete the certification
12 requirements and renew the certifications of those practitioners who continue to meet
13 the certification standards of this Act;
- 14 (6) Register, pursuant to rules promulgated pursuant to chapter 1-26, those applicants
15 who successfully complete the certification requirements; and
- 16 (7) Establish and collect, pursuant to rules promulgated pursuant to chapter 1-26, fees
17 for certification, registration, examination, continuing education, certificate renewal,
18 and reinstatement.

19 Section 14. The board may promulgate rules, pursuant to chapter 1-26, to provide fees for
20 all examinations, certifications, recognitions, renewals, services, and charges authorized by this
21 Act. The fees may not exceed the following maximums:

- 22 (1) Application materials or portfolio reviews, twenty-five dollars;
- 23 (2) Chemical dependency counselor certification application and examination fee, two
24 hundred fifty dollars;

- 1 (3) Chemical dependency counselor certification retest fee, two hundred dollars;
- 2 (4) Chemical dependency counselor certification renewal fee, one hundred fifty dollars;
- 3 (5) Chemical dependency counselor certification level upgrade, one hundred fifty
- 4 dollars;
- 5 (6) Chemical dependency counselor replacement or duplicate certificate, fifteen dollars;
- 6 (7) Chemical dependency counselor certification replacement card, five dollars;
- 7 (8) Chemical dependency counselor trainee recognition fee, one hundred fifty dollars;
- 8 (9) Chemical dependency counselor trainee renewal fee, one hundred dollars;
- 9 (10) Chemical dependency counselor trainee replacement or duplicate certificate fee,
- 10 fifteen dollars;
- 11 (11) Prevention specialist certification application and examination fee, two hundred fifty
- 12 dollars;
- 13 (12) Prevention specialist certification retest fee, two hundred dollars;
- 14 (13) Prevention specialist certification renewal fee, one hundred fifty dollars;
- 15 (14) Prevention specialist replacement or duplicate certificate, fifteen dollars;
- 16 (15) Prevention specialist certification replacement card, five dollars;
- 17 (16) Prevention specialist trainee recognition fee, one hundred fifty dollars;
- 18 (17) Prevention specialist trainee renewal fee, one hundred dollars;
- 19 (18) Prevention specialist trainee replacement or duplicate certificate fee, fifteen dollars;
- 20 (19) Trainee intern replacement certificate, fifteen dollars;
- 21 (20) Trainee intern replacement certificate, fifteen dollars;
- 22 (21) Registration as a continuing education provider, twenty-five dollars; and
- 23 (22) Mailing labels charge, one hundred dollars.

24 Section 15. A chemical dependency counselor trainee may perform chemical dependency

1 counseling services so long as the trainee is working under the supervision of a certified
2 chemical dependency counselor.

3 Section 16. A prevention specialist trainee may perform prevention services so long as the
4 trainee is working under the supervision of a certified prevention specialist or certified chemical
5 dependency counselor, level II or III.

6 Section 17. The board may use its own staff or employ certified chemical dependency
7 counselors, certified prevention specialists, agents, or investigators to assist in the enforcement
8 of this Act or any rule promulgated by the board. Any person violating the provisions of this Act
9 may be enjoined from further violations by an action brought by the state's attorney of the
10 county where the violations occurred or by an action brought by any citizen in the state. The
11 attorney general, the board, or the state's attorney may apply to the circuit court for the county
12 in which a violation of this Act is alleged to have occurred for an order enjoining or restraining
13 the commission or continuance of the acts. The board may authorize a hearing examiner to
14 conduct the hearing required to determine a violation of this Act.

15 Section 18. The board may, if it deems best for the enforcement of this Act or in the conduct
16 of its duties, employ an attorney designated by the attorney general and subject to the
17 supervision, control, and direction of the attorney general. The board shall fix and determine the
18 compensation and period of service of the attorney who shall be paid out of the funds of the
19 board.

20 Section 19. The board shall receive complaints from its members, consumers, third party
21 carriers providing financial reimbursement for chemical dependency prevention or counseling
22 services, or the public concerning a practitioner's professional practices. Each complaint
23 received shall be logged by the secretary-treasurer recording the practitioner's name, name of
24 the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate

1 disposition. The board shall investigate each alleged violation of this Act. All disciplinary
2 proceedings held under the authority of this Act shall be conducted in accordance with chapter
3 1-26.

4 Section 20. The decision of the board to suspend or revoke a certification requires a majority
5 vote of all the board members.

6 Section 21. If the board determines that any complaint is frivolous or clearly unfounded in
7 fact, the board may dismiss the complaint and, by a separate and unanimous vote of the board,
8 may expunge the complaint from the record of the certified practitioner.

9 Section 22. Any practitioner subject to this Act shall practice in accordance with the
10 standards established by the board and is subject to the exercise of the disciplinary sanctions
11 enumerated in section 24 of this Act if, after a hearing in the manner provided in chapter 1-26,
12 the board finds that:

- 13 (1) A practitioner has employed or knowingly cooperated in fraud or material deception
14 in order to obtain a certification to practice the profession, or has engaged in fraud
15 or material deception in the course of professional services or activities;
- 16 (2) A practitioner has been convicted in any court of a felony;
- 17 (3) A practitioner has engaged in or permitted the performance of unacceptable patient
18 care by the practitioner or by auxiliaries working under the practitioner's supervision
19 due to any deliberate or negligent act or failure to act;
- 20 (4) A practitioner has knowingly violated any provision of this Act or board rules;
- 21 (5) A practitioner has continued to practice although the practitioner has become unfit
22 to practice due to professional incompetence, failure to keep abreast of current
23 professional theory or practice, physical or mental disability, or addiction or severe
24 dependency upon or use of alcohol or other drugs which endanger the public by

1 impairing a practitioner's ability to practice safely;

2 (6) A practitioner has engaged in lewd or immoral conduct in connection with the
3 delivery of chemical dependency or prevention services to consumers;

4 (7) A practitioner has or is employing or assisting an uncertified person to hold himself
5 or herself out as a certified chemical dependency counselor or certified prevention
6 specialist; or

7 (8) A practitioner has engaged in false or misleading advertising.

8 No suspension or revocation may be based on a judgment as to therapeutic value of any
9 individual treatment rendered, but only upon a repeated pattern or trend of treatment resulting
10 in unacceptable results.

11 Section 23. The board may, in a disciplinary proceeding, order a practitioner to submit to
12 a reasonable physical or mental examination if the practitioner's physical or mental capacity to
13 practice safely is at issue. Failure to comply with a board order to submit to a physical or mental
14 examination renders a practitioner liable to the summary revocation procedures described in
15 section 25 of this Act.

16 Section 24. The board may impose any of the following sanctions, singly or in combination,
17 if the board finds that a practitioner has violated any part of section 22 of this Act:

18 (1) Revoke a practitioner's certification to practice for an indefinite length of time;

19 (2) Suspend a practitioner's certification for a specific or indefinite length of time;

20 (3) Censure a practitioner;

21 (4) Issue a letter of reprimand;

22 (5) Place a practitioner on probationary status and require the practitioner to report
23 regularly to the board on the matters which are the basis for probation;

24 (6) Limit the practitioner's practice to areas prescribed by the board and continue to

1 renew professional education until a satisfactory degree of skill has been attained in
2 those areas which are the basis of the probation;

3 (7) Require the practitioner to reimburse the board in an amount equal to the costs
4 incurred for the investigation and disciplinary hearing.

5 The board may withdraw the probation if the board finds the deficiencies that resulted in
6 disciplinary action have been remedied.

7 Certification shall remain in effect during the pendency of an appeal unless suspended under
8 section 25 of this Act.

9 Section 25. The board may summarily suspend a practitioner's certification in advance of
10 a final adjudication or during the appeals process if the board finds that a practitioner would
11 represent a clear and immediate danger to the public health and safety if the practitioner were
12 allowed to continue to practice. A practitioner whose certification is suspended under this
13 section is entitled to a hearing before the board within twenty days after the effective date of the
14 suspension. The practitioner may subsequently appeal the suspension to circuit court in
15 accordance with chapter 1-26.

16 Section 26. Any practitioner whose certification or registration to practice has been
17 suspended or revoked may be reinstated or a new certification or registration may be issued, as
18 the case may be, if in the discretion of the board, such action is warranted. The board may
19 require the applicant to pay all costs of the proceedings resulting in the applicant's suspension
20 or revocation of certification or registration and reinstatement or new certification or
21 registration. In addition, the board may, by rule promulgated pursuant to chapter 1-26, require
22 a fee for reinstatement, not to exceed one hundred fifty dollars.

23 Section 27. In the prosecution of any person for violation of this Act, it is not necessary to
24 allege or prove lack of valid certification. Proof of certification or registration is a matter of

1 defense to be established by the defendant.

2 Section 28. Nothing in this Act may be construed to limit the ongoing certification of any
3 person at the level of certification and for the time period established under the former South
4 Dakota Chemical Dependency Counselor Certification Board doing business as the Certification
5 Board for Alcohol and Drug Professionals

6 Section 29. That subdivision (4) of § 34-20A-2 be amended to read as follows:

7 (4) "Chemical dependency counselor," a level II or III counselor certified by the South
8 Dakota ~~Chemical Dependency Counselor Certification Board, Incorporated for~~
9 Alcohol and Drug Professionals;

10 .