

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

832L0579

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1160 - 02/17/2005

Introduced by: Representatives Murschel, Boomgarden, Cutler, Krebs, Kroger, Schafer, Sebert, and Street and Senators Broderick, Abdallah, Kelly, Koetzle, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to franchises and cable
2 services.

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

4 Section 1. That chapter 9-35 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

7 (1) "Cable operator," any person who provides cable service over a cable system;

8 (2) "Cable service," the one-way transmission to subscribers of video programming or
9 other programming service and the subscriber interaction, if any, which is required
10 for the selection or use of such video programming or other programming service;

11 (3) "Cable system," a facility consisting of a set of closed transmission paths and
12 associated signal generation, reception, and control equipment that is designed to
13 provide cable service to multiple subscribers within a community. The term does not
14 include a facility that serves subscribers without using the public right-of-way; a



1 facility of a telecommunications company that provides telecommunications service
2 as defined and regulated by chapter 49-31, except to the extent that the facility is used
3 to transmit video programming directly to subscribers, unless the extent of such use
4 is solely to provide interactive on-demand services;

5 (4) "Franchise," an authorization, established by ordinance, issued by a franchising
6 authority, which authorizes the construction and operation of a cable system;

7 (5) "Franchising authority," a municipality;

8 (6) "Other programming service," information that a cable operator makes available to
9 all subscribers generally;

10 (7) "Public, educational, or governmental access facilities," channel capacity designated
11 for public, educational, and governmental use and the facilities and equipment for the
12 use of such channel capacity; and

13 (8) "Video programming," programming provided by, or generally considered
14 comparable to programming provided by, a television broadcast station.

15 Section 2. That chapter 9-35 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A franchising authority may require a franchise of any cable operator for the operation of
18 a cable system within its jurisdiction. The exercise of such authority shall be pursuant to an
19 ordinance detailing the basic requirements for a franchise and the terms and conditions for any
20 other contractual arrangement thereafter deemed appropriate and consistent with this Act and
21 federal law.

22 Section 3. That chapter 9-35 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 A franchising authority may grant one or more additional franchises to other cable operators

1 under terms that are not substantially more favorable than that which the cable operator
2 designated by section 2 of this Act is required to meet. The terms that may not be substantially
3 more favorable are with regard to right-of-way access; public, educational, or governmental
4 access facilities requirements; and franchise fees.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0331

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 17** - 02/23/2005

Introduced by: The Committee on State Affairs at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the authority of the
2 Public Utilities Commission with regard to wind energy facilities.

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

4 Section 1. That § 49-41B-1 be amended to read as follows:

5 49-41B-1. The Legislature finds that energy development in South Dakota and the Northern
6 Great Plains significantly affects the welfare of the population, the environmental quality, the
7 location and growth of industry, and the use of the natural resources of the state. The Legislature
8 also finds that by assuming permit authority, that the state must also ensure that these facilities
9 are constructed in an orderly and timely manner so that the energy requirements of the people
10 of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and
11 operation of ~~energy conversion facilities and transmission~~ facilities will produce minimal
12 adverse effects on the environment and upon the citizens of this state by providing that ~~an~~
13 ~~energy conversion or transmission~~ a facility may not be constructed or operated in this state
14 without first obtaining a permit from the ~~Public Utilities Commission~~ commission.

15 Section 2. That § 49-41B-2 be amended to read as follows:



1 49-41B-2. Terms as used in this chapter mean:

2 (1) "Associated facilities," facilities which include, ~~but are not limited to~~, aqueducts,
3 diversion dams, transmission substations of two hundred fifty kilovolts or more,
4 storage ponds, reservoirs, or cooling ponds;

5 (2) "Commission," the State Public Utilities Commission;

6 (3) "Construction," any clearing of land, excavation, or other action that would affect the
7 environment of the site for each land or rights of way upon or over which a facility
8 may be constructed, but not including activities incident to preliminary engineering
9 or environmental studies;

10 (4) "Energy conversion facility," any new facility, or facility expansion, designed for or
11 capable of generation of one hundred megawatts or more of electricity, but does not
12 include any wind energy facilities;

13 (5) "Facility," any energy conversion facility, transmission facility, or ~~both~~ wind energy
14 facility, and associated facilities;

15 (6) "Permit," the permit issued by the commission under this chapter required for the
16 construction and operation of a facility;

17 (7) "Person," an individual, partnership, limited liability company, joint venture, private
18 or public corporation, association, firm, public service company, cooperative,
19 political subdivision, municipal corporation, government agency, public utility
20 district, or any other public or private entity, however organized;

21 (8) "Siting area," that area within ten miles in any direction of a proposed energy
22 conversion facility or which is determined by the commission to be affected by a
23 proposed energy conversion facility;

24 (9) "Trans-state transmission facility," an electric transmission line and its associated

1 facilities which originates outside the State of South Dakota, crosses this state and
2 terminates outside the State of South Dakota; and which transmission line and
3 associated facilities delivers electric power and energy of twenty-five percent or less
4 of the design capacity of such line and facilities for use in the State of South Dakota;

5 (10) "Utility," any person engaged in and controlling the generation or transmission of
6 electric energy and gas or liquid transmission facilities as defined by § 49-41B-2.1;

7 (11) "Wind energy facility," a new facility, or facility expansion, consisting of a
8 commonly managed integrated system of towers, wind turbine generators with
9 blades, power collection systems, and electric interconnection systems, that converts
10 wind movement into electricity and that is designed for or capable of generation of
11 one hundred megawatts or more of electricity. A wind energy facility expansion
12 includes the addition of new wind turbines, designed for or capable of generating
13 twenty-five megawatts or more of electricity, which are to be managed in common
14 and integrated with existing turbines and the combined megawatt capability of the
15 existing and new turbines is one hundred megawatts or more of electricity. The
16 number of megawatts generated by a wind energy facility is determined by adding the
17 nameplate power generation capability of each wind turbine.

18 Section 3. That § 49-41B-25 be amended to read as follows:

19 49-41B-25. Within six months of receipt of the initial application for a permit for the
20 construction of ~~substations~~ a wind energy facility, substation, or transmission lines ~~line~~ of less
21 than two hundred fifty kilovolts, the ~~Public Utilities Commission~~ commission shall make
22 complete findings, and render a decision, regarding whether a permit should be granted, denied,
23 or granted upon such terms, conditions or modifications of the construction, operation or
24 maintenance as the commission may deem appropriate. In its decision the commission must find

1 that the construction of the facility meets all requirements of this chapter. Notice of the
2 commission's decision shall be given to the applicant and to parties to the hearing within ten
3 days following the decision.

4 Section 4. That § 49-41B-35 be amended to read as follows:

5 49-41B-35. To implement the provisions of this chapter regarding ~~energy conversion and~~
6 ~~transmission~~ facilities, the commission shall promulgate rules pursuant to chapter 1-26. The
7 commission shall prepare, in consultation with other state agencies, a single application form
8 which incorporates information requirements of those state agencies or their boards or
9 commissions which have related permit issuing powers that must be exercised prior to
10 construction of a facility. Rules may be adopted by the commission:

- 11 (1) To establish the information requirements and procedures that every utility must
12 follow when filing plans with the commission regarding its ~~existing and proposed~~
13 ~~energy conversion facilities, and for proposed and existing transmission~~ facilities;
14 ~~and~~
- 15 (2) To establish procedures for utilities to follow when filing an application for a permit
16 to construct ~~an energy conversion facility or a transmission~~ a facility, and the
17 information required to be included in the application; and
- 18 (3) To require bonds, guarantees, insurance, or other requirements to provide funding for
19 the decommissioning and removal of a wind energy facility.

20 Section 5. That § 49-41B-36 be amended to read as follows:

21 49-41B-36. ~~This chapter shall not~~ Nothing in this chapter may be construed as a delegation
22 to the ~~Public Utilities Commission~~ commission of the authority to route a transmission facility,
23 or to designate or mandate location of an energy conversion facility or wind energy facility.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0369

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 60** - 02/23/2005

Introduced by: The Committee on Judiciary at the request of the South Dakota Commission
on Child Support

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to child support.

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

3 Section 1. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If the child receives social security or veteran's dependent benefits as a result of the obligor's
6 disability, or social security retirement benefits from the obligor, the obligor is entitled to a
7 credit to the amount of the monthly support obligation.

8 Section 2. That § 25-7-6.7 be amended to read as follows:

9 25-7-6.7. Deductions from monthly gross income shall be allowed as follows:

- 10 (1) Income taxes ~~withheld figured on the basis of two dependent exemptions for a single~~
11 ~~taxpayer paid monthly rather than actual amount withheld~~ payable based on the
12 applicable tax rate for a single taxpayer with one withholding allowance and a
13 monthly payroll period rather than the actual tax rate;
- 14 (2) ~~Estimated income taxes payable, prorated monthly~~ Social security and medicare taxes
15 based on the applicable tax rate for an employee or a self-employed taxpayer;



1 (3) ~~FICA taxes withheld from wages or salary;~~

2 ~~(4) Retirement fund amounts withheld or paid directly to an IRS qualified retirement~~
3 ~~plan, in a reasonable amount~~ Contributions to an IRS qualified retirement plan not
4 exceeding ten percent of gross income;

5 ~~(5)~~(4) Actual business expenses of an employee, incurred for the benefit of his employer,
6 not reimbursed;

7 ~~(6)~~(5) Payments made on other support and maintenance orders.

8 Section 3. That § 25-7-6.14 be amended to read as follows:

9 25-7-6.14. As used in this section, basic visitation means a parenting plan whereby one
10 parent has physical custody and the other parent has visitation with the child of the parties. In
11 a basic visitation situation, unless the parties otherwise agree and the agreement is approved by
12 the court, the court may, if deemed appropriate under the circumstances, order an abatement of
13 not less than thirty-eight percent nor more than sixty-six percent of the child support if:

14 (1) A child spends ten or more days in a month with the obligor; and

15 (2) The days of visitation and the abatement amount are specified in the court order.

16 The court shall allow the abatement to the obligor in the month in which the visitation is
17 exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation.
18 It shall be presumed that the visitation is exercised. If the visitation exercised substantially
19 deviates from the visitation ordered, either party may file a petition for modification without
20 showing any other change in circumstances.

21 As used in this section, shared responsibility means a parenting plan whereby each parent
22 provides a suitable home for the child of the parties, the court order allows the child to spend
23 at least one hundred twenty days in a calendar year in each home, and the parents have agreed
24 in writing to share the duties, responsibilities, and expenses of parenting, including expenses

1 for the child's education, recreation, and entertainment activities. In a shared responsibility
2 situation, unless the parties otherwise agree and the agreement is approved by the court, the
3 court may, if deemed appropriate under the circumstances, order a shared responsibility cross
4 credit. The cross credit shall be calculated by multiplying the combined child support obligation
5 using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support
6 obligation. The shared custody child support obligation shall be apportioned to each parent
7 according to his or her net income. A child support obligation is computed for each parent by
8 multiplying that parent's portion of the shared custody child support obligation by the percentage
9 of time the child spends with the other parent. The respective child support obligations are
10 offset, with the parent owing more child support paying the difference between the two
11 amounts. It shall be presumed that the shared responsibility parenting plan is exercised. If the
12 parenting plan exercised substantially deviates from the parenting plan ordered, either party may
13 file a petition for modification without showing any other change in circumstances.

14 The court shall consider each case individually before granting either the basic visitation or
15 shared responsibility adjustment to insure that the adjustment does not place an undue hardship
16 on the custodial parent or have a substantial negative effect on the child's standard of living.

17 Section 4. That § 25-7-6.13 be amended to read as follows:

18 25-7-6.13. All orders for support entered and in effect prior to July 1, ~~2004~~ 2005, may be
19 modified in accordance with this chapter without requiring a showing of a change in
20 circumstances from the entry of the order.

21 Section 5. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 If a parent is employed full-time at a rate of pay that equals or exceeds the state's minimum
24 wage, it shall be presumed that a parent's second job income is not to be considered in

1 establishing a support obligation. This presumption may be rebutted by evidence that the income
2 source was available to pay expenses related to the child when the family was intact or if the
3 family had formed, by evidence that exclusion of the income would result in a financial hardship
4 upon the other parent, or that exclusion of the second job income will have a substantial
5 negative effect upon the child's standard of living.

6 Section 6. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If the parents have two or more children between them and each parent has primary physical
9 custody of at least one child, the child support obligation shall be determined by computing the
10 amount of each parent's respective support obligation for the children in the other parent's
11 physical custody, and the support obligations shall be offset in determining a monthly support
12 obligation. If one or more of the children are receiving assistance from the department as
13 provided in § 28-7A-7, and in lieu of the offset, each parent shall be obligated to pay the
14 respective support obligation amount to the other parent.

15 Section 7. That § 25-7A-6 be amended to read as follows:

16 25-7A-6. If a parent served with a notice of support debt under § 25-7A-5 makes a timely
17 request for a hearing, the secretary of social services shall file the notice of support debt, proof
18 of service thereof, and response thereto in the office of the clerk of the circuit court in the county
19 of residence of that parent. The matter shall be set for hearing before a referee who is a member
20 in good standing of the State Bar Association and is appointed by the court, pursuant to statute,
21 and after due notice to all parties by first class mail. The referee shall make a report to the court,
22 recommending the amount of the debt due to the state, if any, and the monthly support
23 obligation of the parent and the arrearage debt due to the obligee or another state who has
24 applied for support enforcement services, or for health insurance coverage or genetic testing

1 costs.

2 The referee shall file the report with the court and cause copies thereof to be served by
3 mailing to the parties and the secretary. Any party shall have ten days from the date of service
4 of the report in which to file objections to the report. If a party files an objection, the other party
5 shall have an additional five days from the date of service of the objections to file additional
6 objections. If no objection is filed, the circuit court may thereafter, and without further notice,
7 enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report,
8 the hearing to be solely on the record established before the referee. The circuit court may
9 thereafter adopt the referee's report, or may modify it, or may reject and remand it with
10 instructions or for further hearing. The secretary shall serve the parent the court's order by
11 certified mail, return receipt requested, at the parent's last known address, and shall file proof
12 of service.

13 If the circuit court's order modifies the referee's report and no hearing was held before the
14 court before entry of its order, any party has ten days from the date of service of the order in
15 which to file an objection to that modification. If an objection is filed, the circuit court shall fix
16 a date for hearing on the objection and after the hearing shall enter its order. The secretary shall
17 serve the order by certified mail, return receipt requested, at the parent's last known address, and
18 shall file proof of service.

19 Section 8. That § 25-7A-22 be amended to read as follows:

20 25-7A-22. If the support order was entered in this state and this state maintains continuing
21 exclusive jurisdiction over the support order in accordance with chapter 25-9B, or if the support
22 order was registered in this state and the requirements of § 25-9B-611 or 25-9B-613 are
23 satisfied, an obligor, an obligee, or the assignee may file a petition, on forms prescribed by the
24 department, to increase or decrease child support. For any support order entered or modified

1 after July 1, 1997:

2 (1) The order may be modified upon showing a substantial change in circumstances if
3 the petition is filed within three years of the date of the order; or

4 (2) The order may be modified without showing any change in circumstances if the
5 petition is filed after three years of the date of the order.

6 If a petition is filed, the secretary of social services shall file the petition in the office of the
7 clerk of the circuit court where the original order for support is filed. Any response shall also
8 be provided to the petitioning party. The matter shall be set for hearing before a referee who is
9 a member in good standing of the State Bar Association and is appointed by the court, pursuant
10 to statute, and after due notice to all parties by first class mail. The referee shall make a report
11 to the court, recommending the amount of the monthly support obligation of the parent or for
12 health insurance coverage.

13 The referee shall file the report with the court and cause copies thereof to be served by
14 mailing to the parties and the secretary. Any party shall have ten days from the date of service
15 of the report in which to file objections to the report. If a party files an objection, the other party
16 shall have an additional five days from the date of service of the objections to file additional
17 objections. If no objection is filed, the circuit court may thereafter, and without further notice,
18 enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report,
19 the hearing to be solely on the record established before the referee. The circuit court may
20 thereafter adopt the referee's report, or may modify it, or may reject and remand it with
21 instructions or for further hearing. The secretary shall serve the parent the court's order by
22 certified mail, return receipt requested, at the parent's last known address, and shall file proof
23 of service.

24 If the circuit court's order modifies the referee's report and no hearing was held before the

1 circuit court before entry of its order, any party has ten days from the date of service of the order
2 in which to file an objection to that modification. If an objection is filed, the circuit court shall
3 fix a date for hearing on the objection and after the hearing shall enter its order. The secretary
4 shall serve the order by certified mail, return receipt requested, at the parent's last known
5 address, and shall file proof of service.

6 Section 9. That chapter 25-7A be amended by adding thereto a NEW SECTION to read as
7 follows:

8 In any order establishment case, the obligee is limited to a prior-period support obligation
9 or arrearage not exceeding three years before either the date of application with any Title IV-D
10 agency, the date of filing with a court of competent jurisdiction, or the date of a written demand
11 served personally or by registered or certified mail, return receipt requested, upon the father at
12 his last known address, whichever occurs earlier.

13 Section 10. That § 25-7-6.10 be amended to read as follows:

14 25-7-6.10. Deviation from the schedule in § 25-7-6.2 shall be considered if raised by either
15 party and made only upon the entry of specific findings based upon any of the following factors:

16 (1) The income of a subsequent spouse or contribution of a third party to the income or
17 expenses of that parent but only if the application of the schedule works a financial
18 hardship on either parent;

19 (2) Any financial condition of either parent which would make application of the
20 schedule inequitable. If the total amount of the child support obligation, including
21 any adjustments for health insurance and child care costs, exceeds fifty percent of the
22 obligor's monthly net income, it shall be presumed that the amount of the obligation
23 imposes a financial hardship on the obligor. This presumption may be rebutted based
24 upon other factors set forth in this section;

1 (3) ~~The federal income tax consequences arising from claiming the child as a dependent;~~

2 ~~(4) Any necessary education or health care special needs of the child;~~

3 ~~(5) For agreements entered into prior to July 1, 1986, if it is established by clear and~~
4 ~~convincing evidence, that debts or property were exchanged for child support and it~~
5 ~~appears equitable to continue such arrangement;~~

6 ~~(6)~~(4) The effect of agreements between the parents regarding extra forms of support for the
7 direct benefit of the child;

8 ~~(7)~~(5) The obligation of either parent to provide for subsequent natural children or
9 stepchildren. However, an existing support order may not be modified solely for this
10 reason; or

11 ~~(8)~~(6) The voluntary act of either parent which reduces that parent's income.

12 Section 11. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If the parents of a child have agreed to a change in the physical custody of the child without
15 the court's approval, the parent who relinquished physical custody may be ordered to pay child
16 support to the parent who gained physical custody of the child even though the custody order
17 has not been modified to reflect the change in custody.

18 Section 12. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The department shall create and distribute a standardized form to allow a parent, guardian,
21 or other custodian to request reimbursement of any medical or health care costs from the
22 responsible parent. A parent, guardian, or custodian shall also be entitled to use the small claims
23 procedure of chapter 15-39 as a means to collect unreimbursed medical or health care costs from
24 the responsible parent.

1 Section 13. That § 25-8-5 be amended to read as follows:

2 25-8-5. The mother may recover ~~from the father a reasonable share of the necessary support~~
3 ~~of a child born out of wedlock.~~

4 ~~— In the absence of a previous demand in writing served personally or by registered or certified~~
5 ~~letter addressed to the father at his last known residence, not more than six years' support~~
6 ~~furnished before bringing an action may be recovered from the father support for a period of~~
7 ~~three years before the date of application with any Title IV-D agency, the date of filing with a~~
8 ~~court of competent jurisdiction, or the date of a written demand served personally or by~~
9 ~~registered or certified mail, return receipt requested, upon the father at his last known address,~~
10 ~~whichever occurs earlier.~~

11 Section 14. That chapter 15-39 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Notwithstanding any other provision of law, a parent, guardian, or custodian is entitled to
14 use the procedures provided in this chapter to collect unreimbursed medical or health care costs
15 incurred on behalf of a child from the other responsible parent.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0385

SENATE ENGROSSED NO. **SB 66** - 01/27/2005

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

1 FOR AN ACT ENTITLED, An Act to provide certain options to school boards in
2 reorganization, to increase the percentage of voters necessary to petition for school district
3 reorganization, and to declare an emergency.

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

5 Section 1. That § 13-6-10 be amended to read as follows:

6 13-6-10. If the school board or the voters of two or more districts or parts of districts express
7 a desire to consolidate their respective districts to create a new entity; or the school board or the
8 voters of an existing district express a desire to divide the district to create one or more new
9 entities; or the school board or the voters of an existing district express a desire to dissolve and
10 be annexed to an existing district, the school board may by resolution, or shall, if presented by
11 a petition signed by ~~fifteen~~ the lesser of one thousand registered voters or twenty percent of the
12 registered voters residing in the district, based upon the total number of registered voters at the
13 last preceding general election, develop a plan to accomplish the desire expressed in the
14 resolution or contained in the petition. If more than one district is involved, their respective
15 school boards shall act jointly in the preparation of the plan. Within fifteen days after a petition
16 is filed as provided in this section, the school district shall acknowledge the receipt of the



1 petition in writing to the person who filed the petition. Within one hundred eighty days after the
2 petition was filed, the school board shall develop the plan required in this section and shall file
3 the plan as required in § 13-6-17. The Department of Education may grant two extensions of
4 the filing deadline, not to exceed ninety days each.

5 The school board shall call conferences and hold hearings to develop the plan. The school
6 board may employ a consultant. If the school boards involved in the creation of a plan initiated
7 by a petitioner cannot agree on a single plan within the time allowed in this section, the
8 Secretary of Education shall submit a plan to the voters of each affected school board within
9 ninety days.

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

563L0511

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 95** - 02/18/2005

Introduced by: Senators Sutton (Duane), Abdallah, Broderick, Gray, Hundstad, Koetzle, McNenny, Moore, and Napoli and Representatives Frost, Cutler, Dennert, Elliott, Jensen, Klaudt, Michels, Murschel, O'Brien, Olson (Ryan), Pederson (Gordon), Rounds, Turbiville, and Valandra

1 FOR AN ACT ENTITLED, An Act to authorize account wagering and multi-jurisdictional
2 simulcasting and interactive wagering totalizator hubs and to revise certain provisions
3 regarding pari-mutuel racing.

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

5 Section 1. That § 42-7-56 be amended to read as follows:

6 42-7-56. The commission shall:

- 7 (1) Provide for racing under the certificate system;
- 8 (2) Perform quasi-legislative, quasi-judicial, and advisory functions excluding special
9 budgetary functions as defined in § 1-32-1;
- 10 (3) Set racing dates;
- 11 (4) Promulgate rules pursuant to chapter 1-26 for effectively preventing the use of any
12 substance, compound items, or combination thereof of any medicine, narcotic,
13 stimulant, depressant, or anesthetic which could alter the normal performance of a
14 racing animal unless specifically authorized by the commission;



- 1 (5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and
2 equipment used within the state;
- 3 (6) Promulgate rules pursuant to chapter 1-26 governing, restricting, or regulating bids
4 on licensees' concessions and leases on equipment;
- 5 (7) Approve all proposed extensions, additions, or improvements to the buildings,
6 stables, or tracts upon property owned or leased by a licensee;
- 7 (8) Exclude from race courses or other pari-mutuel facilities any person who violates the
8 racing laws or any rule, ~~regulation~~, or order of the commission or is not eligible for
9 licensing in another racing jurisdiction;
- 10 (9) Compel the production of all documents showing the receipts and disbursements of
11 any licensee and determine the manner in which ~~such~~ the financial records shall be
12 kept;
- 13 (10) Investigate the operations of any licensee and cause the various places where the
14 certificate system is operated to be visited and inspected at reasonable intervals for
15 the purpose of satisfying itself that the rules ~~and regulations~~ are strictly complied
16 with;
- 17 (11) Request appropriate state officials to perform inspections necessary for the health and
18 safety of spectators, employees, participants, and animals that are lawfully on the race
19 track;
- 20 (12) License all participants in the racing industry and require and obtain such information
21 as the commission deems necessary from licensed applicants;
- 22 (13) Promulgate and enforce additional rules pursuant to chapter 1-26, and conditions
23 under which all horse and dog races held shall be conducted and promulgate rules
24 pursuant to chapter 1-26 to preserve the integrity and security of racing; ~~and~~

1 (14) License all facilities at which money is collected or disbursed under the certificate
2 system;

3 (15) Promulgate rules pursuant to chapter 1-26 for the authorization, regulation, and
4 auditing of account wagering on horse and dog racing authorized by this chapter;

5 (16) Promulgate rules pursuant to chapter 1-26 regarding the licensing and regulation of
6 multi-jurisdictional totalizator hubs and the employees of such facilities; and

7 (17) Promulgate rules pursuant to chapter 1-26 to establish application fees and initial
8 system audit fees that shall be used to conduct the background investigation of the
9 applicant and the initial system audit of the multi-jurisdictional totalizator hub. If the
10 commission or the executive secretary determines that the actual cost of the
11 background investigation or initial system audit will exceed the amount of the fees
12 paid, the commission may assess the actual cost of the background investigation or
13 initial system audit, including the costs for personnel and travel, against the applicant.

14 Section 2. That § 42-7-58.7 be amended to read as follows:

15 42-7-58.7. Notwithstanding any other provisions of this chapter, the commission may accept
16 and consider applications at any time for operation of satellite facilities and multi-jurisdictional
17 totalizator hubs to be operated under the certificate system and issue a license at any time for
18 the operation of ~~satellite~~ the facilities or hubs, if the facilities or hubs only allow wagering on
19 horse and dog racing authorized by this chapter.

20 Section 3. That § 42-7-60 be amended to read as follows:

21 42-7-60. Every person applying for a license under §§ 42-7-58 ~~and~~, 42-7-58.1, and 42-7-
22 56(16) shall give bond payable to the State of South Dakota with good security to be approved
23 by the commission. The bond shall be the amount which the commission determines is adequate
24 to protect the amount normally due and owing to the commission in a sixty-day period or, in the

1 case of new or altered conditions, based on the projected revenues and to guarantee proper
2 payout of wagers.

3 The commission may waive the bond. In such event, the amount of taxes and fees due and
4 owing the state shall be a lien on the license to operate. The lack of timely payment shall be
5 cause for revocation or suspension of the license to operate.

6 Section 4. That § 42-7-65 be amended to read as follows:

7 42-7-65. All transfers of licenses to ~~operate a meet~~ collect or disburse money under the
8 certificate system or transfers of stock in a corporation holding a license shall be subject to prior
9 review and approval by the commission, and the disclosure requirements as provided in § 42-7-
10 59. The commission may approve minor transfers of stock without a hearing. The commission
11 shall apply the standards provided in § 42-7-91 in determining whether it shall permit a transfer
12 of stock.

13 Section 5. That § 42-7-71 be amended to read as follows:

14 42-7-71. One-fourth of all money received by the state treasurer under this chapter from
15 licensees operating horse racing tracks shall be placed in a special revenue fund to be known
16 as the "South Dakota-bred racing fund." The fund shall be used by the commission to encourage
17 horse racing and the raising and breeding of horses in South Dakota and shall be used for the
18 purpose of providing compensation to South Dakota-bred horses ~~by~~ and providing funds to all
19 horsetracks licensed in South Dakota. ~~However, not more than one-fourth of the moneys~~
20 ~~deposited in the South Dakota-bred racing fund may be used by the commission to provide~~
21 ~~purse supplements to horsetracks for horses other than South Dakota-bred horses.~~

22 Section 6. That § 42-7-82 be amended to read as follows:

23 42-7-82. Claims for any part of a redistribution from a pari-mutuel pool shall be made within
24 ~~sixty days~~ one year from the ~~end of the meet at~~ date on which the race was held or be forever

1 barred. Any sums so barred shall become the property of the licensee conducting the meet or
2 providing the simulcast signal from the host track to the satellite facility or the multi-
3 jurisdictional totalizator hub at which the contribution was made.

4 Section 7. That § 42-7-89 be amended to read as follows:

5 42-7-89. The payments required in §§ 42-7-63, 42-7-79, 42-7-85, ~~and~~ 42-7-88, and 42-7-102
6 to be made by the licensee to the state treasurer are in lieu of all other or further excise or
7 occupational taxes to the state or any county, municipality, or other political subdivision.

8 Section 8. That § 42-7-91 be amended to read as follows:

9 42-7-91. The commission may refuse, suspend, or withdraw licenses under the certificate
10 system and privileges granted by it or terminate ~~racing license~~ privileges for just cause. Those
11 things constituting just cause are:

- 12 (1) Any action or attempted action by a person contrary to the provisions of this chapter
13 and law;
- 14 (2) Corrupt practices, which include but are not limited to:
 - 15 (a) Prearranging or attempting to prearrange the order of finish of a race;
 - 16 (b) Failing to properly pay the winnings to a bettor or to properly return change
17 to a bettor upon purchasing a ticket;
 - 18 (c) Falsifying or manipulating the odds on any entrant in a race;
- 19 (3) Any violation of the rules of racing adopted by the commission;
- 20 (4) ~~Willful falsification~~ Falsification or misstatement of fact in an application for ~~racing~~
21 ~~privileges~~ any license issued pursuant to this chapter;
- 22 (5) Material false statement to a racing official or to the commission;
- 23 (6) Willful disobedience of a commission order or of a lawful order of a racing official
24 other than a commissioner;

- 1 (7) Continued failure or inability to meet financial obligations connected with the
- 2 licensee's business, occupation or profession performed or engaged on the track
- 3 grounds;
- 4 (8) Failure or inability to maintain properly a race track;
- 5 (9) The refusal to license, or the suspension, or the revocation of a racing license by
- 6 another racing jurisdiction.

7 Section 9. That § 42-7-102 be amended to read as follows:

8 42-7-102. Notwithstanding any other provision of this chapter, the commission may
9 authorize any licensee to participate in an interstate combined wagering pool with one or more
10 other racing jurisdictions. If a licensee participates in an interstate combined wagering pool, the
11 licensee may adopt the take-out of the host jurisdiction or facility. The State of South Dakota
12 shall receive one and one-half percent of the total contributed in this state, and the special racing
13 revolving fund and the South Dakota-bred racing fund shall each receive one and one-half
14 percent of the total contributed in this state. However, if the licensee participating in the
15 interstate combined wagering pool is a multi-jurisdictional totalizator hub, the total portion to
16 be received by the state shall be one-fourth of one percent of the total contributed through the
17 hub, of which the special racing revolving fund shall receive one-fifth of one percent of the total
18 contributed through the hub and the South Dakota-bred racing fund shall receive one-twentieth
19 of one percent of the total contributed through the hub. Any such interstate combined wagering
20 pool may only apply to horse and dog racing authorized by this chapter.

21 Section 10. Nothing in this Act authorizes internet gambling otherwise prohibited by chapter
22 22-25A.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

776L0668

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 107 - 02/11/2005

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

Introduced by: Senators Kooistra, Knudson, and Nesselhuf and Representatives Sebert and Thompson

1 FOR AN ACT ENTITLED, An Act to regulate the sale and shipment of cigarettes.

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

3 Section 1. That § 10-50-1 be amended by adding thereto NEW SUBDIVISIONS to read as
4 follows:

5 "Adult," any person who is at least the legal minimum purchase age;

6 "Consumer," any individual who is not a retailer or a licensed distributor or wholesaler
7 pursuant to § 10-50-9;

8 "Delivery sale," any sale of cigarettes to a consumer in the state where:

9 (a) The purchaser submits the order for the sale by means of a telephonic or other
10 method of voice transmission, the mail or any other delivery service, or the
11 internet or other online service; or

12 (b) The cigarettes are delivered by use of the mail or delivery service. A sale of
13 cigarettes shall be a delivery sale regardless of whether the seller is located
14 within or without the state;



1 "Delivery service," any person engaged in the commercial delivery of letters, packages, or
2 other containers;

3 "Legal minimum purchase age," the minimum age at which an individual may legally
4 purchase cigarettes in this state pursuant to § 34-46-2;

5 "Mail," or "mailing," the shipment of cigarettes through the United States Postal Office;

6 "Shipping container," any container in which cigarettes are shipped in connection with a
7 delivery sale;

8 "Shipping document," any bill of lading, airbill, or any other document used to provide
9 evidence of the undertaking by a delivery service to deliver a letter, package, or other container.

10 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No person may make a delivery sale of cigarettes to any individual who is under the legal
13 minimum purchase age in the state.

14 Any person accepting a purchase order for a delivery sale shall comply with:

- 15 (1) The age verification requirements provided in section 3 of this Act;
- 16 (2) The disclosure requirements provided in section 4 of this Act;
- 17 (3) The shipping requirements provided in section 5 of this Act;
- 18 (4) The registration and reporting requirements provided in section 6 of this Act; and
- 19 (5) All other statutes of the state generally applicable to sales of cigarettes that occur
20 entirely within the state, and any law imposing an excise tax, sales tax, license,
21 revenue-stamping requirement, and escrow payment obligation as provided in chapter
22 10-50B.

23 Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 No person may mail, ship, or otherwise deliver cigarettes in connection with a delivery sale
2 unless prior to the first delivery sale to the consumer:

3 (1) The person obtains from the consumer a statement signed by the consumer in writing
4 that certifies the consumer's address and that the consumer is at least eighteen years
5 of age. The statement shall also confirm that the consumer understands that signing
6 another person's name to the certification is illegal, the sale of cigarettes to any
7 individual under the legal minimum purchase age is illegal, the purchase of cigarettes
8 by any individual under the legal minimum purchase age is illegal, and that the
9 consumer wants to receive a mailing from a tobacco company;

10 (2) The person makes a good faith effort to verify the information contained in the
11 certification provided by the consumer pursuant to subdivision (1) against a
12 commercially available database, or obtains a photocopy or other image of the valid,
13 government-issued identification stating the date of birth or age of the individual
14 placing the order;

15 (3) The person provides to the consumer, via e-mail or other means, a notice that meets
16 the requirements of section 4 of this Act; and

17 (4) If an order for cigarettes is made pursuant to an advertisement on the internet or other
18 advertising medium, the person receives payment for the delivery sale from the
19 prospective consumer by a credit or debit card that has been issued in the consumer's
20 name, or by check.

21 Any person accepting a purchase order for a delivery sale may request that the prospective
22 consumer provide an e-mail address.

23 Section 4. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The notice required under section 3 of this Act shall include a prominent and clearly legible
2 statement that:

- 3 (1) Cigarette sales to consumers below the legal minimum purchase age are illegal;
- 4 (2) Consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette
5 Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) as of January 1, 2005, rotated
6 on a quarterly basis;
- 7 (3) Sales of cigarettes are restricted to those consumers who provide verifiable proof of
8 age in accordance with section 3 of this Act; and
- 9 (4) Cigarette sales are subject to tax under § 10-50-3, and an explanation of how the tax
10 has been or will be paid with respect to the delivery sale.

11 Section 5. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery
14 sale shall:

- 15 (1) Include as part of the bill of lading or other shipping documents a clear and
16 conspicuous statement as follows: "Cigarettes: South Dakota Law Prohibits Shipping
17 to Individuals Under 18, and Requires the Payment of all Applicable Taxes"; and
- 18 (2) Use a method of mailing, shipping, or delivery that obligates the delivery service to
19 require the consumer placing the purchase order for the delivery sale, or another adult
20 of legal minimum purchase age residing at the consumer's address, to sign to accept
21 delivery of the shipping container, and provide proof in the form of a valid
22 government-issued identification bearing a photograph of the individual who signs
23 to accept delivery of the shipping container. The person accepting delivery shall be
24 the addressee or another adult of legal minimum purchase age residing at the

1 consumer's address.

2 If the person accepting a purchase order for a delivery sale delivers the cigarettes without
3 using a delivery service, the person shall comply with each requirement of sections 2 to 7,
4 inclusive, of this Act applicable to a delivery service. The person is in violation of the provisions
5 of sections 2 to 7, inclusive, of this Act if the person fails to comply with any such requirement.

6 Section 6. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Prior to making a delivery sale or mailing, shipping, or otherwise delivering cigarettes in
9 connection with any delivery sale, each person shall file with the department a statement
10 providing the person's name, trade name, and the address of the person's principal place of
11 business and any other place of business.

12 Not later than the tenth day of each calendar month, each person that has made a delivery
13 sale or mailed, shipped, or otherwise delivered cigarettes in connection with any delivery sale
14 during the previous calendar month shall file with the department a memorandum or a copy of
15 the invoice that provides for each delivery sale:

- 16 (1) The name and address of the consumer;
- 17 (2) The brand or brands of the cigarettes that were sold; and
- 18 (3) The quantity of cigarettes that were sold.

19 Section 7. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 In addition to any other provision of law, the secretary may assess, for a first violation of any
22 provision of sections 2 to 7, inclusive, of this Act, a civil penalty of one thousand dollars or five
23 times the retail value of the cigarettes involved, whichever is greater. A subsequent violation
24 is punishable by a civil penalty of five thousand dollars or five times the retail value of the

1 cigarettes involved, whichever is greater.

2 Any person who knowingly violates any provision pursuant to sections 2 to 7, inclusive, of
3 this Act, or who knowingly and falsely submits a certification in another person's name, shall
4 for each offense be fined ten thousand dollars or five times the retail value of the cigarettes
5 involved, whichever is greater.

6 Any person failing to collect or remit to the department any tax required in connection with
7 a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the
8 retail value of the cigarettes involved.

9 Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the
10 requirements of sections 2 to 7, inclusive, of this Act shall be forfeited to the state and
11 destroyed. All fixtures, equipment, and all other materials and personal property on the premises
12 of any person who, with the intent to defraud the state, violates any of the requirements of
13 sections 2 to 7, inclusive, of this Act, shall be forfeited to the state.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

547L0547

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 109 - 02/22/2005

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

Introduced by: Senators Dempster, Broderick, Earley, Kelly, Knudson, Olson (Ed), and Sutton (Dan) and Representatives Hunt, Cutler, Krebs, Roberts, Rounds, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the modification of
2 credit card agreements.

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

4 Section 1. That § 54-11-10 be amended to read as follows:

5 54-11-10. Upon written notice, a credit card issuer may change the terms of any credit card
6 agreement, if such right of amendment has been reserved, ~~including finance charges, fees and~~
7 ~~other costs, effective as to existing balances, so long as the card holder does not, within~~
8 ~~twenty-five days of the effective date of the change, furnish written notice to the issuer that he~~
9 ~~does not agree to abide by such changes. Upon receipt of such written notice by the issuer, the~~
10 ~~card holder shall have the remainder of the time under the existing terms in which to pay all~~
11 ~~sums owed to the issuer or creditor. Use of the card after the effective date of the change of~~
12 ~~terms, including a change in interest rates, is deemed to be an acceptance of the new terms, even~~
13 ~~though the twenty-five days have not expired. However, the following changes to the credit card~~
14 ~~agreement, effective as to existing balances, do not become binding on the parties if the card~~



1 holder, within twenty-five days of the effective date of the change, furnishes written notice to
2 the issuer, at the address designated by the issuer, that the card holder does not agree to abide
3 by such changes:

- 4 (1) Modifying the circumstances under which a finance charge will be imposed;
- 5 (2) Altering the method used to calculate finance charges;
- 6 (3) Increasing finance charges, fees, and other costs; or
- 7 (4) Increasing the required minimum payment.

8 Any other change to the credit card agreement modifying the manner in which the issuer and
9 card holder resolve disputes arising out of their relationship do not become binding on the
10 parties if the card holder, within twenty-five days of the effective date of the change, furnishes
11 written notice to the issuer, at the address designated by the issuer, that the card holder does not
12 agree to abide by such changes.

13 Use of the card after the effective date of the change of terms is deemed to be an acceptance
14 of the new terms, even if the twenty-five-day period has not expired. Unless otherwise required
15 by 12 C.F.R. § 226, in effect on January 1, 2005, a written change of terms notice is not required
16 if the proposed change in terms has been communicated by the issuer to the card holder and the
17 card holder agrees.

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

20 In lieu of the card holder's right to reject certain changes in terms within twenty-five days
21 pursuant to section 1 of this Act, the issuer may require the card holder to provide written notice
22 of such rejection not less than five days prior to the effective date of the change if the issuer has
23 sent notice of the proposed change in terms under this Act to the card holder not less than thirty
24 days prior to the effective date of the change. The issuer may provide the card holder an

- 1 alternative means by which to communicate the card holder's rejection of the change in terms,
- 2 so long as the alternative means is not more burdensome to the card holder.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

354L0447

SENATE ENGROSSED NO. **SB 114** - 02/15/2005

Introduced by: Senators Duenwald, Hansen (Tom), Hanson (Gary), and Koskan and
Representatives Davis, Fryslie, Hackl, Hargens, and Jensen

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff on pulse crops.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Council," the South Dakota Pulse Crop Council;

5 (2) "First purchaser," any person, firm, corporation, association, partnership, agent, or
6 broker buying, accepting for sale, or otherwise acquiring pulse crops after harvest
7 from a grower. A grower selling unharvested pulse crops or delivering pulse crops
8 from the farm on which they are produced to storage facilities, packing shed, or
9 processing plant is not a first purchaser;

10 (3) "Grower," any person who is the legal initial owner of pulse crops harvested from
11 more than ten acres;

12 (4) "Participating grower," a grower who has not requested a refund from the payment
13 of assessments on pulse crops under this Act for the current or previous year;

14 (5) "Pulse crops," lentils, dry peas, chickpeas, and lupines;

15 (6) "Secretary," the secretary of the Department of Agriculture.



1 Section 2. The South Dakota Pulse Crops Council is composed of five members who are
2 participating growers of dry peas, lentils, chickpeas, or lupines. The secretary shall make the
3 initial appointments to the council and the secretary or a designee may serve as a nonvoting ex
4 officio member. Initial appointments to the council shall include five participating growers,
5 including a dry pea grower, a chickpea grower, a lentil or lupine grower, and two at-large pulse
6 producers. If no grower representing one of these crops is available or willing to serve, then
7 another at-large grower shall be appointed.

8 Section 3. The term of the members of the council is three years. However, the initial
9 appointments shall be for staggered terms. Succeeding council members shall be nominated and
10 elected by participating growers pursuant to rules promulgated by the secretary pursuant to
11 chapter 1-26. No council member may serve more than two consecutive elected terms. If a
12 member ceases to be a participating grower, the secretary shall declare the member's office
13 vacant, and the secretary shall appoint a successor for the balance of the term of the office
14 vacated.

15 Section 4. The council shall annually elect a chair and vice-chair. A majority of voting
16 members constitutes a quorum. All meetings of the council shall be called by the chair.
17 However, special meetings may be called by three members of the council. The council shall
18 adopt procedures for the calling of special meetings.

19 Section 5. Compensation for the members of the council shall be paid pursuant to § 4-7-
20 10.4.

21 Section 6. Funds collected pursuant to this Act shall be deposited with the state treasurer in
22 a special fund known as the pulse crops fund. Expenditures of these funds shall be made in
23 accordance with the provisions of chapter 4-7.

24 Section 7. The council shall promote the development, marketing, processing, and

1 production of pulse crops in South Dakota. In the administration of this Act, the council may:

- 2 (1) Contract and cooperate with any person or with any governmental department or
3 agency for research, education, promotion, and transportation;
- 4 (2) Expend the funds collected pursuant to this Act and appropriated for its
5 administration;
- 6 (3) Appoint, discharge, fix compensation for, and prescribe the duties of personnel as
7 necessary, subject to approval of the secretary;
- 8 (4) Accept donations of funds, property, services, or other assistance from public or
9 private sources for the purpose of furthering the objectives of the council.

10 Section 8. The council shall promulgate rules pursuant to chapter 1-26 concerning:

- 11 (1) The procedures for obtaining a declaratory ruling;
- 12 (2) The procedures by which assessments are collected for pulse crops grown or sold to
13 a first purchaser;
- 14 (3) The procedures for obtaining a refund of the assessment;
- 15 (4) The procedures for collecting delinquent assessments and assessing penalties; and
- 16 (5) The record-keeping and reporting requirements of first purchasers.

17 Section 9. Nothing in this Act abrogates or limits the rights, powers, duties, and functions
18 of the Department of Agriculture or any other agency of the state.

19 Section 10. An assessment at the rate of one percent of the net market price is levied and
20 imposed on any pulse crop grown or sold in South Dakota to a first purchaser. The council may
21 enter into reciprocal agreements with other states that also have a pulse checkoff to remit the
22 assessment to the state where the crop is grown. This assessment is due on any identifiable lot
23 or quantity of a pulse crop.

24 Section 11. Each first purchaser of pulse crops shall collect the assessment imposed by this

1 Act by charging and collecting from the seller the assessment at the prescribed rate by deducting
2 the assessment from the purchase price of the crops subject to the assessment and purchased by
3 the first purchaser. The assessments shall be paid to the department within thirty days of the end
4 of each calendar quarter.

5 Section 12. Each first purchaser of pulse crops shall file an application or affidavit with the
6 council on forms prescribed and furnished by the council which contain the name under which
7 the first purchaser is transacting business within the state, the place of business, and the location
8 of loading places of the first purchaser.

9 Section 13. Each first purchaser shall keep a permanent record of all purchases of pulse
10 crops, which may be examined by the council at any reasonable time. The first purchaser shall
11 report to the council the quantity of pulse crops received by the first purchaser. The report and
12 remittance of the assessment shall be made at the times and in the manner prescribed by the
13 council in rules promulgated pursuant to chapter 1-26.

14 Section 14. In the case of a pledge or mortgage of pulse crops as security for a loan under
15 the federal price support program, the assessment established under section 10 of this Act shall
16 be deducted from the proceeds of the loan at the time the loan is made, or be deducted thereafter
17 by agencies of the federal government. The producer's note and loan agreement, producer's note
18 and supplemental loan agreement, or delivery instructions issued by the federal agency to the
19 grower fulfill the requirements for invoices, and these documents constitute proof of payment
20 of the assessment on the pulse crops. Forms supplemental or alternate to those approved in this
21 section that are provided by the Commodity Credit Corporation of the United States Department
22 of Agriculture and contain the necessary information may be used for the purposes of this
23 section. Identification numbers created by the Commodity Credit Corporation for use in lieu of
24 the name of the grower from whom the assessment was collected are approved, if authorized

1 officials of the State of South Dakota have access at all reasonable times to records in the United
2 States Department of Agriculture Farm Service Agency county offices showing the names of
3 growers to whom such identification numbers have been assigned.

4 Section 15. If pulse crops described in section 14 of this Act remain in farm storage for the
5 duration of the pledge or mortgage, the assessment paid at the time the loan was made
6 completely satisfies the assessment liability unless upon subsequent actual delivery of the pulse
7 crop from farm storage in satisfaction of the pledge, or mortgage in the amount of one dollar or
8 more, any underpayment is due solely to the necessity of estimating the quantity of the pulse
9 crops placed in farm storage.

10 Section 16. In connection with the collection of the pulse crop assessment on Commodity
11 Credit Corporation pulse loans disbursed and purchase agreement settlement made,
12 undercollections or overcollections of the pulse crop assessment amounting to one dollar or less
13 as a result of errors do not require collection of the underpayment or refund of the overpayment
14 by the Commodity Credit Corporation, and its responsibility in such cases is waived.

15 Section 17. If any first purchaser fails to pay the assessment provided in this Act, the council
16 may enforce collection in any appropriate court within this state.

17 Section 18. Any grower subject to the assessment provided in this Act, within sixty days
18 following the assessment, may apply to the council for a refund of the assessment. Upon return
19 of the refund application accompanied by a record of the assessment by the first purchaser, the
20 grower shall, within sixty days, be refunded the net amount of the assessment collected.
21 Additionally, a grower, who for any reason, pays the assessment more than once on the same
22 pulse crops, upon furnishing proof of this to the council, is entitled to a refund of the
23 overpayment.

24 Section 19. The council shall develop and disseminate information and instructions relating

1 to the purpose of the pulse crop assessment and manner in which refunds may be claimed.

2 Section 20. If fifteen percent of the participating growers, as disclosed by the records of the
3 council for the preceding year, petition the council, the council shall conduct a referendum
4 among the participating growers of the state to determine whether they wish the Legislature to
5 raise or reduce the assessment imposed by this Act. The referendum may be conducted only
6 among participating growers who have paid all assessments pursuant to this Act for the
7 preceding year, and the ballots shall be prepared by the council and mailed to each participating
8 grower at least thirty days before the last date for filing ballots. In addition, each ballot shall be
9 accompanied by a notice to each participating grower:

- 10 (1) Of the date of the filing of the petition by the growers for the referendum and the
11 number of signatures contained on the petition;
- 12 (2) Of the date and place where the council will open and tabulate the ballots. The date
13 may be not less than five days after the last date for filing the ballots;
- 14 (3) Of the last date upon which ballots may be filed with the council, or postmarked if
15 delivered to the council by mail; and
- 16 (4) That any participating grower may attend the meeting of the council at the time the
17 ballots are opened and the votes tabulated.

18 If a majority of the participating growers voting upon the question are in favor of the
19 proposed change, the council shall certify the result to the secretary with the request that the
20 secretary prepare a bill to submit to the next legislative session to modify this Act accordingly.
21 The results of the referendum are advisory only, and the Legislature is not obligated to adopt
22 legislation enacting the proposals contained in the referendum.

23 Section 21. The council may contract with the Public Utilities Commission to inspect the
24 records of licensed grain dealers to determine compliance with the assessment and checkoff

1 requirements of this Act. The contract shall cover the dealers to be inspected and the amount
2 the council shall reimburse the Public Utilities Commission for the inspections.

3 Section 22. That § 49-45-21 be amended to read as follows:

4 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
5 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
6 Promotion Council pursuant to § 38-29-14, ~~and~~ the South Dakota Corn Utilization Council
7 pursuant to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to section 21 of this
8 Act. Under the terms of any such contract, the commission may inspect the records of licensed
9 grain dealers to determine compliance with assessment and checkoff requirements imposed by
10 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of this Act.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

664L0662

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 119** - 02/23/2005

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

Introduced by: Senators Adelstein and Napoli and Representative Hennies

1 FOR AN ACT ENTITLED, An Act to authorize the transfer of a motor vehicle title to satisfy
2 an unpaid motor vehicle repair bill under certain conditions.

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

4 Section 1. That § 44-11-1 be amended to read as follows:

5 44-11-1. If a person, at the request or consent of the owner or person lawfully in possession,
6 furnishes any services, skill, labor, materials, parts, accessories, supplies, or facilities for the
7 alteration, repair, replacement of parts, storage, keeping, maintenance, or preservation of any
8 personal property, such person shall have a lien thereon, dependent on possession, or notice as
9 ~~hereinafter~~ provided by this chapter on ~~such~~ the property to the extent of a reasonable charge.

10 However, if there is an agreed price, the lien is to the extent of such agreed price.

11 Personal property left for repair at a place of business in this state shall be considered
12 abandoned and may be sold if the property is unclaimed by its owner for a period of ninety days
13 after written notice of the intent to sell the property is given to the owner at ~~his~~ the owner's last
14 known address by certified mail. ~~Such~~ The sale is subject to liens, mortgages, and other
15 creditors' interest properly filed or perfected before the date that the personal property came into



1 the possession of the place of business. ~~Such~~ The abandoned personal property shall be sold
2 under the provisions of chapter 21-54. This section does not apply to any motor vehicle as
3 defined by § 32-3-1.

4 Section 2. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For purposes of this chapter, the department shall provide a person that has possession of
7 a vehicle as the result of an unpaid repair bill with the last known name and address of the
8 record holder of title and any readily identifiable lien holders free of charge.

9 Section 3. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A person may apply for a title on any motor vehicle that is left unclaimed, as the result of
12 an unpaid repair bill, by its owner or person lawfully in possession of, on private property for
13 a period of thirty days after written notice of intent to apply for a title is given to the owner at
14 the owner's last known address and to any readily identifiable insurer or lien holder by certified
15 mail. The notice shall set forth the location where the motor vehicle is being kept, the
16 circumstances surrounding acquisition of the vehicle, the year, make, model, and serial number
17 of the motor vehicle, and shall inform the owner, insurer, and any lien holder of the right to
18 reclaim the vehicle as provided by section 4 of this Act. The notice shall be on a form provided
19 by the department.

20 If it is impossible to determine with reasonable certainty the identity and address of the
21 registered owner, insurer, and any lien holder, a notice shall be published once in a newspaper
22 of general circulation in the area where the motor vehicle was left for repair. Published notices
23 may be grouped together for convenience and economy.

24 Section 4. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Title to any motor vehicle shall vest with the person to whom the unpaid repair bill is
3 payable and who has complied with the provisions of this chapter in notifying the owner and
4 all insurers and lien holders of their rights to reclaim the motor vehicle after a period of thirty
5 days from the date to which notice was sent to the owner and all insurers and lien holders. The
6 owner, insurer, or the lienholder may reclaim the motor vehicle. The owner, insurer, or lien
7 holder shall notify the department and the repair facility within thirty days of receipt of the
8 notice of their intent to reclaim the motor vehicle. If the owner, insurer, or lien holder fails to
9 claim and remove the motor vehicle within thirty days after mailing of the notice of intent to
10 reclaim the vehicle, title to the motor vehicle is irrevocably vested in the person to whom the
11 repair bill is payable and who has complied with the provisions of this chapter.

12 The vehicle shall be sold at public auction pursuant to §§ 21-54-5, 21-54-7, and 21-54-10
13 and any excess moneys above settlement of the debt shall be forwarded to the prior owner,
14 insurer, and any other party with a legal interest in such vehicle. If the owner, insurer, and any
15 lien holder are unidentifiable or not able to be contacted, the excess moneys shall be sent to the
16 state treasurer and treated as unclaimed property pursuant to chapter 43-41B.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

922L0507

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 125 - 02/03/2005

Introduced by: Senators Bogue, Dempster, and Olson (Ed) and Representatives Rhoden,
Dykstra, and Hackl

1 FOR AN ACT ENTITLED, An Act to exempt transfers of funds from certain municipal revenue
2 producing ventures from the calculation of the general fund balance of school districts.

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

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

6 Any funds transferred by a school district to the general fund of the school district pursuant
7 to § 9-21-28 may not be considered a part of the general fund balance for purposes of this
8 chapter.

9 Section 2. That § 9-21-28 be amended to read as follows:

10 9-21-28. Authority is hereby granted to all municipalities to transfer surplus funds
11 accumulated through special municipal revenue producing enterprises to public school districts
12 operating within the municipality; provided such transfer of funds shall be made through a
13 majority vote of the governing body of the municipality and accepted by a majority vote of the
14 governing body of such school district.

15 No funds shall be transferred that are acquired through legal tax levy in the municipality. All



- 1 such funds ~~shall~~ may be transferred by the school district to the general fund or the capital outlay
- 2 fund of such school district.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0647

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

SB 157 - 02/22/2005

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

1 FOR AN ACT ENTITLED, An Act to increase the per student allocation in the state aid to
2 education formula and to exempt from reversion certain funds appropriated for the state aid
3 to education formula.

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

5 Section 1. That § 13-13-10.1 be amended to read as follows:

6 13-13-10.1. Terms used in this chapter mean:

7 (1) "Average daily membership," the average number of resident and nonresident
8 kindergarten through twelfth grade pupils enrolled in all schools operated by the
9 school district during the previous regular school year, minus average number of
10 pupils for whom the district receives tuition, except pupils described in subdivision
11 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
12 average number of pupils for whom the district pays tuition;

13 (1A) Nonresident students who are in the care and custody of the Department of Social
14 Services, the Unified Judicial System, the Department of Corrections, or other state
15 agencies and are attending a public school may be included in the average daily



1 membership of the receiving district when enrolled in the receiving district. When
2 counting a student who meets these criteria in its general enrollment average daily
3 membership, the receiving district may begin the enrollment on the first day of
4 attendance. The district of residence prior to the custodial transfer may not include
5 students who meet these criteria in its general enrollment average daily membership
6 after the student ceases to attend school in the resident district;

7 (2) "Adjusted average daily membership," calculated as follows:

8 (a) For districts with an average daily membership of two hundred or less,
9 multiply 1.2 times the average daily membership;

10 (b) For districts with an average daily membership of less than six hundred, but
11 greater than two hundred, raise the average daily membership to the 0.8293
12 power and multiply the result times 2.98;

13 (c) For districts with an average daily membership of six hundred or more,
14 multiply 1.0 times their average daily membership;

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

19 (4) "Per student allocation," for school fiscal year ~~2005~~ 2006 is ~~\$4,086.56~~ \$4,205.26.
20 Each school fiscal year thereafter, the per student allocation is the previous fiscal
21 year's per student allocation increased by the index factor;

22 (5) "Local need," the per student allocation multiplied by the adjusted average daily
23 membership;

24 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by

1 applying the levies established pursuant to § 10-12-42;

2 (7) "General fund balance," the unreserved fund balance of the general fund, less general
3 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
4 out of the general fund for the previous school fiscal year;

5 (8) "General fund balance percentage," is a school district's general fund balance divided
6 by the school district's total general fund expenditures for the previous school fiscal
7 year, the quotient expressed as a percent;

8 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
9 2000. However, the general fund base percentage can never increase and can never
10 be less than twenty percent;

11 (10) "Allowable general fund balance," the fund base percentage multiplied by the
12 district's general fund expenditures in the previous school fiscal year;

13 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
14 percentage points;

15 (12) "General fund exclusions," revenue a school district has received from the imposition
16 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
17 from gifts, contributions, grants, or donations; revenue a school district has received
18 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
19 general fund set aside for a noninsurable judgment.

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

22 Any money appropriated for state aid to general education not expended or obligated
23 pursuant to this chapter is not subject to reversion pursuant to § 4-8-19 and shall be
24 reappropriated for state aid to general education.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

455L0408

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 175** - 02/15/2005

Introduced by: Senators Napoli, Abdallah, Adelstein, Apa, Bartling, Bogue, Broderick, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Kelly, Kloucek, Knudson, Koetzle, Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Smidt, Sutton (Dan), Sutton (Duane), and Two Bulls and Representatives Haverly, Boomgarden, Bradford, Brunner, Buckingham, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Haley, Halverson, Hanks, Hargens, Hennies, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Kroger, Lange, McCoy, McLaughlin, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Peters, Putnam, Rausch, Rave, Roberts, Rounds, Schafer, Sebert, Sigdestad, Street, Thompson, Tidemann, Tornow, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to provide for the removal of certain noncommercial motor
2 vehicle license plates from a motor vehicle if the ownership of the vehicle is transferred and
3 to make an appropriation to provide for the administration thereof.

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

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

7 If the ownership of a vehicle registered pursuant to the provisions of this chapter is
8 transferred or assigned, the registration of the vehicle expires and the transferor shall remove
9 the number plates from the vehicle. If the transferor fails to remove the number plates pursuant



1 to this section, the transferor is guilty of a Class 2 misdemeanor.

2 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 A transferor pursuant to section 1 of this Act who has removed number plates from a motor
5 vehicle shall, within thirty days, either:

6 (1) Affix the number plates to any vehicle acquired by the transferor; or

7 (2) Destroy the number plates.

8 If the transferor affixes the number plates to any vehicle, the transferor shall register the
9 vehicle within thirty days.

10 Any violation of this section is a Class 2 misdemeanor.

11 Section 3. If a person purchases a motor vehicle that the number plates have been removed
12 pursuant to section 1 of this Act, the person may operate the motor vehicle for five days from
13 the date of purchase without number plates if a dated notarized bill of sale is carried in the
14 motor vehicle.

15 Section 4. That § 32-5-2.5 be amended to read as follows:

16 32-5-2.5. A person who acquires a motor vehicle required to be annually registered shall,
17 at the time of application for a certificate of title or transfer of title, ~~renew the vehicle's~~
18 ~~registration by purchasing license plates or validation decals which would be valid~~ register the
19 vehicle until the appropriate month assigned to the person for renewal by § 32-5-2.2. ~~The person~~
20 ~~who acquires a vehicle that is registered in this state shall be given credit for all full months~~
21 ~~remaining on the vehicle's unexpired registration.~~ This section does not apply if the vehicles are
22 exempted from the excise tax by § 32-5B-2.

23 Section 5. Sections 1 to 4, inclusive, are effective on January 1, 2007.

24 Section 6. Notwithstanding the provisions of § 32-5B-17, from July 1, 2005, to June 30,

1 2007, inclusive, two percent of the revenues received pursuant to §§ 32-5B-1 and 32-5B-20
2 shall be credited to the state motor vehicle fund and the remainder shall be credited to the state
3 highway fund. Any moneys deposited in the state motor vehicle fund pursuant to this section
4 shall be used for the development of a new computer system to be used by the Division of
5 Motor Vehicles.

6 Section 7. The provisions of section 6 of this Act are repealed on July 1, 2007.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

480L0708

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 177** - 02/23/2005

Introduced by: Senators McCracken, Bartling, Bogue, Broderick, Knudson, Koskan, and Sutton (Dan) and Representatives Dykstra, Cutler, Dennert, Garnos, Gillespie, Glenski, Hargens, Miles, Olson (Ryan), Rave, Rhoden, Rounds, and Schafer

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a renewable electricity and
2 recycled energy renewable energy credit system by the Public Utilities Commission.

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

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

6 For the purposes of this Act, renewable electricity and recycled energy include electricity
7 generated from facilities using one or more of the following sources:

- 8 (1) Wind that uses wind as the source of energy to produce electricity;
- 9 (2) Solar that uses the sun as the source of energy to produce electricity;
- 10 (3) Hydroelectric that uses water as the source of energy to produce electricity, with a
11 capacity of less than sixty megawatts;
- 12 (4) Hydrogen that is generated from one of the sources listed in this section;
- 13 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and
14 wood wastes and residues, animal wastes, or landfill gas as the fuel to produce



1 electricity;

2 (6) Geothermal that uses energy contained in heat that continuously flows outward from
3 the earth as the source of energy to produce electricity; and

4 (7) Recycled energy systems that produce electricity from currently unused waste heat
5 resulting from combustion or other processes and which do not use an additional
6 combustion process. The term does not include any system whose primary purpose
7 is the generation of electricity.

8 Section 2. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The commission may establish, or allow participation in, a system of renewable energy
11 credits for electricity generated from renewable electricity or recycled energy. A renewable
12 energy credit system shall track, record, and verify the trading of credits for electricity generated
13 from renewable electricity and recycled energy sources among electric generators, utilities, and
14 other interested entities within the state and with similar entities in other states. This Act applies
15 to any provider of electricity that generates electricity from renewable electricity or recycled
16 energy.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

318L0753

SENATE ENGROSSED NO. **SB 190** - 02/17/2005

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

Introduced by: Senators Bartling, Apa, Greenfield, Moore, and Napoli and Representatives Klaudt, Fryslie, Garnos, Glover, Novstrup, Pederson (Gordon), Turbiville, and Willadsen

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of certain hunting and fishing licenses
2 using the internet and to require certain licensing agent information to appear on the
3 Department of Game, Fish and Parks internet site.

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

5 Section 1. That chapter 41-6 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 No license that may be issued by a licensing agent appointed pursuant to § 41-2-33 may be
8 sold directly to a licensee by the Department of Game, Fish and Parks via the internet. However,
9 the department may issue such licenses via the internet if the department's internet site first
10 directs the applicant to the licensing agent's internet site so that the license is sold by the
11 licensing agent and issued by the department. The department's internet site shall direct the
12 potential license applicant to a listing of the licensing agents. For each licensing agent listed,
13 the internet display shall provide the licensing agent's name, address, telephone number, and
14 website address. The department may list on their website an e-mail, phone, fax, or any other



1 number to assist license applicants in acquiring their licenses from license agents.

2 Section 2. The provisions of this Act shall be fully implemented no later than December 15,

3 2005.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

616L0473

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 193** - 02/23/2005

Introduced by: Senators Greenfield, Abdallah, Apa, Bartling, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Hansen (Tom), Hanson (Gary), Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, Sutton (Duane), and Two Bulls and Representatives Weems, Brunner, Buckingham, Davis, Deadrick, Dykstra, Frost, Fryslie, Garnos, Glenski, Hackl, Hargens, Howie, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Miles, Nelson, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the performance of
2 abortions on unemancipated minors and those found to be incompetent.

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

4 Section 1. That § 34-23A-7 be amended to read as follows:

5 34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female
6 for whom a guardian has been appointed because of a finding of incompetency, until at least
7 forty-eight hours after written notice of the pending operation has been delivered in the manner
8 specified in this section. The notice shall be addressed to the parent at the usual place of abode
9 of the parent and delivered personally to the parent by the physician or an agent. In lieu of such
10 delivery, notice may be made by certified mail addressed to the parent at the usual place of
11 abode of the parent with return receipt requested and restricted delivery to the addressee, which



1 means a postal employee can only deliver the mail to the authorized addressee. If notice is made
2 by certified mail, the time of delivery shall be deemed to occur at twelve noon on the next day
3 on which regular mail delivery takes place, subsequent to mailing.

4 No notice is required under this section if:

5 (1) The attending physician certifies in the ~~pregnant unemancipated~~ minor's or the
6 incompetent female's medical record that, on the basis of the physician's good faith
7 clinical judgment, a medical emergency exists that so complicates the medical
8 condition of ~~a pregnant~~ the unemancipated minor or the incompetent female as to
9 necessitate the immediate abortion of her pregnancy to avert her death or for which
10 a delay will create serious risk of substantial and irreversible impairment of a major
11 bodily function and there is insufficient time to provide the required notice. Unless
12 the unemancipated minor or incompetent female gives notice of her intent to seek a
13 judicial waiver, the parent shall be verbally informed by the attending physician or
14 the physician's agent as soon as possible, but not later than twenty-four hours after
15 the performance of the emergency abortion, that an emergency abortion was
16 performed on the unemancipated minor or incompetent female and shall also be sent
17 a written notice, in the manner described in this section, of the performed emergency
18 abortion. If the unemancipated minor or the incompetent female, upon whom an
19 emergency abortion was performed, elects not to allow the notification of her parent,
20 any judge of a circuit court shall, upon petition, or motion, and after an appropriate
21 hearing, authorize the waiving of the required notice of the performed abortion if the
22 judge determines, by clear and convincing evidence that the unemancipated minor
23 or incompetent female is mature and capable of determining whether notification
24 should be given, or that the waiver would be in the unemancipated minor's or the

1 incompetent female's best interest; or

2 (2) The person who is entitled to notice certifies in writing that ~~he~~ the person has been
3 notified. The certification is valid only if the signature has been notarized. If the
4 person does not provide a notarized signature, the person shall be sent a written
5 notice as described in this section. No abortion as described in this section may be
6 performed until at least forty-eight hours after written notice of the pending operation
7 has been delivered in the manner specified in this section; or

8 (3) ~~A pregnant~~ An unemancipated minor or incompetent female elects not to allow the
9 notification of her parent ~~or guardian or conservator~~, in which case, any judge of a
10 circuit court shall, upon petition, or motion, and after an appropriate hearing,
11 authorize a physician to perform the abortion if the judge determines, by clear and
12 convincing evidence, that the ~~pregnant unemancipated minor or incompetent~~ female
13 is mature and capable of giving informed consent to the proposed abortion. If the
14 judge determines that the ~~pregnant unemancipated minor or incompetent~~ female is
15 not mature, or if ~~the pregnant female~~ she does not claim to be mature, the judge shall
16 determine, by clear and convincing evidence, whether the performance of an abortion
17 upon her without notification of her parent, ~~guardian, or conservator~~ would be in her
18 best interests and shall authorize a physician to perform the abortion without such
19 notification if the judge concludes that ~~the pregnant female's~~ her best interests would
20 be served thereby.

21 Section 2. That § 34-23A-7.1 be amended to read as follows:

22 34-23A-7.1. In any proceeding pursuant to subdivision 34-23A-7(1) or 34-23A-7(3), the
23 ~~pregnant unemancipated minor or incompetent~~ female may participate in proceedings in the
24 court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall,

1 however, advise her that she has a right to court-appointed counsel and shall, upon her request,
2 provide her with such counsel. Proceedings in the court under ~~this~~ subdivision 34-23A-7(1) or
3 34-23A-7(3) shall be confidential and shall be given such precedence over other pending matters
4 so that the court may reach a decision promptly and without delay so as to serve the best
5 interests of the ~~pregnant~~ unemancipated minor or incompetent female. A judge of the court who
6 conducts proceedings under ~~this~~ subdivision 34-23A-7(1) or 34-23A-7(3) shall make in writing
7 specific factual findings and legal conclusions supporting the decision and shall order a record
8 of the evidence to be maintained including the judge's own findings and conclusions.

9 An expedited confidential appeal shall be available to any such ~~pregnant~~ unemancipated
10 minor or incompetent female for whom the court denies an order authorizing an abortion
11 without notification. An order authorizing an abortion without notification is not subject to
12 appeal. No filing fees are required of any such ~~pregnant~~ unemancipated minor or incompetent
13 female at either the trial or the appellate level. Access to the trial court for the purposes of such
14 a petition or motion, and access to the appellate courts for purposes of making an appeal from
15 denial of the same, shall be afforded such ~~a pregnant woman~~ an unemancipated minor or
16 incompetent female twenty-four hours a day, seven days a week. Notwithstanding any other
17 provision of law, all pleadings, papers, and other documents filed pursuant to this section are
18 confidential, are not public records, and are not open for inspection by any member of the public
19 for any purpose.

20 Section 3. That subdivision (4) of § 34-23A-1 be amended to read as follows:

21 (4) "Parent," one parent or guardian of the pregnant minor or the guardian or conservator
22 of the pregnant female;

23

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

733L0508

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 197** - 02/14/2005

Introduced by: Senators McNenny, Bogue, and Hanson (Gary) and Representative Gillespie

1 FOR AN ACT ENTITLED, An Act to clarify how certain registered livestock brands held in

2 joint tenancy may be transferred.

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

4 Section 1. That chapter 40-19 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any transfer of a livestock brand registered in the name of more than one person requires
7 the written consent of all registered owners.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

327L0562

SENATE ENGROSSED NO. **SB 214** - 02/14/2005

Introduced by: Senators Peterson (Jim), Bartling, Duenwald, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Kloucek, Koetzle, Moore, Nesselhuf, Smidt, and Sutton (Dan) and Representatives Dykstra, Boomgarden, Brunner, Davis, Deadrick, Dennert, Frost, Fryslie, Garnos, Gassman, Gillespie, Glover, Hackl, Halverson, Hargens, Hunhoff, Jensen, Klaudt, Koistinen, Kroger, Lange, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Sigdestad, Street, Tidemann, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide taxation benefits for certain soybean and
2 biodiesel facilities.

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) "Department," the Department of Revenue and Regulation;

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

9 A new agricultural processing facility is any new building or structure constructed
10 for the initial or subsequent processing of any form of agricultural commodity,
11 product, or by-product. A new agricultural processing facility does not include any
12 building or structure constructed for raising or feeding of livestock or the expansion



1 of an existing agricultural processing facility except as provided in section 2 of this
2 Act;

3 (3) "Person," any individual, firm, copartnership, joint venture, association, limited
4 liability company, corporation, estate, trust, business trust, receiver, or any group or
5 combination acting as a unit;

6 (4) "Project," the construction of a new agricultural processing facility at a single site;

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

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

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

12 For purposes of this chapter, a new agricultural processing facility as defined in § 10-45B-1
13 includes an addition to an existing soybean processing facility or operation if the addition
14 produces biodiesel or if the addition produces a product or uses a process that is substantially
15 different than the products or processes produced or used by the existing facility or operation.

16 Section 3. That § 10-45B-2 be amended to read as follows:

17 10-45B-2. Any person may apply for and obtain a refund or credit for contractors' excise
18 taxes imposed and paid under the provisions of chapter 10-46A for the construction of a new
19 agricultural processing facility and for sales or use taxes imposed and paid by ~~such~~ the person
20 under the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural
21 processing equipment. For any new agricultural processing facility for the processing or
22 production of soybeans or biodiesel, any tax due under the provisions of chapters 10-45 and 10-
23 46 that is not eligible for a refund under this section may be paid over a four-year period at equal
24 yearly rates beginning with the commencement of plant production.

1 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The owner of a project paying taxes over a four-year period as provided in section 3 of this
4 Act shall file a tax return on or before December thirty-first of each year reporting the project
5 costs subject to tax under chapters 10-45 and 10-46 incurred during the previous twelve months.
6 The tax due from such return shall be paid in four equal annual payments with the first payment
7 due date no later than December thirty-first of the year the plant begins production. Each
8 subsequent annual payment shall be made no later than December thirty-first following the
9 previous payment.

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

471L0640

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 216** - 02/15/2005

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

Introduced by: Senators Lintz, Duenwald, Greenfield, Hanson (Gary), McNenny, Moore, Napoli, and Peterson (Jim) and Representatives Pederson (Gordon), Brunner, Jensen, and McCoy

1 FOR AN ACT ENTITLED, An Act to enumerate the circumstances under which prairie dogs
2 are to be considered pests.

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

4 Section 1. That § 38-22-1.2 be amended to read as follows:

5 38-22-1.2. Terms used in this chapter, ~~unless the context otherwise clearly requires,~~ mean:

- 6 (1) "Agricultural chemical," any material used to control or eradicate weeds or pests;
- 7 (2) "Board," any county weed and pest board;
- 8 (3) "Board member area," a geographical area within a county from which a member of
9 the board is appointed;
- 10 (4) "Commission," the South Dakota Weed and Pest Control Commission;
- 11 (5) "Control," the prevention or limiting of the growth, spread, or development of weeds
12 or pests;
- 13 (6) "Department," the State Department of Agriculture;
- 14 (7) "Pest," any rodent, bird, other than a game bird or a state or federally protected bird,



1 insect, or nematode which the commission has found to be detrimental to the
2 production of crop or livestock or to the welfare of persons residing within the state,
3 Prairie dogs are included in the definition of a pest if all of the following conditions
4 apply:

5 (a) Sylvatic plague has been reported in any prairie dog colony east of the Rocky
6 Mountains;

7 (b) The South Dakota Department of Game, Fish and Parks has determined that
8 the population of prairie dogs within the state, including tribal lands, exceeds
9 the one hundred forty-five thousand acre level;

10 (c) Prairie dogs are colonizing on lands where the prairie dogs are unwanted by
11 the owner of the impacted land;

12 (d) Lands adjacent to the impacted owner's land do not have a maintained one-
13 mile buffer zone, or other mutually agreed border, in which prairie dog control
14 is applied, and the owner of the impacted land has filed a written complaint of
15 encroachment requesting mitigation or abatement with the South Dakota
16 Department of Agriculture and served a copy upon the owner of adjoining
17 lands from which the prairie dogs are encroaching;

18 (8) "Pesticide," a substance or mixture of substances for preventing, destroying,
19 repelling, or mitigating any pest or any substance or mixture of substances intended
20 for use as a plant regulatory, defoliant, or desiccant or any substance or mixture of
21 substances intended to be used as a spray adjuvant;

22 (9) "Secretary," the state secretary of the Department of Agriculture;

23 (10) "Supervisor," any person appointed or employed by a board for the purpose of
24 carrying out the provisions of this chapter;

- 1 (11) "Weed," any plant which the commission has found to be detrimental to the
2 production of crops or livestock or to the welfare of persons residing within the state.