



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

817L0546

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1166** - 02/09/2005

Introduced by: Representatives Hunt, Boomgarden, Brunner, Buckingham, Deadrick, Dykstra, Elliott, Gassman, Gillespie, Glenski, Hackl, Hanks, Hargens, Haverly, Heineman, Hennies, Howie, Hunhoff, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Apa, Broderick, Duenwald, Earley, Gant, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koetzle, Kooistra, Koskan, Lintz, McNenny, Moore, Napoli, Olson (Ed), Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings pertaining to the  
2 health and rights of women, to revise the physician disclosure requirements to be made to  
3 a woman contemplating submitting to an abortion, and to provide for certain causes of  
4 action for professional negligence if an abortion is performed without informed consent.

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

6 Section 1. The Legislature finds that all abortions, whether surgically or chemically induced,  
7 terminate the life of a whole, separate, unique, living human being.

8 Section 2. The Legislature finds that there is an existing relationship between a pregnant  
9 woman and her unborn child during the entire period of gestation.

10 Section 3. The Legislature finds that procedures terminating the life of an unborn child  
11 impose risks to the life and health of the pregnant woman. The Legislature further finds that a



1 woman seeking to terminate the life of her unborn child may be subject to pressures which can  
2 cause an emotional crisis, undue reliance on the advice of others, clouded judgment, and a  
3 willingness to violate conscience to avoid those pressures. The Legislature therefore finds that  
4 great care should be taken to provide a woman seeking to terminate the life of her unborn child  
5 and her own constitutionally protected interest in her relationship with her child with complete  
6 and accurate information and adequate time to understand and consider that information in order  
7 to make a fully informed and voluntary consent to the termination of either or both.

8 Section 4. The Legislature finds that pregnant women contemplating the termination of their  
9 right to their relationship with their unborn children, including women contemplating such  
10 termination by an abortion procedure, are faced with making a profound decision most often  
11 under stress and pressures from circumstances and from other persons, and that there exists a  
12 need for special protection of the rights of such pregnant women, and that the State of South  
13 Dakota has a compelling interest in providing such protection.

14 Section 5. The Legislature finds that, through the common law, the courts of the State of  
15 South Dakota have imposed a standard of practice in the health care profession that, except in  
16 exceptional circumstances, requires physicians and other health care practitioners to provide  
17 patients with such facts about the nature of any proposed course of treatment, the risks of the  
18 proposed course of treatment, the alternatives to the proposed course, including any risks that  
19 would be applicable to any alternatives, as a reasonable patient would consider significant to the  
20 decision of whether to undergo the proposed course of treatment.

21 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 The South Dakota common law cause of action for medical malpractice informed consent  
24 claims based upon the reasonable patient standard is reaffirmed and is hereby expressly declared

1 to apply to all abortion procedures. The duty of a physician to disclose all facts about the nature  
2 of the procedure, the risks of the procedure, and the alternatives to the procedure that a  
3 reasonable patient would consider significant to her decision of whether to undergo or forego  
4 the procedure applies to all abortions. Nothing in this Act may be construed to render any of the  
5 requirements otherwise imposed by common law inapplicable to abortion procedures or  
6 diminish the nature or the extent of those requirements. The disclosure requirements expressly  
7 set forth in this Act are an express clarification of, and are in addition to, those common law  
8 disclosure requirements.

9 Section 7. That § 34-23A-10.1 be amended to read as follows:

10 34-23A-10.1. ~~No abortion may be performed except with the voluntary and informed~~  
11 ~~consent of the female upon whom the abortion is to be performed. Except in the case of a~~  
12 ~~medical emergency, consent to an abortion is voluntary and informed only if:~~

13 ~~(1) The female is told the following by the physician who is to perform the abortion or~~  
14 ~~by the referring physician, at least twenty-four hours before the abortion:~~

15 ~~(a) The name of the physician who will perform the abortion;~~

16 ~~(b) The particular medical risks associated with the particular abortion procedure~~  
17 ~~to be employed including, when medically accurate, the risks of infection,~~  
18 ~~hemorrhage, danger to subsequent pregnancies, and infertility;~~

19 ~~(c) The probable gestational age of the unborn child at the time the abortion is to~~  
20 ~~be performed; and~~

21 ~~(d) The medical risks associated with carrying her child to term;~~

22 ~~(2) The female is informed, by telephone or in person, by the physician who is to~~  
23 ~~perform the abortion, by the referring physician, or by an agent of either, at least~~  
24 ~~twenty-four hours before the abortion:~~

1 ~~———— (a) That medical assistance benefits may be available for prenatal care, childbirth,~~  
2 ~~and neonatal care;~~

3 ~~———— (b) That the father is liable to assist in the support of her child, even in instances~~  
4 ~~in which the father has offered to pay for the abortion; and~~

5 ~~———— (c) That she has the right to review the printed materials described in § 34-23A-~~  
6 ~~10.3 and the website described in § 34-23A-10.4. The physician or the~~  
7 ~~physician's agent shall orally inform the female that the materials have been~~  
8 ~~provided by the State of South Dakota at no charge to the female. If the female~~  
9 ~~chooses to view the materials, they shall either be given to her at least~~  
10 ~~twenty-four hours before the abortion or mailed to her at least seventy-two~~  
11 ~~hours before the abortion by certified mail, restricted delivery to addressee,~~  
12 ~~which means the postal employee can only deliver the mail to the addressee;~~

13 ~~— (3) The female certifies in writing, prior to the abortion, that the information described~~  
14 ~~in subdivisions (1) and (2) of this section has been furnished her, and that she has~~  
15 ~~been informed of her opportunity to review the information described in § 34-23A-~~  
16 ~~10.3; and~~

17 ~~— (4) Prior to the performance of the abortion, the physician who is to perform the abortion~~  
18 ~~or the physician's agent receives a copy of the written certification prescribed by~~  
19 ~~subdivision (3).~~

20 ~~— The physician may provide the information prescribed in subdivision (1) by telephone~~  
21 ~~without conducting a physical examination or tests of the patient, in which case the information~~  
22 ~~required to be supplied may be based on facts supplied the physician by the female and whatever~~  
23 ~~other relevant information is reasonably available to the physician.~~

24 No abortion may be performed unless the physician first obtains a voluntary and informed

1 written consent of the pregnant woman upon whom the physician intends to perform the  
2 abortion, unless the physician determines that obtaining an informed consent is impossible due  
3 to a medical emergency and further determines that delaying in performing the procedure until  
4 an informed consent can be obtained from the pregnant woman or her next of kin in accordance  
5 with chapter 34-12C is impossible due to the medical emergency, which determinations shall  
6 then be documented in the medical records of the patient. A consent to an abortion is not  
7 voluntary and informed, unless, in addition to any other information that must be disclosed  
8 under the common law doctrine, the physician provides that pregnant woman with the following  
9 information:

10 (1) A statement in writing providing the following information:

11 (a) The name of the physician who will perform the abortion;

12 (b) That the abortion will terminate the life of a whole, separate, unique, living  
13 human being;

14 (c) That the pregnant woman has an existing relationship with that unborn human  
15 being and that the relationship enjoys protection under the United States  
16 Constitution and under the laws of South Dakota;

17 (d) That by having an abortion, her existing relationship and her existing  
18 constitutional rights with regards to that relationship will be terminated;

19 (e) A description of all known medical risks of the procedure and statistically  
20 significant risk factors to which the pregnant woman would be subjected,  
21 including:

22 (i) Depression and related psychological distress;

23 (ii) Increased risk of suicide ideation and suicide;

24 (iii) A statement setting forth an accurate rate of deaths due to abortions,

1 including all deaths in which the abortion procedure was a substantial  
2 contributing factor;

3 (iv) All other known medical risks to the physical health of the woman,  
4 including the risk of infection, hemorrhage, danger to subsequent  
5 pregnancies, and infertility;

6 (f) The probable gestational age of the unborn child at the time the abortion is to  
7 be performed, and a scientifically accurate statement describing the  
8 development of the unborn child at that age; and

9 (g) The statistically significant medical risks associated with carrying her child to  
10 term compared to undergoing an induced abortion.

11 The disclosures set forth above shall be provided to the pregnant woman in writing  
12 and in person no later than two hours before the procedure is to be performed. The  
13 physician shall ensure that the pregnant woman signs each page of the written  
14 disclosure with the certification that she has read and understands all of the  
15 disclosures, prior to the patient signing a consent for the procedure. If the pregnant  
16 woman asks for a clarification or explanation of any particular disclosure, or asks any  
17 other question about a matter of significance to her, the explanation or answer shall  
18 be made in writing and be given to the pregnant woman before signing a consent for  
19 the procedure and shall be made part of the permanent medical record of the patient;

20 (2) A statement by telephone or in person, by the physician who is to perform the  
21 abortion, or by the referring physician, or by an agent of both, at least twenty-four  
22 hours before the abortion, providing the following information:

23 (a) That medical assistance benefits may be available for prenatal care, childbirth,  
24 and neonatal care;



1 has read the materials which are required to be disclosed, and that the physician believes she  
2 understands the information imparted.

3 Section 8. That § 34-23A-1 be amended to read as follows:

4 34-23A-1. Terms as used in this chapter mean:

5 (1) "Abortion," the use of any means to intentionally terminate the pregnancy of a ~~female~~  
6 woman known to be pregnant with knowledge that the termination with those means  
7 will, with reasonable likelihood, cause the death of the fetus;

8 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child, of  
9 human parents;

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

12 (4) "Human being," an individual living member of the species of Homo sapiens,  
13 including the unborn human being during the entire embryonic and fetal ages from  
14 fertilization to full gestation;

15 (5) "Medical emergency," any condition which, on the basis of the physician's good faith  
16 clinical judgment, so complicates the medical condition of a pregnant ~~female~~ woman  
17 as to necessitate the immediate abortion of her pregnancy to avert her death or for  
18 which a delay will create serious risk of substantial and irreversible impairment of  
19 a major bodily function;

20 ~~(4)(6)~~ "Parent," one parent of the pregnant minor or the guardian or conservator of the  
21 pregnant ~~female~~ woman;

22 ~~(5)(7)~~ "Physician," a person licensed under the provisions of chapter 36-4 or a physician  
23 practicing medicine or osteopathy in the employ of the government of the United  
24 States or of this state;

1       ~~(6)~~(8) "Probable gestational age of the unborn child," what, in the judgment of the  
2               physician, will with reasonable probability be the gestational age of the unborn child  
3               at the time the abortion is planned to be performed.

4       Section 9. That § 34-23A-10.3 be amended to read as follows:

5       34-23A-10.3. The health department shall publish, in culturally sensitive languages, within  
6       ~~sixty one hundred eighty~~ days after July 1, ~~1993~~ 2005, the following printed materials in such  
7       a way as to ensure that the information is easily comprehensible:

8       (1)   Materials designed to inform the pregnant woman of all the disclosures enumerated  
9           in section 7 of this Act;

10      ~~(2)~~   Materials designed to inform the ~~female~~ pregnant woman of public and private  
11           agencies and services available to assist a ~~female~~ pregnant woman through  
12           pregnancy, upon childbirth and while the child is dependent, including adoption  
13           agencies, which shall include a list of the agencies available and a description of the  
14           services they offer; and

15      ~~(2)~~(3) Materials designed to inform the ~~female~~ pregnant woman of the probable anatomical  
16           and physiological characteristics of the unborn child at two-week gestational  
17           increments from the time when a ~~female~~ pregnant woman can be known to be  
18           pregnant to full term, including any relevant information on the possibility of the  
19           unborn child's survival and pictures or drawings representing the development of  
20           unborn children at two-week gestational increments. Such pictures or drawings shall  
21           contain the dimensions of the fetus and shall be realistic and appropriate for the stage  
22           of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed  
23           to convey only accurate scientific information about the unborn child at the various  
24           gestational ages.

1       The materials shall be printed in a typeface large enough to be clearly legible and shall be  
2 available at no cost from the ~~health department~~ Department of Health upon request and in  
3 appropriate number to any person, facility or hospital.

4       Section 10. If any court of law enjoins, suspends, or delays the implementation of the  
5 provisions of section 7 of this Act, the provisions of § 34-23A-10.1, as of June 30, 2005, are  
6 effective during such injunction, suspension, or delayed implementation.

7       Section 11. If any court of law finds any provisions of section 7 of this Act to be  
8 unconstitutional, the other provisions of section 7 are severable. If any court of law finds the  
9 provisions of section 7 of this Act to be entirely or substantially unconstitutional, the provisions  
10 of § 34-23A-10, as of June 30, 2005, are immediately reeffective.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

336L0767

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1239** - 02/08/2005

Introduced by: Representatives Hargens and Haley and Senator Moore

1 FOR AN ACT ENTITLED, An Act to revise the method for setting the fees that may be  
2 received by a county coroner.

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

4 Section 1. That § 7-14-1 be amended to read as follows:

5 7-14-1. The coroner shall receive ~~the following~~ fees and expenses:

6 ~~(1) For a view of each body and examination of the circumstances surrounding the death,~~  
7 ~~fifty-eight dollars;~~

8 ~~(2) The coroner shall receive the same amount per mile traveled in the course of his~~  
9 ~~duties as other county officials~~ as set by the board of county commissioners.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

299L0085

## HOUSE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **HB 1253** - 02/08/2005

Introduced by: Representatives Garnos and Elliott and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to allow for the establishment of a group health insurance  
2 plan for political subdivision employees.

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

4 Section 1. That chapter 3-12A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The Bureau of Personnel may establish a group health insurance plan, a group dental  
7 insurance plan, or both, for employees of any political subdivision. The plan may provide for  
8 group health and dental insurance against the financial cost of hospital, surgical, and medical  
9 treatment and care, and such other coverage or benefits, including a group life insurance plan  
10 and a group disability income insurance plan, as may be deemed appropriate and desirable by  
11 the commissioner. The commissioner may design a cafeteria-style benefit plan which allows an  
12 employee of any political subdivision to choose the employee's own benefits or levels of  
13 coverage.

14 The Bureau of Personnel may promulgate rules pursuant to chapter 1-26 to establish uniform  
15 procedures for the administration of such a plan and to provide for uniform application of the



1 plan. The rules may be adopted in the following areas:

2 (1) Participation in the plan by employees, retired employees, and dependents;

3 (2) Procedures for election of coverage;

4 (3) Effective dates of coverage where not specified by statute;

5 (4) Termination of coverage;

6 (5) Changes in dependent coverage;

7 (6) Collection of premiums;

8 (7) The procedure and conditions for membership for a political subdivision to elect to  
9 join the group health insurance plan; and

10 (8) A method to allocate the cost of claims and administrative costs back to a  
11 participating political subdivision.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

527L0773

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1257** - 02/09/2005

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

1 FOR AN ACT ENTITLED, An Act to revise the composition of the Board of Pardons and  
2 Paroles.

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

4 Section 1. That § 24-13-1 be amended to read as follows:

5 24-13-1. The Board of Pardons and Paroles shall consist of ~~nine~~ ten members. ~~Three~~ Four  
6 members shall be appointed by the Governor; at least one shall be an attorney and at least one  
7 shall be a South Dakota resident who is an enrolled member of the Cheyenne River Sioux Tribe,  
8 the Crow Creek Sioux Tribe, the Flandreau-Santee Sioux Tribe, the Lower Brule Sioux Tribe,  
9 the Oglala Sioux Tribe, the Rosebud Sioux Tribe, the Sisseton-Wahpeton Oyate Sioux Tribe,  
10 the Standing Rock Sioux Tribe, or the Yankton Sioux Tribe. Three members shall be appointed  
11 by the attorney general; at least one shall be an attorney. Three members shall be appointed by  
12 the Supreme Court; at least one shall be an attorney. Each member of the board shall be a  
13 resident of South Dakota and be appointed with the advice and consent of the Senate.

14 Section 2. That § 24-13-2 be amended to read as follows:

15 24-13-2. The members of the board shall serve for terms of four years. Members are eligible



1 for reappointment. The ~~Governor, the attorney general, and the Supreme Court~~ each shall  
2 ~~appoint three members,~~ whose terms shall expire on the third Monday in January of the fourth  
3 year after appointment. Each member shall serve until a successor takes office as provided by  
4 law. In case of a vacancy, the appointing power shall make an interim appointment to expire at  
5 the end of the next legislative session.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

400L0783

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1261** - 02/09/2005

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

1 FOR AN ACT ENTITLED, An Act to provide for the refund of the sales and contractor's excise  
2 tax for significant capital investment and large job-creation projects.

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

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

5 10-45B-1. Terms used in this chapter mean:

6 (1) "Construction date," the first date earth is excavated for the purpose of constructing  
7 a project;

8 (2) "Department," the Department of Revenue and Regulation;

9 (3) "Nameplate capacity," the number of kilowatts a power unit can produce according  
10 to the nameplate assigned to the power unit generator by the manufacturer;

11 ~~(2)~~(4) "New agricultural processing facility," a new building or structure, the construction  
12 of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B.

13 A new agricultural processing facility is any new building or structure constructed  
14 for the initial or subsequent processing of any form of agricultural commodity,  
15 product, or by-product. A new agricultural processing facility does not include any



1 building or structure constructed for raising or feeding of livestock or the expansion  
2 of an existing agricultural processing facility;

3 ~~(3)~~(5) "Person," any individual, firm, copartnership, joint venture, association, limited  
4 liability company, limited liability partnership, corporation, estate, trust, business  
5 trust, receiver, unit of government, rural electric cooperative, consumers power  
6 district or any group or combination acting as a unit;

7 (6) "Power generation facility," a facility with one power unit that generates electricity  
8 with a nameplate capacity of no less than five hundred megawatts;

9 ~~(4)~~(7) "Project," the construction of a new agricultural processing facility or a new business  
10 facility at a single site;

11 ~~(5)~~(8) "Project cost," the amount paid in money, credits, property, or other money's worth  
12 for a project;

13 ~~(6)~~(9) "Secretary," the secretary of the Department of Revenue and Regulation.

14 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 For the purposes of this Act, the term, new business facility, means a new building or  
17 structure, including a power generation facility, the construction of which is subject to the  
18 contractor's excise tax pursuant to chapter 10-46A or 10-46B. A new business facility does not  
19 include any building or structure:

- 20 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
- 21 at retail, to individual consumers;
- 22 (2) Used predominantly for residential housing or transient lodging;
- 23 (3) Used predominantly to provide health care services; or
- 24 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured

1 by gross receipts.

2 Section 3. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 As provided in this Act, any person holding a permit issued pursuant to § 10-45B-6 may  
5 apply for and obtain a refund or credit for sales or use tax imposed and paid by such person  
6 under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid  
7 under the provisions of chapter 10-46A or 10-46B on the project costs for a new business  
8 facility.

9 Section 4. That § 10-45B-4 be amended to read as follows:

10 10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to  
11 project costs incurred and paid after April 1, 1997, and within thirty-six months of the approval  
12 of the application required by § 10-45B-6. No refund may be made unless:

- 13 (1) The project cost exceeds the sum of four million five hundred thousand dollars; and  
14 (2) The person applying for the refund obtains a permit from the secretary as set forth in  
15 § 10-45B-6.

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

18 The refund of taxes pursuant to section 3 of this Act pertains only to project costs incurred  
19 and paid after February 1, 2005, up to and including thirty-six months from the construction date  
20 if the project costs are sixty million dollars or less and after February 1, 2005, up to and  
21 including seventy-two months from the construction date if the project costs are more than sixty  
22 million dollars. There is no refund if the person applying for the refund does not obtain a permit  
23 from the secretary as set forth in § 10- 45B-6.

24 Upon a showing of good cause, the time limits prescribed by this section may be extended

1 by the secretary for a period not to exceed twenty-four months.

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

4 The amount of the tax refund for a new business facility shall be a percentage of the taxes  
5 paid, as follows:

6 (1) For project costs of less than ten million dollars, there shall be no refund;

7 (2) For project costs of ten or more million dollars but less than twenty million dollars  
8 there shall be a refund of twenty-five percent of the taxes paid;

9 (3) For project costs of twenty or more million dollars but less than sixty million dollars  
10 there shall be a refund of fifty percent of the taxes paid;

11 (4) For project costs of sixty or more million dollars but less than six hundred million  
12 dollars there shall be a refund of seventy-five percent of the taxes paid; and

13 (5) For project costs of six hundred million dollars and greater there shall be a refund of  
14 ninety percent of the taxes paid.

15 Section 7. That § 10-45B-5 be amended to read as follows:

16 10-45B-5. If the project cost for a new agricultural processing facility exceeds four million  
17 five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed  
18 to the project cost.

19 Section 8. That § 10-45B-6 be amended to read as follows:

20 10-45B-6. Any person desiring to claim a refund pursuant to ~~§ 10-45B-2~~ this chapter shall  
21 apply for a permit from the secretary at least thirty days prior to ~~commencement of the project~~  
22 the construction date. The application for a permit shall be submitted on a form prescribed by  
23 the secretary. A separate application shall be made and submitted for each project. Upon  
24 approval of the application, the secretary shall issue a permit entitling the applicant to submit

1 refund claims as provided by §§ 10-45B-7 and 10-45B-8. Such permit or refund claims are not  
2 assignable or transferable except as collateral or security pursuant to chapter 57A-9.

3 Section 9. That § 10-45B-8 be amended to read as follows:

4 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a return to the  
5 department no more frequently than on or before the last day of ~~the~~ each month and no less  
6 frequently than on or before the last day of each month following each ~~quarterly period~~ calendar  
7 quarter. The secretary shall determine and pay the amount of the tax refund within thirty days  
8 of receipt of the return. ~~Ninety~~ Ninety-five percent of the amount of refund shall be paid to the  
9 claimant in accordance with §§ 10-59-22 and 10-59-23, and ~~ten~~ five percent shall be withheld  
10 by the department. No interest shall be paid on the refund amount. If electronic funds transfer  
11 is available to the secretary, the secretary shall pay the refund by electronic funds transfer if  
12 requested by the claimant.

13 Section 10. That § 10-45B-9 be amended to read as follows:

14 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be  
15 retained until the project has been completed and the claimant has met all the conditions of § 10-  
16 45B-4 or section 5 of this Act, at which time all sums retained shall be paid to claimant.

17 Section 11. That § 10-45B-10 be amended to read as follows:

18 10-45B-10. If any claim has been fraudulently presented or supported as to any item in the  
19 claim, or if the claimant fails to meet all the conditions of ~~§ 10-45B-4~~ this chapter, then ~~such~~  
20 the claim may be rejected in its entirety and all sums previously refunded to the claimant shall  
21 constitute a debt to the state and a lien in favor of the state upon all property and rights to  
22 property whether real or personal belonging to the claimant and may be recovered in an action  
23 of debt.

24 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any amount refunded pursuant to this Act for a project that is not completed within the time  
3 frames prescribed by section 5 of this Act, including any extensions granted by the secretary,  
4 shall be returned to the state without interest. Any refunded amounts not returned pursuant to  
5 this section and all sums previously refunded to the claimant constitute a debt to the state and  
6 a lien in favor of the state upon all property and rights to property whether real or personal  
7 belonging to the claimant and may be recovered in an action of debt.

8 Section 13. That chapter 10-45B be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 Any person aggrieved by a decision of the secretary under this Act may, within thirty days  
11 of receipt of written notice of the secretary's decision, make written application to the secretary  
12 for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be conducted and  
13 appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of the hearing  
14 examiner's proposed decision, findings of fact, and conclusions of law shall be served on all  
15 parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D, accepts the  
16 final decision of the hearing examiner, no appeal from a final decision of the secretary upon any  
17 additional tax to be paid may be taken unless any amount ordered paid by the secretary is paid  
18 or a bond filed to insure payment of the amount. However, if the final decision of the secretary,  
19 pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner regarding  
20 the amount due, an appeal may be taken without payment of the amount ordered to be paid and  
21 without filing of a bond. If the secretary's decision is affirmed by the circuit court, no appeal  
22 may be taken unless any amount ordered to be paid by the secretary is paid or a bond is filed to  
23 insure payment of such amount.

24 Section 14. That § 10-46B-1 be amended to read as follows:

1        10-46B-1. There is imposed an excise tax upon the gross receipts of all prime contractors  
2        and subcontractors engaged in realty improvement contracts for those persons subject to tax  
3        under chapter 10-28, 10-33, 10-34, 10-35, 10-36, or 10-36A or any municipal utility or  
4        telephone company subject to chapter 9-39, 9-41, 9-47, or 9-48 or any rural water system, at the  
5        rate of two percent. Notwithstanding the provisions of this section, the tax imposed by this  
6        chapter does not apply to the construction of a power generation facility as defined by section  
7        1 of this Act.

8        Section 15. That § 10-46A-1.2 be amended to read as follows:

9        10-46A-1.2. The tax imposed upon contractors performing realty improvement contracts for  
10       those persons subject to tax under chapter 10-28, 10-33, 10-34, 10-35, 10-36 or 10-36A or any  
11       municipal utility or telephone company subject to chapter 9-39 or 9-41 or any rural water system  
12       ~~shall~~ is not be subject to this chapter and ~~said~~ the contracts ~~shall be~~ are subject to the contractors'  
13       excise tax imposed by chapter 10-46B. Notwithstanding the provisions of this section, the tax  
14       imposed by this chapter applies to the construction of a power generation facility as defined by  
15       section 1 of this Act.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0230

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. SB 12 - 01/21/2005

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

1 FOR AN ACT ENTITLED, An Act to authorize a parent to appear telephonically for a hearing  
2 to voluntarily terminate parental rights.

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

4 Section 1. That § 25-5A-14 be amended to read as follows:

5 25-5A-14. The personal presence of one parent at the hearing is required for jurisdictional  
6 purposes. However, ~~any~~ for good cause shown, and upon notice to any other person or  
7 authorized agency whose consent is required pursuant to § 25-5A-6, the court may permit the  
8 parent to appear telephonically if the parent does so in the physical presence of a person  
9 designated by the court to monitor the parent's appearance. Any other person whose consent is  
10 necessary; may appear by filing with the court a power of attorney. If the Department of Social  
11 Services or a licensed child placement agency has custody of a child by written agreement of  
12 a parent with power of attorney to consent, the secretary or an authorized agent may appear and  
13 consent. Notwithstanding the foregoing provisions of this section, due regard shall be given to  
14 the Indian Child Welfare Act (25 U.S.C. 1901 to 1963, inclusive,) as in effect on January 1,  
15 2005, if applicable.



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0314

HOUSE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **SB 41** - 02/07/2005

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding access to vital  
2 records.

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

4 Section 1. That § 34-25-1.1 be amended by adding thereto a NEW SUBDIVISION to read  
5 as follows:

6 "Authorized representative," an attorney, physician, funeral director, or other designated  
7 agent acting on behalf of the family.

8 Section 2. That § 34-25-8 be amended to read as follows:

9 34-25-8. The birth of every child born in this state shall be registered as provided in this  
10 chapter. Within seven days after the date of each live birth, there shall be filed with the  
11 department by electronic means if a facility has such capabilities, or otherwise if electronic  
12 means are not available, a certificate of such birth, ~~which.~~ The certificate shall be upon the form  
13 prescribed by the department. For certificates of birth filed after seven days, but within one year  
14 from the date of birth, the department may, by rules promulgated pursuant to chapter 1-26,  
15 require additional evidence in support of the facts of birth.



1 ~~Certified~~ Informational copies of birth records shall be available to any person who can  
2 identify the birth record by providing the name of the person on the birth record, the date of  
3 birth, the mother's maiden name, or additional information required to locate the record.  
4 Nothing in this section prohibits the release of information contained on a birth record which  
5 would not identify any person named in the record.

6 If one hundred years have elapsed after the date of birth, the records of the birth in the  
7 custody of the department shall become available to the public without restriction. The  
8 department shall promulgate rules, pursuant to chapter 1-26, to provide for the continued  
9 safekeeping of these records.

10 Section 3. That § 34-25-52 be amended to read as follows:

11 ~~34-25-52. The Department of Health shall upon request supply to any applicant a certified~~  
12 ~~copy of the record of any birth, death, fetal death, marriage, or divorce registered under the~~  
13 ~~provisions of this chapter, for the making and certification of which he shall be entitled to a fee~~  
14 ~~based upon administrative cost as established by the department pursuant to chapter 1-26 to be~~  
15 ~~paid by the applicant. Information in vital records indicating that a birth occurred out of wedlock~~  
16 ~~shall not be disclosed except as provided by regulation or upon order of a court of competent~~  
17 ~~jurisdiction. Any record or a certified copy thereof shall be prima facie evidence in all of the~~  
18 ~~courts of this state of the facts therein stated~~ The department or authorized local registrars shall,  
19 upon receipt of an application, issue a certified copy of a vital record to the registrant or the  
20 registrant's spouse, children, parents, guardian, next of kin, or authorized representative. The  
21 department may authorize others to obtain certified copies in response to a demonstration that  
22 the record is needed for the determination or protection of a personal or property right. The  
23 department or authorized local registrars shall upon receipt of an application, issue  
24 informational copies to any applicant of any vital record. The department or authorized local

1 registrar may withhold the immediate issuance of any certified copy for a period of no longer  
2 than three days. The department shall be entitled to a fee based upon administrative cost as  
3 established by the department pursuant to chapter 1-26 for each search of the files and records.  
4 The fee shall be paid in advance by the applicant and shall not be in addition to the fee  
5 hereinbefore provided for the making and certification of the record but shall be applied in  
6 payment thereof if the record is found.

7 Section 4. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 All forms and procedures used in the issuance of certified and informational copies of vital  
10 records shall be uniform and shall be provided or approved by the state registrar. The  
11 department shall promulgate rules pursuant to chapter 1-26 to determine application  
12 requirements for a certified and an informational copy of a vital record, acceptable proof of  
13 identity, and the features required in a certified or informational copy.

14 Section 5. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 Nothing in this chapter may be construed to permit disclosure of information contained in  
17 the "Information for Medical and Health Use Only" section of the birth certificate or the  
18 "Information for Statistical Purposes Only" section of the certificate of marriage or certificate  
19 of divorce unless specifically authorized by the department for statistical or research purposes.  
20 Such data is not subject to subpoena or court order and is not admissible before any court,  
21 tribunal, or judicial body.

22 Section 6. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 To protect the integrity of vital records, ensure their proper use, and to ensure the efficient

1 and proper administration of the vital records system, no employee of the state vital records  
2 office, local registrar, or deputy registrar may permit inspection of any vital record or disclose  
3 information contained in any vital record or issue a copy of all or part of any such record unless  
4 authorized by this chapter or a court of competent jurisdiction.

5 Section 7. That § 34-25-57 be amended to read as follows:

6 34-25-57. No person, officer, agent, or employee of any other person or of any corporation  
7 or partnership may:

- 8 (1) Inter, cremate, or otherwise finally dispose of a dead body of a human being or  
9 permit the same to be done or remove the body from the state without authority of  
10 a burial or removal permit;
- 11 (2) Refuse or fail to furnish any information in such person's possession or furnish false  
12 information affecting any certificate or record required by this chapter;
- 13 (3) Intentionally falsify any certificate of birth, death, or burial or removal permit or any  
14 record required by this chapter;
- 15 (4) Being required by this chapter to fill out a certificate of birth or death and file the  
16 certificate with the local registrar or deliver it upon request to any person charged  
17 with the duty of filing the certificate, fail, neglect, or refuse to perform;
- 18 (5) Being an employee of the state vital records office, a local registrar or deputy  
19 registrar, intentionally fail, neglect, or refuse to perform the duty as required by this  
20 chapter or by the rules adopted by the secretary of health or by the instructions and  
21 directions of the department;
- 22 (6) Intentionally make, counterfeit, alter, amend, or mutilate any certificate, record, or  
23 report required by this chapter or a certified copy of the certificate, record, or report  
24 for the purpose of deception;

1       (7)   Obtain, possess, use, sell, or furnish to another, or attempt to obtain, possess, use,  
2           sell, or furnish to another, any certificate, record, or report, or certified copy thereof,  
3           required by this chapter, whether altered in any manner or not, for any purpose of  
4           deception; or

5       (8)   Possess any certificate, record, or report, or copy thereof, required by this chapter,  
6           knowing that the certificate, record, or report, or copy thereof, was stolen or  
7           otherwise obtained unlawfully.

8       A violation of this section is a Class 1 misdemeanor.

9       Section 8. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11       No employee of the state vital records office, local registrar, or deputy registrar may be held  
12 personally liable for any unintentional issuance of any certified copy of any vital record  
13 fraudulently obtained.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

679L0099

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 73** - 01/31/2005

Introduced by: Senators Lintz, McNenny, and Napoli and Representatives Pederson (Gordon), Brunner, Howie, and McCoy

1 FOR AN ACT ENTITLED, An Act to revise the power of rural fire protection districts to  
2 contract with certain entities.

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

4 Section 1. That § 34-31A-18 be amended to read as follows:

5 34-31A-18. Any rural fire protection district may ~~elect to~~ enter into a contract with another  
6 rural fire protection district to consolidate or cooperate for mutual fire protection and prevention  
7 purposes, or may enter into a contract with any federal, state, or local government agency for  
8 fire protection service or fire protection cooperation upon terms suitable to all concerned, ~~and~~  
9 power. Power to make such contracts is hereby conferred upon such state or local government  
10 agency in addition to such powers as are otherwise provided by law. Any rural fire protection  
11 district may enter into a contract with any nonprofit corporation, organized under the laws of  
12 this state and whose sole purpose is fire protection, for fire protection service or fire protection  
13 cooperation upon terms suitable to all concerned. Any contract between a rural fire protection  
14 district and a nonprofit corporation that was entered into prior to the effective date of this Act,  
15 and which now complies with the provisions of this section is hereby declared to be valid and



1 legal.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

249L0142

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 86** - 01/26/2005

Introduced by: Senators Duenwald, Broderick, Gray, Koskan, and Olson (Ed) and  
Representatives Rounds, Davis, Hennies, Jensen, and Murschel

1 FOR AN ACT ENTITLED, An Act to revise the compensation for deputy coroners.

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

3 Section 1. That § 7-14-9 be amended to read as follows:

4 7-14-9. The coroner may appoint one or more deputies and ~~such deputies~~ each deputy shall  
5 receive ~~the same~~ fees and expenses as ~~the coroner, but~~ determined at the discretion of the board  
6 of the county commissioners. The deputy coroner may not receive a salary.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

690L0525

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 96** - 01/26/2005

Introduced by: Senators Duenwald and Nesselhuf and Representatives Schafer, Boomgarden,  
Davis, Hackl, and Kroger

1 FOR AN ACT ENTITLED, An Act to allow municipalities to offer full food services at certain  
2 licensed municipal facilities and to declare an emergency.

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

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any municipality holding a license pursuant to Title 35 may serve or provide for the service  
7 of food at any establishment operating under such license.

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



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

716L0581

## SENATE ENGROSSED NO. **SB 103** - 02/04/2005

Introduced by: Senators Broderick, Gray, Moore, Nesselhuf, and Sutton (Duane) and Representatives Fryslie, Faehn, Haley, Pederson (Gordon), Rounds, and Willadsen

1 FOR AN ACT ENTITLED, An Act to authorize the funding of public transportation from the  
2 state highway fund and to repeal certain obsolete provisions regarding the state highway  
3 fund.

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

5 Section 1. That § 10-12-6 be repealed.

6 ~~— 10-12-6. The secretary of revenue and regulation may levy annually a sufficient tax, not to~~  
7 ~~exceed one-tenth of one dollar per thousand dollars taxable valuation for any year upon each~~  
8 ~~dollar of the taxable valuation of all taxable property in this state, to provide a special fund in~~  
9 ~~the state treasury to be known as the state highway fund. All money received by the state~~  
10 ~~treasurer pursuant to such levy shall be placed in such fund, to be used and expended under the~~  
11 ~~direction of the Department of Transportation, for the purpose of constructing and maintaining~~  
12 ~~highways and bridges in this state and paying the salaries and expenses of the Department of~~  
13 ~~Transportation, as the same may be appropriated for these purposes by the Legislature.~~

14 Section 2. That chapter 31-2 be amended by adding thereto a NEW SECTION to read as  
15 follows:



1        There is created a special fund in the state treasury to be known as the state highway fund.  
2        All moneys in the fund shall be used and expended under the direction of the Department of  
3        Transportation, for the purpose of constructing and maintaining highways and bridges in this  
4        state, paying the salaries and expenses of the Department of Transportation, and funding public  
5        transportation, as the moneys may be appropriated for these purposes by the Legislature.

6        Section 3. That § 31-2-14.2 be amended to read as follows:

7        31-2-14.2. All moneys in the state highway fund shall be used only for the construction,  
8        maintenance, and supervision of highways and bridges in this state ~~and~~, for the administrative  
9        costs necessary to perform such duties, and for the funding of public transportation.