



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0318

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1049** - 01/26/2005

**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 Judiciary at the request of the Department of Game, Fish and Parks

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the permitting and  
2 the regulation of shooting preserves and to declare an emergency.

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

4 Section 1. That § 41-10-1 be amended to read as follows:

5 41-10-1. ~~In~~ Terms used in this chapter, ~~unless the context otherwise requires~~ mean:

6 (1) "Commission," ~~shall mean the South Dakota~~ the Game, Fish and Parks Commission,  
7 acting directly or through its duly authorized officers or agents;

8 (2) "Department," the Department of Game, Fish and Parks, acting directly or through  
9 its duly authorized officers or agents;

10 (3) "Person," ~~shall include~~ includes individuals, copartnerships, associations, and  
11 corporations;

12 (3)(4) "Shooting ~~preserves~~ preserve," ~~shall be an~~ any acreage either privately owned  
13 or leased on which hatchery raised game is released for the purpose of hunting,  
14 for a fee, over an extended season.



1 Section 2. That § 41-10-2 be amended to read as follows:

2 41-10-2. The ~~Game, Fish and Parks Commission~~ department may issue and renew shooting  
3 preserve operating permits for privately owned and operated shooting preserves.

4 Section 3. That § 41-10-3 be amended to read as follows:

5 41-10-3. Any person owning, holding, or controlling, by lease or otherwise, any contiguous  
6 tract of land of not more than ~~one~~ two thousand ~~two~~ five hundred ~~eighty~~ sixty acres, who desires  
7 to establish a shooting preserve under the regulations provided in this chapter, ~~shall~~ may make  
8 application to the ~~Game, Fish and Parks Commission~~ department for a shooting preserve  
9 operating permit. ~~Said~~ The application shall be made by the applicant, ~~his agent, or his~~ or the  
10 applicant's agent or attorney, and shall be accompanied by a fee which is determined as provided  
11 by § 41-10-4.

12 Section 4. That § 41-10-4.5 be amended to read as follows:

13 41-10-4.5. Upon receipt of a written application for a new shooting preserve operating  
14 permit, the ~~commission shall schedule a public hearing on the application~~ department shall  
15 notify the public of the application by publishing notice of the time and manner in which  
16 interested persons may present data, opinions, or arguments in writing to the department on the  
17 application and the manner in which interested persons may request status as an interested party  
18 and request receipt of written notice of the decision of the department. The department shall  
19 publish the notice of the time, place, and purpose of the hearing once at least twenty days ~~before~~  
20 the hearing prior to the time designated by the department in the published notice in at least  
21 three newspapers of general circulation in areas of the state likely to be affected by the proposed  
22 permit. ~~After the hearing, the commission may issue the permit in accordance with the~~  
23 requirements of § 41-10-7. No more than ten days after the time designated by the department  
24 in the published notice, the department shall provide and mail by certified mail, return receipt

1 requested, written notice of its decision made in accordance with the requirements of § 41-10-7  
2 to the applicant and to any person who submitted within the prescribed time and manner data,  
3 opinions, or arguments in writing to the department in opposition to issuance of the new  
4 operating permit and who requested the status as an interested party in accordance with this  
5 section and the published notice. The date that written notice of the decision is mailed to the  
6 applicant and to an interested person who requested the status of an interested party constitutes  
7 the respective date notice of application denial or approval has been provided as referenced in  
8 sections 9 and 10 of this Act.

9 Section 5. That § 41-10-6 be amended to read as follows:

10 41-10-6. Upon receipt of the application for a shooting preserve operating permit, the ~~Game,~~  
11 ~~Fish and Parks Commission~~ department shall inspect the area described in ~~such~~ the application,  
12 the premises, and the facilities. The ~~commission~~ department also shall evaluate the ability of the  
13 applicant to operate an area of this character.

14 Section 6. That § 41-10-7 be amended to read as follows:

15 41-10-7. If the ~~Game, Fish and Parks Commission~~ department ~~finds that~~ is satisfied that all  
16 of the following criteria have been established by the applicant:

- 17 (1) The applicant for a shooting preserve operating permit proposes to comply with all  
18 of the provisions of this chapter;
- 19 (2) The applicant is financially able to provide the necessary facilities and services to  
20 operate a shooting preserve;
- 21 (3) The preserve shall be open to the general public without restrictions as to race, color,  
22 or creed;
- 23 (4) The operation will not work a fraud upon persons who are permitted to hunt thereon;
- 24 (5) The operation is not designed to circumvent game laws and regulations;

1 (6) The issuance of the permit will be in the public interest;

2 (7) The applicant is a resident of the state;

3 (8) The applicant does not operate or own any interest in more than ~~two~~ one shooting  
4 ~~preserves~~ preserve comprised of a contiguous tract of land of more than one thousand  
5 two hundred eighty acres nor more than two shooting preserves each of which are  
6 comprised of a contiguous tract of land of one thousand two hundred eighty acres or  
7 less; and

8 (9) The preserve for which an operating permit is requested is at least one mile from any  
9 game production area or other publicly owned shooting area, or if located within one  
10 mile of such areas, the preserve would not take unfair advantage of wildlife habitat  
11 developments or wildlife population existing on those areas, or would not otherwise  
12 be detrimental to the public interest;

13 the ~~commission~~ department shall approve the application and issue a shooting preserve  
14 operating permit for the operation of a shooting preserve on the property described in the  
15 application with the rights and subject to the limitations prescribed in this chapter and the  
16 ~~commission rules promulgated thereunder~~ pursuant to this chapter. However, the provisions of  
17 subdivisions (7) and (9) of this section do not apply to any shooting preserve licensed pursuant  
18 to this chapter, prior to July 1, 1986.

19 Section 7. That § 41-10-14 be amended to read as follows:

20 41-10-14. Within the limits set by the ~~Game, Fish and Parks Commission~~ commission, in  
21 rules promulgated pursuant to chapter 1-26, the shooting preserve operator may establish ~~his~~  
22 ~~own~~ shooting hours and limitations and restrictions on the age, sex, ~~and~~ number, and type of  
23 each game species that may be taken by each person, ~~and he~~. The operator may establish ~~his~~  
24 ~~own shooting hours, bag limits, and~~ the fees to be charged to ~~his~~ the operator's guests.

1 Section 8. That § 41-10-16 be amended to read as follows:

2 41-10-16. Any person licensed to hunt a species as required by this chapter may harvest and  
3 legally possess pen raised or wild game shot on a shooting preserve if ~~such~~ the game is tagged  
4 as directed by the ~~Game, Fish and Parks Commission~~ commission in rules promulgated  
5 pursuant to chapter 1-26. The provisions of this section relating to issuance of tags and  
6 remittance of tag fees, shall be administered by the ~~Department of Game, Fish and Parks~~  
7 department pursuant to commission rules adopted pursuant to § 41-2-18. The cost of each ~~such~~  
8 tag to the shooting preserve operator shall be established by the commission in rules  
9 promulgated pursuant to chapter 1-26.

10 Section 9. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If an applicant is denied a shooting preserve operating permit by the department, the  
13 applicant may make a written request to the department for a contested case hearing before the  
14 commission pursuant to chapter 1-26. The written request shall be mailed to the department by  
15 certified mail, return receipt requested, on or before ten days have elapsed from the date that the  
16 notice of application denial has been provided and mailed to the applicant by certified mail,  
17 return receipt requested.

18 Section 10. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 If an applicant is granted a new shooting preserve operating permit by the department, any  
21 interested person who has requested the status of an interested party and who has presented data,  
22 opinion, or arguments in writing to the department pursuant to the requirements in § 41-10-4.5  
23 may make a written request to the department for a contested case hearing before the  
24 commission pursuant to chapter 1-26. The written request shall be mailed to the department and

1 the applicant by certified mail, return receipt requested, on or before ten days have elapsed from  
2 the date that the notice of application approval has been provided to the interested party.

3 Section 11. That ARSD 41:09:01:01 be amended to read as follows:

4 41:09:01:01. Operation plan to be submitted with application. A person submitting an  
5 application for a shooting preserve permit shall submit with the application a detailed plan of  
6 operation for the proposed private shooting preserve for approval of the ~~commission~~  
7 department.

8 Section 12. That ARSD 41:09:01:06 be amended to read as follows:

9 41:09:01:06. Applications - New and renewal -- Appeal process for renewal applications.  
10 Applications for new shooting preserves and renewal applications for existing shooting  
11 preserves must be received in the Pierre office of the department no earlier than January 1 and  
12 no later than March 1 of the year the shooting preserve operation is to begin. ~~The commission~~  
13 ~~shall review all new applications at a regular meeting.~~

14 ~~—The director of the Division of Wildlife shall consider all renewal applications. If the~~  
15 ~~director denies a renewal application, the department shall send a notice of denial to the~~  
16 ~~applicant by certified mail, return receipt requested.~~

17 ~~—The applicant may appeal the denial of the renewal application by the director by giving~~  
18 ~~notice of appeal and requesting review by the commission. The notice of appeal and request for~~  
19 ~~review must be mailed to the department by certified mail, return receipt requested, within 30~~  
20 ~~days after the date of the notice of application denial. If the notice of appeal and request for~~  
21 ~~review are made within the 30-day time limit, the commission shall review the renewal~~  
22 ~~application at a regular meeting.~~

23 Section 13. That ARSD 41:09:01:06.01 be repealed.

24 ~~—41:09:01:06.01. Notice of public hearing. Upon receipt of a written application for licensing~~

1 ~~of a shooting preserve located within one mile of a publicly owned shooting area, the~~  
2 ~~department shall schedule a public hearing on the application. The department shall publish the~~  
3 ~~notice of the time and place of hearing once at least 20 days before the hearing in at least three~~  
4 ~~newspapers of general circulation in different parts of the state likely to be affected by the~~  
5 ~~application.~~

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

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

393L0464

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1084** - 01/25/2005

Introduced by: Representatives Schafer and Elliott and Senators Gray and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the circumstances for when special elections for  
2 home rule charters shall be called.

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

4 Section 1. That § 6-12-8 be amended to read as follows:

5 6-12-8. ~~In all cases a~~ A special election shall be called on any question involving a home  
6 rule charter unless ~~there is an already scheduled election other than the general and annual~~  
7 ~~election in a municipality~~ another election is scheduled within one hundred twenty days of the  
8 initiation of the action.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

670L0291

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1101** - 01/27/2005

Introduced by: Representatives Rounds, Boomgarden, Bradford, Elliott, Hargens, Hunt, Krebs, Olson (Ryan), Pederson (Gordon), Schafer, Sebert, and Street and Senators Schoenbeck, Abdallah, Broderick, McCracken, Moore, Nesselhuf, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to except contracts of independent contractors who are  
2 captive insurance agents from the prohibition against contracts in restraint of trade.

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

4 Section 1. That § 53-9-8 be amended to read as follows:

5 53-9-8. ~~Every~~ Any contract restraining exercise of a lawful profession, trade, or business is  
6 void to that extent, except as provided by §§ 53-9-9 to 53-9-11, inclusive, and section 2 of this  
7 Act.

8 Section 2. That chapter 53-9 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Any independent contractor who is an insurance producer as defined in subdivision 58-1-  
11 2(16) and is a captive agent who is not an independent agent and who works exclusively for a  
12 single insurance company or an affiliated group of insurance companies, even if the single  
13 insurance company allows its captive agents to market the products of another insurance  
14 company pursuant to contract, may agree with an insurer at the time of contracting or at any time



1 during the term of the contract:

2 (1) Not to engage directly or indirectly in the same business or profession as that of the  
3 insurer for any period not exceeding two years from the date of termination of the  
4 independent contractor's agreement with the insurer; and

5 (2) Not to solicit existing customers of the insurer within a specified county, first or  
6 second class municipality, or other specified area for any period not exceeding two  
7 years from the date of termination of the agreement, if the insurer continues to carry  
8 on a like business within the specified area.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

490L0442

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1105 - 01/26/2005**

Introduced by: Representatives Cutler, Krebs, McCoy, Michels, Murschel, Roberts, and Weems and Senators Knudson, Broderick, Duniphan, Hanson (Gary), Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the definition of domestic abuse.

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

3 Section 1. That § 25-10-1 be amended to read as follows:

4 25-10-1. Terms used in this chapter mean:

5 (1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm  
6 or bodily injury, or the infliction of fear of imminent physical harm or bodily injury  
7 between family or household members, or any violation of § 25-10-13, any violation  
8 of chapter 22-19A, or any act described in subdivision 22-1-2(9) between family or  
9 household members;

10 (2) "Family or household members," spouses, former spouses, or persons related by  
11 consanguinity, adoption, or law, persons living in the same household, persons who  
12 have lived together, or persons who have had a child together;

13 (3) "Protection order," an order restraining any family or household member from  
14 committing any act of domestic abuse or an order excluding any family or household



1 member from the dwelling or residence of another family or household member,  
2 whether or not the dwelling or residence is shared. A protection order has a duration  
3 of three years or less; and

4 (4) "Temporary protection order," an order restraining any family or household member  
5 from committing any act of domestic abuse or an order excluding any family or  
6 household member from the dwelling or residence of another family or household  
7 member, whether or not the dwelling or residence is shared. A temporary protection  
8 order has a duration of thirty days except as provided in § 25-10-7.1.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0256

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 13** - 01/14/2005

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

1 FOR AN ACT ENTITLED, An Act to create certain provisions regarding transfers of  
2 experience rating accounts and assignment of unemployment insurance tax rates.

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

4 Section 1. That § 61-5-33 be amended to read as follows:

5 61-5-33. Any individual, group of individuals, or employing unit that acquires its  
6 organization, trade or business from an employer for whom an experience-rating account has  
7 been maintained by the Department of Labor, shall immediately notify the department and upon  
8 the mutual consent of the parties concerned and approval of the department, may assume the  
9 position of the employer with respect to the experience-rating account. ~~However, transfer of the~~  
10 ~~experience-rating account from the predecessor to the successor employer shall be mandatory~~  
11 ~~if the ownership of both entities is substantially the same.~~ If the experience-rating account is not  
12 assumed by the successor employer or employing unit, the initial contribution rate for employers  
13 pursuant to § 61-5-20.2 shall be assigned to the successor employer or employing unit. The  
14 department shall promulgate rules pursuant to chapter 1-26 to carry out the provisions of this  
15 section consistent with federal standards of additional credit allowance as provided in section



1 3303 of the Internal Revenue Code.

2 Section 2. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Notwithstanding any other provision of law, the following provisions apply with regard to  
5 assignment of rates and transfers of experience:

6 (1) If an employer transfers its organization, trade, or business, or a portion thereof, to  
7 another employer and, at the time of the transfer, there is substantially common  
8 ownership, management, or control of the two employers, then the unemployment  
9 experience attributable to the transferred organization, trade, or business shall be  
10 transferred to the employer to whom the business is so transferred. The rates of both  
11 employers shall be recalculated and made effective immediately upon the date of the  
12 transfer of the organization, trade, or business; and

13 (2) If a person who is not an employer under this Title at the time the person acquires the  
14 organization, trade, or business of an employer, the unemployment experience of the  
15 acquired business may not be transferred to the person if the secretary finds that the  
16 person acquired the business solely or primarily for the purpose of obtaining a lower  
17 rate of contributions. Instead, the person shall be assigned the applicable new  
18 employer rate under the provisions of § 61-5-20.2. In determining whether the  
19 business was acquired solely or primarily for the purpose of obtaining a lower rate  
20 of contributions, the secretary shall use objective factors which may include the cost  
21 of acquiring the business, whether the person continued the business enterprise of the  
22 acquired business, how long the business enterprise was continued, or whether a  
23 substantial number of new employees were hired for performance of duties unrelated  
24 to the business activity conducted prior to acquisition.

1 Section 3. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 If a person knowingly violates or attempts to violate provisions of section 2 of this Act  
4 related to determining the assignment of a contribution rate, or if a person knowingly advises  
5 another person in a way that results in a violation of such provision, the person is guilty of a  
6 Class 1 misdemeanor. In addition, the person is subject to the following penalties:

7 (1) If the person is an employer, the employer shall be assigned the highest rate  
8 assignable under this chapter for the rate year during which the violation or attempted  
9 violation occurred and the three rate years immediately following this rate year.  
10 However, if the person's business is already at the highest rate for any year, or if the  
11 amount of increase in the person's rate would be less than two percent for the year,  
12 then a penalty rate of contributions of two percent of taxable wages shall be imposed  
13 for such year; or

14 (2) If the person is not an employer, the person is subject to a civil penalty of not more  
15 than five thousand dollars. Any such fine shall be deposited in the penalty and  
16 interest account established under § 61-3-28.

17 For purposes of this section, the term, knowingly, means having actual knowledge of or  
18 acting with deliberate ignorance or reckless disregard for the prohibition involved.

19 Section 4. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 The secretary shall promulgate rules pursuant to chapter 1-26 to establish procedures to  
22 identify the transfer or acquisition of a business for purposes of section 2 of this Act and to  
23 implement the application of section 2 of this Act.

24 Section 5. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Terms used in sections 2 to 4, inclusive, mean:

3 (1) "Person," person as defined by section 7701(a)(1) of the Internal Revenue Code of  
4 1986; and

5 (2) "Trade or business," includes the employer's workforce.

6 Section 6. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The provisions of sections 2 to 6, inclusive, of this Act shall be interpreted and applied in  
9 such a manner as to meet the minimum requirements contained in any guidance or regulations  
10 issued by the United States Department of Labor.

11 Section 7. That § 61-5-33.1 be amended to read as follows:

12 61-5-33.1. The Department of Labor may waive the mandatory transfer of the  
13 experience-rating account required by ~~§ 61-5-33~~ section 2 of this Act if the inherent nature of  
14 the employing unit has substantially and permanently changed since July 1, 1988. The  
15 provisions of this section apply to account transfers occurring on or after July 1, 1992.

16 Section 8. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 The secretary shall establish procedures to identify the transfer or acquisition of a business  
19 for purposes of this Act.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0381

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 59** - 01/24/2005

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

1 FOR AN ACT ENTITLED, An Act to permit the involuntary feeding or hydration of a prisoner.

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

3 Section 1. The supervisor of a jail, as defined in § 24-11-1, or a prison warden may attempt  
4 to prevent a prisoner from causing severe harm or death to himself or herself by refusing  
5 sufficient nutrition or hydration. A prisoner may be involuntarily fed or hydrated if it is  
6 determined, pursuant to the provisions of this Act, that the prisoner is likely to cause severe  
7 harm to himself or herself by refusing sufficient nutrition or hydration. No supervisor of a jail  
8 or prison warden may prevent medically imposed fasts for the purpose of conducting medical  
9 tests or procedures or religious fasts for a reasonable length of time.

10 Section 2. Prior to involuntary feeding or hydration, the prisoner shall receive a hearing  
11 before a panel consisting of two medical representatives and a representative of the jail or  
12 prison. The medical representatives shall be a physician, physician assistant, or nurse  
13 practitioner. No panel member may have participated in the prisoner's current diagnosis,  
14 evaluation, or treatment. The prisoner has the right to notice of the hearing at least forty-eight  
15 hours in advance, the right to attend the hearing, the right to present evidence and cross-examine



1 witnesses, and the right to representation by a disinterested lay advisor.

2 Section 3. The hearing panel:

- 3 (1) Shall engage in a confidential review of the prisoner's medical records;
- 4 (2) Shall receive a description of the proposed course of treatment for the involuntary  
5 feeding or hydration of the prisoner and testimony of the circumstances of the  
6 situation from the attending physician; and
- 7 (3) May ask for testimony or written statement concerning the circumstances of the  
8 prisoner's lack of nutrition or hydration.

9 Section 4. The panel may order involuntary feeding or hydration by a majority vote. The  
10 panel shall provide its decision in writing to the attending physician, the supervisor of the jail  
11 or prison warden, and the prisoner. The prisoner may appeal an adverse decision of the panel  
12 to the supervisor of the jail in which the prisoner is confined or the secretary of corrections if  
13 the prisoner is confined in a Department of Corrections facility. The prisoner may appeal the  
14 decision of the jail supervisor or secretary of corrections to circuit court pursuant to chapter 1-  
15 26.

16 Section 5. In an emergency, involuntary feeding or hydration of a prisoner may be  
17 administered without panel review for up to three days if two medical representatives who are  
18 a physician, physician assistant, or nurse practitioner order the treatment. Involuntary feeding  
19 for a greater length of time requires the approval of the panel.

20 Section 6. If involuntary feeding or hydration of a prisoner exceeds ten days, a physician  
21 who is not the attending physician shall review the prisoner's current case and at subsequent  
22 intervals not to exceed three days, make a written determination whether the involuntary feeding  
23 or hydration shall be continued. The physician's written determination shall be provided to the  
24 attending physician, the supervisor of the jail or prison warden, and the prisoner.

1           Section 7. A jail or prison shall maintain records of any involuntary feeding or hydration of  
2 prisoners. The records shall include any available medical history of a prisoner's prior refusal  
3 of adequate nutrition or hydration, current and prior illnesses, and may include such other  
4 information as deemed necessary by the jail or prison to facilitate management of prisoners.

5           Section 8. No person who serves on the hearing panel, who is the attending physician, who  
6 is the supervisor of the jail or prison warden, or who orders or participates in the involuntarily  
7 feeding or hydrating of a prisoner may be held civilly or criminally liable for the involuntarily  
8 feeding or hydrating of a prisoner pursuant to this Act if the person performs these duties in  
9 good faith and in a reasonable manner according to generally accepted medical or other  
10 professional practices.