



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0352

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1042 - 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: The Committee on Transportation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding abandoned motor  
2 vehicles.

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

4 Section 1. That § 32-30-12.2 be amended to read as follows:

5 32-30-12.2. No person ~~shall intentionally~~ may abandon a motor vehicle on any public  
6 highway or right-of-way. A violation of this section is a ~~Class 1~~ Class 2 misdemeanor. Any  
7 person convicted of abandoning a motor vehicle shall be ordered to pay ~~a fine of five hundred~~  
8 ~~dollars~~ any reasonable towing and storage fees, if the person was notified pursuant to § 32-36-8.

9 The court shall suspend the fine if the person pays for the towing and storage expenses.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

553L0351

## HOUSE ENGROSSED NO. **HB 1095** - 02/07/2005

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

Introduced by: Representatives Dykstra, Cutler, Davis, Elliott, Hackl, Kraus, Miles, Murschel, Rave, and Tornow and Senators Duenwald, Adelstein, and Dempster

1 FOR AN ACT ENTITLED, An Act to provide for a drug screening program for certain facilities  
2 providing patient or resident care or supervision.

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

4 Section 1. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The commissioner of the Bureau of Personnel shall establish and implement a drug  
7 screening program for applicants who seek positions at the Human Services Center or the South  
8 Dakota Developmental Center whose primary duty includes patient or resident care or  
9 supervision. The commissioner may establish and implement a drug screening program for  
10 employees holding positions at the Human Services Center or the South Dakota Developmental  
11 Center whose primary duty includes patient or resident care or supervision, based upon  
12 reasonable suspicion of illegal drug use by any such employee.

13 Section 2. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as  
14 follows:



1 Any printed public announcement or advertisement soliciting applications for employment  
2 at the South Dakota Human Services Center or South Dakota Developmental Center for a  
3 position in which the primary duty includes patient or resident care or supervision, shall include  
4 a statement of the requirements of the drug screening program established pursuant to this Act.

5 Section 3. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Individual test results and medical information collected pursuant to this Act are  
8 confidential. This information may be revealed only as authorized by the commissioner of the  
9 Bureau of Personnel. An applicant or employee may have access to the information or test  
10 results upon written request to the commissioner.

11 Section 4. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Except as provided in section 3 of this Act, any person responsible for recording, reporting,  
14 or maintaining medical information required pursuant to the provisions of this Act, who  
15 knowingly or intentionally discloses or fails to protect medical information declared to be  
16 confidential under section 3 of this Act, or who compels another person to disclose such medical  
17 information, is guilty of a Class 2 misdemeanor.

18 Section 5. That chapter 1-36A be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 The commissioner of the Bureau of Personnel may promulgate rules, pursuant to chapter 1-  
21 26, necessary to carry out the provisions of this Act with regard to:

- 22 (1) Listing of positions whose primary duty includes patient or resident care or  
23 supervision;
- 24 (2) Substances to be screened;

- 1       (3)   Drug screening procedures for applicants for positions at the South Dakota Human  
2           Services Center or the South Dakota Developmental Center whose primary duty  
3           includes patient or resident care or supervision;
- 4       (4)   Drug screening procedures for employees at the South Dakota Human Services  
5           Center or the South Dakota Developmental Center whose primary duty includes  
6           patient or resident care or supervision;
- 7       (5)   Procedures for collecting, analyzing, and evaluating test samples;
- 8       (6)   Confidentiality of testing procedures;
- 9       (7)   Referral for education or treatment;
- 10      (8)   Consequences that may result from valid positive test results or from failure to  
11           submit to a test.

12       Section 6. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14       Any adjustment training center shall have a drug screening policy for applicants seeking  
15 employment whose primary duty includes patient or resident care or supervision. Any  
16 adjustment training center shall have a drug screening policy for employees whose primary duty  
17 includes patient or resident care or supervision, based upon reasonable suspicion of illegal drug  
18 use by such employee.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

168L0675

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1152** - 02/23/2005

Introduced by: Representatives Kroger and Rave and Senators Kooistra and Bartling

1 FOR AN ACT ENTITLED, An Act to establish an internal service fund for municipal  
2 equipment purchases.

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

4 Section 1. That chapter 9-21 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The governing body of a municipality may by resolution create an internal service fund to  
7 provide for the acquisition of equipment. Moneys may be budgeted and transferred to the fund  
8 from any source which may lawfully be used for such purpose, including equipment usage  
9 charges on any municipal department or agency. For purposes of this section, the term,  
10 equipment, includes machinery, motor vehicles, and any other equipment or personal property.



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

735L0735

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1203** - 02/03/2005

Introduced by: Representatives Murschel and Wick and Senator Earley

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the distribution of the  
2 tax imposed on financial institutions.

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

4 Section 1. That § 10-43-77 be amended to read as follows:

5 10-43-77. The county treasurer upon receipt of ~~such~~ the funds, remitted to the county  
6 pursuant to § 10-43-76, shall apportion and distribute the funds between the taxing subdivisions,  
7 including the county, in the same proportion as the average of personal property taxes assessed  
8 in each taxing subdivision, including the county, for calendar years 1972, 1973, 1974, 1975, and  
9 1976 were distributed as determined and certified by the secretary of revenue and regulation.

10 ~~For school districts operating during the years 1972 to 1976, inclusive, that reorganize, the~~  
11 ~~funds shall be apportioned and distributed to the successor districts in the same manner and~~  
12 ~~proportion as they were distributed prior to reorganization. For any school district affected by~~  
13 a consolidation on or after July 1, 2003, as defined in § 13-6-1, the successor school district  
14 shall receive the funds allocated to each of the former school districts. For any school district  
15 eliminated or subdivided by a reorganization on or after July 1, 2003, as defined in § 13-6-1,



1 each successor school district shall receive a portion of the funds allocated to the former school  
2 district. Each successor school district's portion of the funds shall be based upon the percentage  
3 of the total taxable valuation of the former school district transferred to the successor school  
4 district, at the time of the reorganization.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

400L0526

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1212** - 02/18/2005

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to professional and  
2 occupational licensing boards.

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

4 Section 1. That § 36-4-1 be amended to read as follows:

5 36-4-1. ~~There is hereby created a~~ The State Board of Medical and Osteopathic Examiners,  
6 hereinafter called the Board of Examiners, ~~which board shall consist of six~~ consists of nine  
7 members to be appointed by the Governor for terms of ~~five~~ three years. No member may serve  
8 more than three consecutive full terms. However, appointment to an unexpired term is not  
9 considered a full term for this purpose. Each member shall hold office until ~~his~~ a successor is  
10 appointed and qualified. ~~All vacancies~~ Any vacancy on the board shall be filled by appointment  
11 by the Governor, ~~but the board must.~~ The board shall at all times include ~~four~~ six doctors of  
12 medicine and one doctor of osteopathy. The Governor may stagger terms to enable the board  
13 to have different terms expire each year. Any member appointed to the board prior to July 1,  
14 2005, shall serve the five-year term to which the member was originally appointed. Any member  
15 appointed to the board after July 1, 2005, shall serve a three-year term.



1 Section 2. That § 36-4-2 be amended to read as follows:

2 36-4-2. The Board of Examiners shall include ~~four~~ six doctors of medicine holding a degree  
3 of M.D., and one doctor of osteopathy holding the degree of D.O. ~~Such~~ The members of the  
4 board ~~must~~ shall be licensed in the State of South Dakota, and ~~must~~ shall be skilled and capable  
5 physicians in good standing.

6 Section 3. That § 36-4-2.1 be amended to read as follows:

7 36-4-2.1. The membership of the Board of Examiners shall include ~~one lay member who is~~  
8 ~~a user~~ two lay members who are users of the services regulated by the board. ~~The term lay~~  
9 ~~member who is a user refers to a person who is not licensed by the board but where practical~~  
10 ~~uses the service licensed, and the meaning shall be liberally construed to implement the purpose~~  
11 ~~of this section. The lay member shall be appointed by the Governor and~~ One lay member may  
12 be a nonphysician health care professional licensed by the board. The Governor shall appoint  
13 the lay members. The lay members shall have the same term of office as other members of the  
14 board.

15 Section 4. That § 36-4-34 be amended to read as follows:

16 36-4-34. ~~Whenever it shall appear~~ If it appears from evidence satisfactory to the Board of  
17 Examiners that any person has violated the provisions of this chapter or that any licensee under  
18 this chapter has been guilty of unprofessional or dishonorable conduct or is ~~grossly~~ incompetent,  
19 the board ~~shall have the right to~~ may apply for an injunction in any court of competent  
20 jurisdiction to restrain ~~such~~ the person or licensee from continuing to practice medicine,  
21 osteopathy, surgery, or obstetrics in any of their branches in this state. Application for an  
22 injunction is an alternate to criminal proceedings, and the commencement of one proceeding by  
23 the board constitutes an election.

24 Section 5. That § 36-4A-3.1 be amended to read as follows:

1       36-4A-3.1. The board shall appoint a physician assistant advisory committee composed of  
2 three physician assistants. Each committee member shall serve a term of three years, ~~except~~  
3 ~~initial appointees whose terms.~~ However, the terms of initial appointees shall be staggered so  
4 that no more than one member's term expires in one year. ~~A~~ No committee member may ~~not~~ be  
5 appointed to more than ~~two~~ three consecutive full terms. If a vacancy occurs, the board shall  
6 appoint a person to fill the unexpired term. The appointment of a member to an unexpired term  
7 is not considered a full term. The committee shall meet at least annually or as deemed necessary  
8 to conduct business. The advisory committee shall assist the board in evaluating standards of  
9 physician assistant care and the regulation of physician assistants pursuant to this chapter. The  
10 committee shall also make recommendations to the board regarding rules promulgated pursuant  
11 to this chapter.

12       Section 6. That § 36-4A-37 be amended to read as follows:

13       36-4A-37. The South Dakota State Board of Medical and Osteopathic Examiners ~~shall have~~  
14 ~~the right to~~ may deny the issuance or renewal of a license or suspend or revoke the license of  
15 any physician assistant issued under this chapter upon satisfactory proof, in compliance with  
16 chapter 1-26, of such person's:

- 17       (1) ~~Gross incompetence~~ Incompetence or unprofessional or dishonorable conduct as  
18       defined in § 36-4-30;
- 19       (2) Violation of this chapter in any respect;
- 20       (3) Failure to notify the board, in writing, of the termination of the contract with ~~his~~ the  
21       person's supervising physician within seven days after ~~such~~ the termination;
- 22       (4) Rendering medical services beyond the specific tasks allowed to the physician  
23       assistant; or
- 24       (5) Rendering medical services without supervision of a physician as required by law and

1 the rules ~~and regulations~~ of the board.

2 Section 7. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The board shall appoint an advanced life support personnel advisory committee composed  
5 of four members as follows:

- 6 (1) One emergency medical technician-intermediate/85;
- 7 (2) One emergency medical technician-intermediate/99;
- 8 (3) One emergency medical technician-paramedic; and
- 9 (4) One emergency room physician.

10 Each committee member shall serve a term of three years. However, the terms of initial  
11 appointees shall be staggered so that no more than two members' terms expire in one year. No  
12 committee member may be appointed to more than three consecutive full terms. If a vacancy  
13 occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person  
14 to an unexpired term is not considered a full term. The committee shall meet at least annually  
15 or as deemed necessary to conduct business. The advisory committee shall assist the board in  
16 evaluating standards of care for advanced life support personnel and the regulation of advanced  
17 life support personnel pursuant to this chapter. The committee shall also make recommendations  
18 to the board regarding rules promulgated pursuant to this chapter.

19 Section 8. That § 36-4B-31 be amended to read as follows:

20 36-4B-31. The board may deny the issuance or renewal of a license or suspend or revoke the  
21 license of any advanced life support personnel issued under this chapter upon satisfactory proof  
22 of ~~such individual's gross~~ the person's incompetence, or unprofessional or dishonorable conduct  
23 as defined in § 36-4-30 or proof of a violation of this chapter.

24 Section 9. That § 36-4C-4 be amended to read as follows:

1       36-4C-4. The board shall appoint a Respiratory Care Practitioners' Advisory Committee  
2 composed of five members as follows:

- 3       (1) Two registered respiratory therapists;
- 4       (2) Two certified respiratory therapists; and
- 5       (3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

6       ~~Committee members shall be selected from a list of nominees by the South Dakota affiliate~~  
7 ~~of the American Association for Respiratory Care.~~ Each committee member shall serve a term  
8 of three years, ~~except. However, the terms of initial appointees whose terms shall be staggered~~  
9 so that no more than two members' terms expire in any one year. No committee member may  
10 be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall  
11 appoint a person to fill the unexpired term. The appointment of a person to an unexpired term  
12 is not considered a full term. The committee shall meet at least annually or as deemed necessary  
13 to conduct business.

14       The advisory committee shall assist the board in evaluating the qualifications of applicants  
15 for licensure and reviewing the examination results of applicants. The committee shall also  
16 make recommendations to the board regarding rules promulgated pursuant to this chapter.

17       Section 10. That § 36-4C-16 be amended to read as follows:

18       36-4C-16. A proceeding for cancellation, revocation, or suspension of a license or temporary  
19 permit may be initiated if the board has written information that any person may have been  
20 guilty of any misconduct pursuant to § 36-4C-15 or is guilty of ~~gross~~ incompetence or  
21 unprofessional or dishonorable conduct.

22       Section 11. That § 36-5-2 be amended to read as follows:

23       36-5-2. Any person who ~~shall practice or attempt~~ practices or attempts to practice  
24 chiropractic or who ~~shall use~~ uses the title chiropractor or any word or title having a tendency

1 to induce any person to believe that ~~he~~ the person is a chiropractor without first having secured  
2 a license from the Board of Chiropractic Examiners ~~and secured an annual certificate of~~  
3 ~~registration from the South Dakota Chiropractors Association and~~ or an annual license renewal  
4 from the Board of Chiropractic Examiners is guilty of a Class 1 misdemeanor. The state's  
5 attorneys shall enforce the provisions of this chapter within their respective counties.

6 Section 12. That § 36-5-3 be amended to read as follows:

7 36-5-3. The Board of Chiropractic Examiners shall be composed of one lay person and four  
8 members who are chiropractors, and appointed by the Governor for terms of three calendar  
9 years. ~~Any~~ No member may serve more than three consecutive full terms. The Governor shall,  
10 by appointment, fill any vacancy occurring in ~~such board shall be filled by appointment by the~~  
11 ~~Governor~~ the board. The appointment to an unexpired term is not considered a full term. The  
12 Governor may stagger terms to enable the board to have different terms expire each year.

13 Section 13. That § 36-5-14.1 be amended to read as follows:

14 36-5-14.1. Each person receiving a license under the provisions of this chapter shall procure  
15 from the secretary-treasurer of the board on or before the thirty-first day of December of each  
16 year, a renewal of license. The renewal shall be issued by the secretary-treasurer upon payment  
17 of the fee to be fixed in a rule, promulgated by the board pursuant to chapter 1-26, not exceeding  
18 the sum of three hundred dollars. The renewal license shall be in the form of a receipt  
19 acknowledging payment of the required fee and signed by the secretary-treasurer ~~and shall be~~  
20 ~~issued only to persons certified by the South Dakota Chiropractors Association as members in~~  
21 ~~good standing as defined in § 36-5-18.~~

22 Section 14. That § 36-5-16 be amended to read as follows:

23 36-5-16. The board may, in compliance with chapter 1-26, refuse to grant a license to any  
24 person otherwise qualified, and may revoke the license of any chiropractor who is not of good

1 moral character, ~~or~~; who solicits professional patronage by agents, ~~or~~; who is guilty of gross  
2 unprofessional conduct, ~~or~~ incompetency, ~~or~~ habitual intoxication ~~or~~; the use of narcotics, ~~or~~ of  
3 fraud, or deception, ~~or~~; who shall be convicted of a felony; ~~;~~ or who shall practice practices  
4 contrary to the provisions of this chapter or the rules ~~and regulations~~ of the board. The board  
5 shall define by rule the foregoing grounds for revocation and refusal.

6 Section 15. That § 36-5-18 be amended to read as follows:

7 36-5-18. The South Dakota Chiropractors Association, composed of ~~all~~ the licensed  
8 chiropractors in this state, ~~hereby reconstituted to electing to participate,~~ shall improve, promote,  
9 and further, by educational work, the qualifications of its members and the art, science, and  
10 practice of chiropractic, ~~shall issue an annual certificate of registration upon such terms as it~~  
11 ~~shall provide to each member, and make a report to the secretary of the Department of~~  
12 ~~Commerce and Consumer Affairs. The association shall certify to the Board of Chiropractic~~  
13 ~~Examiners annually on January fifteenth, the names of all chiropractors who are current on~~  
14 ~~payment of dues.~~

15 ~~— The association may enact bylaws to regulate its affairs.~~

16 Section 16. That § 36-6A-2 be repealed.

17 ~~— 36-6A-2. Any appointment for a full term under § 36-6A-1 or to fill any vacancy among the~~  
18 ~~professional members on the Board of Dentistry shall be made by the Governor. A list of~~  
19 ~~dentists and dental hygienists recommended by the South Dakota State Dental Association and~~  
20 ~~South Dakota Dental Hygienists Association, respectively, shall be furnished to the Governor~~  
21 ~~at least ninety days prior to the expiration of an applicable term, or, in cases of vacancies, within~~  
22 ~~sixty days after the occurrence of such vacancy. Such list shall contain not less than two~~  
23 ~~professional members for each membership to be filled.~~

24 Section 17. That § 36-6A-4 be amended to read as follows:

1       36-6A-4. No member of the board may serve more than ~~two~~ three consecutive full terms.  
2 ~~Appointments to such board shall be made by the Governor~~ However, appointment of a person  
3 to an unexpired term is not considered a full term for this purpose. The Governor shall make  
4 appointments to the board for terms of ~~five~~ three years. Each member shall hold office until a  
5 successor is appointed and qualified. ~~Any vacancy shall be filled by appointment of the~~  
6 ~~Governor~~ The Governor shall, by appointment, fill any vacancy for the balance of the unexpired  
7 term. The Governor may stagger terms to enable the board to have different terms expire each  
8 year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term  
9 to which the member was originally appointed. Any member appointed to the board after July 1,  
10 2005, shall serve a three-year term.

11       Section 18. That § 36-7-3 be amended to read as follows:

12       36-7-3. The State Board of Examiners in Optometry ~~shall consist~~ consists of four members  
13 appointed by the Governor, three of whom shall be fully qualified and licensed to prescribe and  
14 administer diagnostic and therapeutic pharmaceutical agents under this chapter. Each member  
15 ~~must~~ shall have been a resident of this state actually engaged in the practice of optometry at least  
16 five years preceding the appointment. The term of each member is three years commencing on  
17 July first, ~~and all vacancies shall be filled by appointment of the Governor.~~ The Governor shall,  
18 by appointment, fill any vacancy. No member may serve more than three consecutive full terms.  
19 The appointment of a person to an unexpired term is not considered a full term. No member of  
20 any optical school or college, or instructor in optometry, or person connected therewith, or any  
21 jobber or jobber's representative, is eligible for the board.

22       Section 19. That § 36-7-24 be amended to read as follows:

23       36-7-24. The Board of Examiners, in compliance with chapter 1-26, may revoke the  
24 certificate of any registrant for any one, or any combination, of the following causes:

- 1 (1) Conviction of a felony, as shown by a certified copy of the record of the court of
- 2 conviction;
- 3 (2) Obtaining of, or an attempt to obtain, a certificate of registration by fraudulent
- 4 misrepresentation;
- 5 (3) ~~Gross malpractice~~ Malpractice;
- 6 (4) Continued practice by a person knowingly having an infectious or contagious disease;
- 7 (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other
- 8 habit-forming drugs;
- 9 (6) Being guilty of "unprofessional conduct."

10 Section 20. That § 36-8-2 be amended to read as follows:

11 36-8-2. The State Board of Podiatry Examiners shall include three professional members

12 appointed by the Governor, each of whom shall be a resident podiatrist of this state; ~~the~~. The

13 term of each shall be three years, commencing on the first day of July. ~~All vacancies shall be~~

14 ~~filled by appointment by the Governor.~~ No member may serve more than three consecutive full

15 terms. The Governor shall, by appointment, fill any vacancy. The appointment of a person to

16 an unexpired term is not considered a full term.

17 Section 21. That § 36-9-9 be amended to read as follows:

18 36-9-9. The term of office for the members of the Board of Nursing is ~~four~~ three years and

19 expires on July first. Each member shall serve until ~~the member's~~ a successor has been

20 appointed and qualified. ~~A~~ No member may ~~not~~ be appointed to more than ~~two~~ three

21 consecutive full terms. However, appointment of a person to an unexpired term is not

22 considered a full term for this purpose.

23 At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a new board

24 member. The Governor may stagger terms to enable the board to have different terms expire

1 each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year  
2 term to which the member was originally appointed. Any member appointed to the board after  
3 July 1, 2005, shall serve a three-year term.

4 Section 22. That § 36-9-49 be amended to read as follows:

5 36-9-49. In compliance with chapter 1-26, the Board of Nursing may deny an application  
6 for licensure or certification or may deny, revoke, or suspend a license or certificate and may  
7 take other disciplinary or corrective action it considers appropriate in addition to or in lieu of  
8 such an action upon proof that the applicant, licensee, or certificate holder has:

- 9 (1) Committed fraud, deceit, or misrepresentation in procuring or attempting to procure  
10 licensure or certification;
- 11 (2) Been convicted of a felony. The conviction of a felony means the conviction of any  
12 offense which, if committed within the State of South Dakota, would constitute a  
13 felony under its laws;
- 14 (3) Engaged in the practice of nursing under a false or incorrect name or under a  
15 fictitious or assumed business name which has not been registered pursuant to  
16 chapter 37-11 or impersonated another licensee or certificate holder of a like or  
17 different name;
- 18 (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs as  
19 defined by chapter 34-20B to such an extent as to result in incapacitation from the  
20 performance of professional duties;
- 21 (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health  
22 or safety of persons entrusted to his or her care;
- 23 (6) Had a license, certificate, or privilege to practice as a registered nurse, licensed  
24 practical nurse, certified registered nurse anesthetist, or clinical nurse specialist

1 denied, revoked, or suspended or had other disciplinary action taken in another state,  
2 territory, or foreign country;

3 (7) Violated any provisions of this chapter or the rules promulgated under it;

4 (8) Aided or abetted an unlicensed or uncertified person to practice nursing;

5 (9) Engaged in the practice of nursing during a time his or her license or certificate is  
6 lapsed, on inactive status, suspended, or revoked;

7 (10) Been guilty of gross incompetence or unprofessional or dishonorable conduct;

8 (11) Exercised influence within the nurse-patient relationship for the purpose of engaging  
9 a patient in sexual activity. For the purpose of this subdivision, the patient is  
10 presumed incapable of giving free, full, and informed consent to sexual activity with  
11 the nurse; or

12 (12) Engaged in gross sexual harassment or sexual contact.

13 Section 23. That § 36-9A-5.1 be amended to read as follows:

14 36-9A-5.1. The Board of Nursing shall appoint an advanced practice nurse advisory  
15 committee composed of two certified nurse midwives and four certified nurse practitioners.  
16 Committee members shall be selected from a list of nominees by the Board of Nursing. Each  
17 committee member shall serve a term of three years, ~~except.~~ However, the terms of initial  
18 appointees whose terms shall be staggered so that no more than two members' terms expire in  
19 one year. A No committee member may not be appointed to more than two three consecutive  
20 terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The  
21 appointment of a person to an unexpired term is not considered a full term. The committee shall  
22 meet at least annually, or as deemed necessary, to conduct business. The advisory committee  
23 shall assist the boards in evaluating standards of advanced practice nursing care and the  
24 regulation of nurse practitioners and nurse midwives pursuant to this chapter. The committee

1 shall also make recommendations to the boards regarding rules promulgated pursuant to this  
2 chapter.

3 Section 24. That § 36-9A-30 be amended to read as follows:

4 36-9A-30. The proceedings for revocation or suspension of a license may be initiated if the  
5 boards have information that any person may have been guilty of any misconduct as provided  
6 in § 36-9A-29, or is guilty of gross incompetence or unprofessional or dishonorable conduct.

7 Section 25. That § 36-10-19 be amended to read as follows:

8 36-10-19. ~~There is hereby established~~ The board shall appoint a physical therapy committee,  
9 composed of three physical therapists, which shall assist the Board of Examiners in conducting  
10 examinations of persons applying for a license to practice physical therapy ~~and~~. The committee  
11 shall assist the Board of Examiners on all matters pertaining to the licensure, practice, and  
12 discipline of all persons licensed to practice physical therapy in the State of South Dakota, or  
13 the making or abolishing of rules ~~and regulations~~ pertaining to physical therapy. Each committee  
14 member shall serve a term of three years. No member may serve more than three consecutive  
15 full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The  
16 appointment of a person to an unexpired term is not considered a full term. The committee shall  
17 meet at least annually or as deemed necessary to conduct business.

18 Section 26. That § 36-10-20 be repealed.

19 ~~— 36-10-20. The South Dakota Physical Therapy Association shall at any regular or special~~  
20 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~  
21 ~~nominate two persons for each vacancy, on the committee. All persons appointed to such board~~  
22 ~~after the first members shall serve for a period of three years. The Board of Examiners shall~~  
23 ~~select from the list of nominees presented to it, as certified by the secretary of the South Dakota~~  
24 ~~Physical Therapy Association, persons to serve on such committee.~~

1 Section 27. That § 36-10-22 be repealed.

2 ~~36-10-22. In the event any vacancy shall arise on such committee by reason of death,~~  
3 ~~retirement, removal from this state, or otherwise of any member serving on such committee,~~  
4 ~~such vacancy shall be filled in the same manner as original appointments thereto are made and~~  
5 ~~the term of the member chosen to fill a vacancy shall be for the remainder of the unexpired term~~  
6 ~~of the committee member he is replacing.~~

7 Section 28. That § 36-10-39 be amended to read as follows:

8 36-10-39. The Board of Examiners may cancel, revoke, or suspend the license of any  
9 physical therapist or the certificate of any physical therapist assistant issued under this chapter  
10 upon satisfactory proof of such a licensee's or certificate holder's gross incompetence, or  
11 unprofessional or dishonorable conduct, or proof of a violation of this chapter in any respect.

12 Section 29. That § 36-10-41 be amended to read as follows:

13 36-10-41. The proceedings for cancellation, revocation, or suspension of a license may be  
14 initiated when the Board of Examiners has information that any person, persons, firms, or  
15 corporation may have been guilty of any misconduct as provided in § 36-10-40 or is guilty of  
16 gross incompetence or unprofessional or dishonorable conduct.

17 Section 30. That § 36-10B-4 be amended to read as follows:

18 36-10B-4. The board shall appoint a nutrition and dietetics advisory committee composed  
19 of five members. The members shall be registered dietitians or qualified nutritionists. ~~The~~  
20 ~~committee members shall be selected from a list of nominees provided by the South Dakota~~  
21 ~~Dietetic Association.~~ Each committee member shall serve a term of three years, ~~except,~~  
22 However, the terms of initial appointees ~~whose terms~~ shall be staggered so that no more than  
23 two members' terms expire in any one year. No committee member may be appointed to more  
24 than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the

1 unexpired term. The appointment of a person to an unexpired term is not considered a full term.

2 The committee may assist the board in evaluating the qualifications of applicants for  
3 licensure. The committee may make recommendations to the board regarding rules promulgated  
4 pursuant to this chapter.

5 Section 31. That § 36-11-3 be amended to read as follows:

6 36-11-3. ~~The~~ Those registered pharmacists of this state electing to participate shall constitute  
7 an association under the name and title of the South Dakota Pharmacists Association; ~~the~~. The  
8 purpose of ~~which shall be~~ the association is to serve as the state professional society of  
9 pharmacists which represents the profession of pharmacy, enhances the public's awareness of  
10 pharmacy, and serves the best interest of public health and pharmacy. The South Dakota  
11 Pharmacists Association shall be conducted as a nonprofit corporation pursuant to the terms of  
12 its articles of incorporation. The members of the association who have secured a current annual  
13 certificate of registration to practice pharmacy in this state and who have elected to participate  
14 in the association are entitled to all of the rights and privileges of the association and may vote,  
15 serve as an officer or director of the association, and participate in all of the meetings of the  
16 association. The association shall hold an annual meeting at such time and place as it  
17 determines. ~~It shall report annually to the Governor, recommending the names of at least three~~  
18 ~~members who are practicing pharmacists rendering pharmaceutical services to the general public~~  
19 ~~in this state and otherwise qualified to be appointed as members of the State Board of Pharmacy.~~

20 Section 32. That § 36-11-4 be amended to read as follows:

21 36-11-4. The State Board of Pharmacy shall include three professional members who shall  
22 hold their offices for terms of three years or until their successors are appointed and qualified.  
23 ~~On or before the first day of October of each year, or whenever a vacancy shall occur among the~~  
24 ~~professional members of such board, the Governor shall appoint a licentiate in pharmacy who~~

1 shall be a member of the South Dakota Pharmacists Association as a member of such board or  
2 to fill a vacancy therein. The Governor shall have the authority to No member may serve more  
3 than three consecutive full terms. The appointment of a person to an unexpired term is not  
4 considered a full term. The Governor may remove any member of the board for just cause.

5 Section 33. That § 36-11-6 be amended to read as follows:

6 36-11-6. ~~The association shall annually receive all fees received for renewal of certificates~~  
7 ~~of registration as a pharmacist in this state. The board may, upon receipt, pay to the South~~  
8 Dakota Pharmacists Association eighty percent of all fees the board receives for renewals of  
9 certificates of registration as a pharmacist. The association may shall use the funds for payment  
10 of expenses of the association, including the following association activities to benefit the public  
11 and the profession: continuing education, matters related to registration standards for  
12 pharmacists, professional service standards, and general operating expenses related to the  
13 activities enumerated in this section. The association shall also use funds received to pay any  
14 legislated assessment to support a diversion program for chemically impaired pharmacists.  
15 Expenditures of funds shall be approved by the president and treasurer of the association. The  
16 association shall annually file in the office of the board an itemized statement of the receipts of  
17 the association and disbursements from the receipts.

18 Section 34. That § 36-11-9 be amended to read as follows:

19 36-11-9. ~~It shall be the duty of the~~ The Board of Pharmacy to shall report annually to the  
20 Governor as provided by law for state officers and boards, ~~and to the South Dakota~~  
21 ~~Pharmaceutical Association.~~

22 Section 35. That § 36-11-23 be amended to read as follows:

23 36-11-23. Each pharmacist shall annually by October first each year, pay to the ~~South~~  
24 ~~Dakota Pharmacists Association board~~ a registry fee to be fixed by ~~the association and adopted~~

1 by the board in compliance with chapter 1-26, not to exceed one hundred fifty dollars, ~~for which~~  
2 ~~the pharmacist shall receive from.~~ Upon payment of the fee by a pharmacist, the Board of  
3 Pharmacy ~~a renewal of the~~ shall renew the pharmacist's certificate of registration. Any  
4 pharmacist who fails to pay the renewal fee by the due date is subject to suspension of certificate  
5 by the board in compliance with chapter 1-26. Any suspended certificate may be reinstated if  
6 all delinquent fees have been paid, plus a penalty of twenty-five dollars, and the Board of  
7 Pharmacy has approved the application for reinstatement.

8 Section 36. That § 36-12-3 be amended to read as follows:

9 36-12-3. ~~There is hereby created~~ The Governor shall appoint a State Board of Veterinary  
10 Medical Examiners ~~to be appointed by the Governor of the State of South Dakota,~~ which shall  
11 include three ~~reputable~~ veterinarians ~~who.~~ Each veterinarian shall be graduated a graduate from  
12 a college authorized by law to confer degrees of veterinary medicine, ~~and having with~~  
13 educational standards equal to those approved by the American Veterinary Medical Association,  
14 and each of whom veterinarian shall be licensed and registered under this chapter and actively  
15 engaged in the practice of veterinary medicine in the state for a period of five years preceding  
16 the appointment. Appointments shall be made for the term of three years. No member of this  
17 board shall may serve more than ~~six consecutive years~~ three full terms. The appointment of a  
18 person to an unexpired term is not considered a full term.

19 Section 37. That § 36-12-5 be repealed.

20 ~~—36-12-5. The South Dakota State Veterinary Medical Society shall at each annual meeting~~  
21 ~~nominate twice the number of veterinarians to be appointed that year on the Board of Veterinary~~  
22 ~~Medical Examiners. Such names shall be certified to the Governor by the secretary of such~~  
23 ~~society, and the appointment shall be made from the nominees so submitted. If the society fails~~  
24 ~~to provide nominees as provided herein then the Governor may appoint from licensed and~~

1 ~~registered members of the veterinary profession in good standing in South Dakota without~~  
2 ~~restriction.~~

3 Section 38. That § 36-12-6 be amended to read as follows:

4 36-12-6. The Governor shall remove any member of the Board of Veterinary Examiners  
5 upon proper showing of ~~gross~~ neglect of duty or for corrupt conduct in office or any other  
6 misfeasance; or malfeasance ~~therein~~ in office.

7 Section 39. That § 36-12-22 be amended to read as follows:

8 36-12-22. The State Board of Veterinary Medical Examiners may, in compliance with  
9 chapter 1-26, either refuse to issue a license or refuse to issue a certificate of registration or  
10 suspend or revoke a license and certificate of registration upon any of the following grounds:

- 11 (1) Fraud or deception in procuring the license;
- 12 (2) The publication or use of any untruthful or improper statement, or representation,  
13 with a view of deceiving the public, or any client or customer in connection with the  
14 practice of veterinary medicine;
- 15 (3) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the  
16 use of morphine, cocaine, or other habit-forming drugs; or entry of a plea of guilty  
17 to, or nolo contendere to, or conviction of a violation of any federal or state law  
18 relating to controlled drugs or substances;
- 19 (4) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the  
20 licensee from practicing veterinary medicine;
- 21 (5) ~~Gross malpractice~~ Malpractice, including failure to furnish to the board, upon written  
22 application by it, any report or information relating thereto;
- 23 (6) The employment of an unlicensed person to perform work which under this chapter  
24 can lawfully be done only by persons licensed to practice veterinary medicine;

- 1 (7) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in  
2 issuing health certificates;
- 3 (8) Failure to keep one's premises in a reasonably clean and sanitary condition and failure  
4 to use reasonably sanitary methods in the practice of veterinary medicine;
- 5 (9) The use, prescription, or sale of any veterinary prescription drug in the absence of a  
6 valid veterinary client-patient relationship;
- 7 (10) Professional incompetence which constitutes a deviation from the statewide standard  
8 of competence, which is that minimum degree of skill and knowledge necessary for  
9 the performance of characteristic tasks of a veterinarian in at least a reasonably  
10 effective way.

11 Section 40. That § 36-13-1 be amended to read as follows:

12 36-13-1. The Abstracters' Board of Examiners shall be composed of five members appointed  
13 by the Governor. Four members of the board shall be abstracters who have been qualified to do  
14 the business of abstracting under § 36-13-8 for five years prior to the date of their appointment.  
15 Four of these abstracter members shall be members of the South Dakota Land Title Association.  
16 The members may not be all of the same political party, and their terms shall be for ~~four~~ three  
17 years. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term  
18 to which the member was originally appointed. Any member appointed to the board after July 1,  
19 2005, shall serve a three-year term. No board member may serve more than three consecutive  
20 full terms. Members of the board shall qualify by taking the oath of office provided by law for  
21 public officers.

22 ~~Vacancies~~ The Governor shall, by appointment, fill any vacancy among the professional  
23 members of the board ~~shall be filled by appointment~~ for the unexpired term ~~by the Governor~~  
24 from abstracters qualified as provided in this section. Any appointment to an unexpired term is

1 not considered a full term.

2 Section 41. That § 36-13-1.1 be amended to read as follows:

3 36-13-1.1. The membership of the Abstracters' Board of Examiners shall include one lay  
4 member who is a user of the services regulated by the board. The term, lay member who is a  
5 user, refers to a person who is not licensed by the board but, where practical, uses the service  
6 licensed, ~~and the meaning.~~ The term shall be liberally construed to implement the purpose of  
7 this section. The lay member shall be appointed by the Governor and Governor shall appoint  
8 the lay member. The lay member shall have the same term of office as other members of the  
9 board. No lay member of the board may serve more than three consecutive full terms.

10 Section 42. That § 36-14-2 be amended to read as follows:

11 36-14-2. The Governor shall appoint a Board of Barber Examiners herein established, which  
12 shall include three professional members appointed by the Governor, the. The term of each shall  
13 be three years commencing on the first day of July. No member may serve more than three  
14 consecutive full terms. However, appointment to fill an unexpired term is not considered a  
15 complete term for this purpose. Each of these members shall be a practical barber who has  
16 followed the occupation of barber in this state for at least five years immediately preceding ~~his~~  
17 the barber's appointment. The Governor may remove a member for cause, and shall fill all  
18 vacancies. ~~Members~~ Any member appointed to fill ~~vacancies~~ a vacancy shall serve during the  
19 remainder of the unexpired term of their predecessors. The Governor may stagger the terms to  
20 enable the board to have different terms expire each year.

21 Section 43. That § 36-14-2.1 be amended to read as follows:

22 36-14-2.1. The membership of the Board of Barber Examiners shall include one lay member  
23 who is a user of the services regulated by the board. The term, lay member who is a user, refers  
24 to a person who is not licensed by the board but, where practical, uses the service licensed, ~~and~~

1 ~~the meaning.~~ The term shall be liberally construed to implement the purpose of this section. ~~The~~  
 2 ~~laymember shall be appointed by the Governor and~~ The Governor shall appoint the lay member.  
 3 The lay member shall have the same term of office and is subject to the same limits and  
 4 conditions as other members of the board.

5 Section 44. That § 36-14-32 be amended to read as follows:

6 36-14-32. The Board of Barber Examiners may refuse to issue or renew, or may suspend or  
 7 revoke, any certificate of registration for any of the following causes:

- 8 (1) Conviction of a felony;
- 9 (2) ~~Gross malpractice~~ Malpractice or gross incompetency;
- 10 (3) Continued practice by a person knowingly having an infectious or contagious disease;
- 11 (4) Advertising by means of knowingly false or deceptive statements;
- 12 (5) Advertising, practicing, or attempting to practice under a trade name other than one's  
 13 own;
- 14 (6) Drunkenness, or addiction to the use of habit-forming drugs;
- 15 (7) Immoral or unprofessional conduct;
- 16 (8) The commission of any of the offenses described in § 36-14-36.

17 Section 45. That § 36-15-3 be amended to read as follows:

18 36-15-3. ~~There is created a~~ The Cosmetology Commission ~~which~~ shall perform all functions  
 19 exercised by the former State Board of Cosmetology. The Cosmetology Commission ~~shall~~  
 20 ~~consist~~ consists of five members to be appointed by the Governor for a term of ~~four~~ three years;  
 21 ~~not all of whom shall.~~ No member may serve more than three consecutive full terms. However,  
 22 appointment to fill an unexpired term is not considered a complete term for this purpose. Not  
 23 all of the members may be of the same political party. Three members ~~must~~ shall be currently  
 24 licensed as cosmetologists in this state at the time of their appointment. Two members shall be

1 lay people. ~~The terms of members who are first appointed after the effective date of this order~~  
2 ~~shall be: two appointed for a term of one year; two appointed for a term of two years; and one~~  
3 ~~for a term of four years, and such initial terms shall be designated by the Governor. Any member~~  
4 ~~appointed to fill a vacancy arising from other than the natural expiration of a term shall serve~~  
5 ~~for only the unexpired portion of the term. The Governor may stagger the terms to enable the~~  
6 ~~commission to have different terms expire each year. Any member appointed to the commission~~  
7 ~~prior to July 1, 2005, shall serve the four-year term to which the member was originally~~  
8 ~~appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year~~  
9 ~~term.~~ Each member of the commission shall ~~be required to~~ take the oath of office as provided  
10 by law for public officials.

11 Section 46. That § 36-15-58 be amended to read as follows:

12 36-15-58. The proceedings for cancellation, revocation, or suspension of a license may be  
13 initiated when the cosmetology commission has information that any person may have been  
14 guilty of any misconduct as provided in § 36-15-56, or is guilty of ~~gross~~ incompetence,  
15 ~~negligence,~~ or unprofessional or dishonorable conduct.

16 Section 47. That § 36-16-3 be amended to read as follows:

17 36-16-3. ~~There is created a~~ The State Electrical Commission ~~which~~ shall perform all  
18 functions exercised by the former State Electrical Board. The State Electrical Commission ~~shall~~  
19 ~~consist~~ consists of seven members to be appointed by the Governor for a term of ~~four~~ three  
20 ~~years, not all of whom.~~ No member may serve more than three consecutive full terms. However,  
21 appointment to fill an unexpired term is not considered a complete term for this purpose. Not  
22 all of the members shall be of the same political party. ~~The terms of members who are first~~  
23 ~~appointed after the effective date of this order shall be: one appointed for a term of one year; one~~  
24 ~~appointed for a term of two years; two appointed for a term of three years; and one for a term~~

1 of four years, and such initial terms shall be designated by the Governor. Any member appointed  
2 to fill a vacancy arising from other than the natural expiration of a term shall serve for only the  
3 unexpired portion of the term. Three of the members appointed shall, where possible, be  
4 selected from names submitted by private utility companies, rural electrical cooperatives,  
5 electrical inspectors, electrical contractors, and journeymen electricians. The Governor may  
6 stagger the terms to enable the commission to have different terms expire each year. Any  
7 member appointed to the commission prior to July 1, 2005, shall serve the four-year term to  
8 which the member was originally appointed. Any member appointed to the commission after  
9 July 1, 2005, shall serve a three-year term. One member shall represent an electric utility, one  
10 member shall be a licensed electrical contractor, one member shall be a licensed electrician with  
11 at least a journeyman level license and one member shall have fire safety expertise.

12 Section 48. That § 36-16-4 be amended to read as follows:

13 36-16-4. The Governor shall appoint one member of the State Electrical Commission who  
14 shall be involved in the education of electrical engineers. This member shall serve without  
15 compensation and be appointed biennially.

16 Section 49. That § 36-18A-14 be amended to read as follows:

17 36-18A-14. The Board of Technical Professions is hereby created to administer the  
18 provisions of this chapter. Each member of the board shall receive a certificate of appointment  
19 from the Governor; and shall file with the secretary of state a written oath for the faithful  
20 discharge of the member's official duties. The board shall consist of seven members to be  
21 appointed by the Governor for a term of four three years. In implementing the four-year terms,  
22 the Governor shall vary the terms to enable the board to have no more than two terms expire in  
23 any one year. No member may serve more than three consecutive full terms. However,  
24 appointment to fill an unexpired term is not considered a complete term for this purpose. The

1 board shall be composed of two professional engineers, two architects, two land surveyors, and  
2 one member from the public. ~~Members may be reappointed to succeed themselves. A member~~  
3 ~~shall hold over the expiration of a term until a successor is duly appointed and qualified. The~~  
4 Governor may stagger the terms to enable the board to have different terms expire each year.  
5 Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to  
6 which the member was originally appointed. Any member appointed to the board after July 1,  
7 2005, shall serve a three-year term.

8 Section 50. That § 36-18A-56 be amended to read as follows:

9 36-18A-56. The board may take action without proof of actual injury on the following  
10 violations:

- 11 (1) Has violated any statute, rule, or order that the board has issued or is empowered to  
12 enforce;
- 13 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether  
14 or not the conduct or acts relate to professional practice;
- 15 (3) Has engaged in conduct or acts that are ~~grossly~~ negligent, incompetent, reckless, or  
16 otherwise in violation of established standards related to that person's professional  
17 practice;
- 18 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether  
19 or not the person admits guilt, or has been shown to have engaged in acts or practices  
20 tending to show that the applicant or licensee is incompetent or has engaged in  
21 conduct reflecting adversely on the person's ability or fitness to engage in that  
22 person's professional practice. A copy of the record of conviction or plea of guilty or  
23 nolo contendere is conclusive evidence;
- 24 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in

- 1 passing all or a portion of the examination;
- 2 (6) Has had that person's professional license, registration, certificate, right to  
3 examination, or other similar rights to practice revoked, suspended, canceled, given  
4 probation, limited, censured, reprimanded, or not renewed for cause in any state or  
5 territory of the United States, the District of Columbia, or in any foreign country;
- 6 (7) Failed to meet any requirement for issuance or renewal of the person's license or  
7 certificate;
- 8 (8) Has used or attempted to use as that person's own the certificate or seal of another;
- 9 (9) Has used or attempted to use an expired, suspended, or revoked license;
- 10 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or other  
11 technical submission or document not prepared by that person or under that person's  
12 responsible charge;
- 13 (11) Aided or assisted another person in violating any provision of this chapter or the rules  
14 pertaining to this chapter;
- 15 (12) Failed to promptly and appropriately provide information requested by the board as  
16 a result of a formal or informal complaint to the board which would indicate a  
17 violation of this chapter;
- 18 (13) Has provided false testimony or information to the board;
- 19 (14) Failed to report known violations of this chapter;
- 20 (15) Has engaged in the use of untruthful or improbable statements in advertisements;
- 21 (16) Failed to complete continuing professional development requirements set by the  
22 board;
- 23 (17) Made misleading or untruthful representations in advertisements or published  
24 materials;

- 1 (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- 2 (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- 3 (20) Has committed an act, engaged in conduct, or committed practices that may result in  
4 an immediate threat to the public; or
- 5 (21) Has provided professional services in technical areas not covered by that person's  
6 license or competency.

7 Section 51. That § 36-19-2 be amended to read as follows:

8 36-19-2. The State Board of Funeral Service shall include the secretary of health or ~~his~~ the  
9 secretary's designee and five professional members who shall be licensed to practice funeral  
10 service, ~~appointed by the Governor, provided that no person shall. The Governor shall appoint~~  
11 the professional members of the board. However, no person may be appointed as a professional  
12 member of ~~said~~ the board who has not been licensed in this state, as an embalmer and funeral  
13 director, or to practice funeral service, for at least five years prior to ~~his~~ appointment. The term  
14 of office of appointed members shall be ~~five~~ three years. ~~All vacancies shall be filled by~~  
15 ~~appointment by the Governor. Nominations of three or more qualified candidates for each~~  
16 ~~appointive term of a professional member, or part thereof, shall be filed with the Governor by~~  
17 ~~the South Dakota Embalmers and Funeral Directors Association. The terms of office shall be~~  
18 ~~so arranged that only one professional member's term will expire each year on June thirtieth.~~  
19 The Governor shall, by appointment, fill any vacancy.

20 The State Board of Funeral Service shall also include two lay members who are users of the  
21 services regulated by the board. The term, lay member who is a user, refers to a person who is  
22 not licensed by the board but, where practical, uses the service licensed, ~~and the meaning. The~~  
23 term shall be liberally construed to implement the purpose of this section. ~~The lay members~~  
24 ~~shall be appointed by the Governor and, after the initial appointments, both such~~ The Governor

1 shall appoint the lay members. The lay members shall have the same term of office as other  
2 members of the board.

3 No board member ~~shall~~ may serve more than ~~two~~ three consecutive full terms ~~on said board;~~  
4 ~~any person serving more than three years under an original appointment or to fill a vacancy shall~~  
5 ~~be deemed to have served a full term. However, appointment to fill an unexpired term is not~~  
6 ~~considered a complete term for this purpose. The Governor may stagger the terms to enable the~~  
7 ~~board to have different terms expire each year. Any member appointed to the board prior to~~  
8 ~~July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any~~  
9 ~~member appointed to the board after July 1, 2005, shall serve a three-year term.~~

10 Section 52. That § 36-19-38 be amended to read as follows:

11 36-19-38. The State Board of Funeral Service, acting in compliance with chapter 1-26, may  
12 refuse to grant, may suspend, or revoke any license if the license holder ~~thereof~~ or the license  
13 applicant ~~therefor~~:

- 14 (1) Obtained ~~said~~ the license by fraud or misrepresentation either in applying for ~~said~~ the  
15 license or in passing the examination for ~~said~~ the license;
- 16 (2) Uses intoxicants or drugs to such a degree as to render ~~him~~ the person unfit to  
17 practice funeral service or funeral directing;
- 18 (3) Has been convicted of a felony or crime involving moral turpitude; ~~provided,~~  
19 ~~however, that. However,~~ upon the conviction of a holder of a valid license, of a  
20 felony or crime involving moral turpitude, ~~such~~ the conviction shall immediately and  
21 automatically revoke ~~such~~ the license;
- 22 (4) Is not a person of good moral character;
- 23 (5) ~~Shall be~~ Is guilty of ~~gross or willful~~ malpractice in the business of funeral service or  
24 funeral directing;

1       (6) ~~Shall be~~ Is guilty of willful violation of any section of this chapter, or any rule ~~or~~  
 2       ~~regulation~~ of the board, or any rule ~~or regulation~~ of the state or any municipal board  
 3       or department of health governing the disposition, shipment, or transportation of dead  
 4       human bodies; or ~~shall~~ willfully ~~fail~~ fails to make any report required by law or by  
 5       the rules ~~or regulations~~ of the board;

6       (7) ~~Shall sign~~ Signs a certificate stating that ~~he~~ the person embalmed or prepared a dead  
 7       human body for shipment or burial, whereas in fact, someone, other than the person  
 8       signing ~~said~~ the certificate, embalmed or prepared ~~such~~ the dead human body for  
 9       shipment or burial;

10      (8) ~~Shall pay or cause~~ Pays or causes to be paid, directly or indirectly, a commission for  
 11      the securing of business; or, directly or indirectly ~~solicit~~ solicits such business;  
 12      ~~provided, however, that.~~ However the soliciting of members or the selling of stock  
 13      in any cooperative burial association ~~shall not be construed as~~ is not a violation of  
 14      this subdivision.

15      ~~Provided, however, that if~~ If the license as funeral director ~~be~~ is held by a firm, corporation,  
 16      association, or organization, the provisions of this section ~~shall~~ apply to the members of the  
 17      board of directors, officers, and employees, as well as to the firm, corporation, association, or  
 18      organization.

19      Section 53. That § 36-20B-4 be amended to read as follows:

20      36-20B-4. ~~There is created the~~ The South Dakota Board of Accountancy, which has  
 21      responsibility for the administration and enforcement of this chapter. ~~The board,~~ consists of six  
 22      members, all of whom shall be residents of this state. Five members shall be appointed by the  
 23      Governor for ~~four-year~~ three-year terms. Four of the appointed members shall be holders of  
 24      active certificates and three of these shall be in the practice of public accountancy. One

1 appointed member shall be a lay member who is not a holder of a certificate under this chapter  
2 but shall have had professional or practical experience in the use of accounting services and  
3 financial statements, so as to be qualified to make judgments about the qualifications and  
4 conduct of persons and firms subject to regulation under this chapter. The auditor general shall  
5 serve as an ex officio member. ~~Any~~ The Governor shall, by appointment, fill any vacancy  
6 ~~occurring during a term shall be filled by appointment by the Governor for the remainder of the~~  
7 ~~unexpired term. Upon the expiration of the member's term of office, a member shall continue~~  
8 ~~to serve until a successor is appointed and takes office.~~ Any member of the board whose  
9 certificate is revoked or suspended shall automatically cease to be a member of the board, ~~and~~  
10 ~~the.~~ The Governor may remove any member of the board for cause. No person who has served  
11 ~~two successive complete terms is eligible for reappointment, but appointment to fill an~~  
12 ~~unexpired term is not considered a complete term for this purpose.~~ The Governor may stagger  
13 the terms to enable the board to have different terms expire each year. Any member appointed  
14 to the board prior to July 1, 2005, shall serve the four-year term to which the member was  
15 originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-  
16 year term. No member may serve more than three consecutive full terms. However, appointment  
17 to fill an unexpired term is not considered a complete term for this purpose.

18 Section 54. That § 36-20B-40 be amended to read as follows:

19 36-20B-40. The board may, in accordance with chapter 1-26, revoke any certificate, license,  
20 or permit issued pursuant to this chapter or corresponding provisions of prior law or revoke or  
21 limit privileges under this chapter; suspend any such certificate, license, or permit, or refuse to  
22 renew any such certificate, license, or permit for a period of not more than five years; reprimand,  
23 censure, or limit the scope of practice of any licensee; impose an administrative fine not  
24 exceeding one thousand dollars, or place any licensee on probation, all with or without terms,

1 conditions, and limitations, for any one or more of the following reasons:

- 2 (1) Fraud or deceit in obtaining a certificate or permit;
- 3 (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or  
4 permit to engage in the practice of public accountancy in any other state for any  
5 cause;
- 6 (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter  
7 or registration under this chapter, or of a certificate, license or permit issued by  
8 another state, to maintain compliance with the requirements for issuance or renewal  
9 of such certificate, license, permit, or registration or to report changes to the board;
- 10 (4) Revocation or suspension of the right to practice before any state or federal agency;
- 11 (5) Dishonesty, fraud, or ~~gross~~ repeated acts of negligence in the performance of services  
12 as a licensee or individual granted privileges under this chapter or in the filing or  
13 failure to file one's own income tax returns;
- 14 (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant  
15 to chapter 1-26, or violation of professional standards;
- 16 (7) Violation of any rule of professional conduct promulgated by the board pursuant to  
17 chapter 1-26;
- 18 (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud,  
19 under the laws of the United States, of this state, or of any other state if the acts  
20 involved would have constituted a crime under the laws of this state;
- 21 (9) Performance of any fraudulent act while holding a certificate, license, or permit or  
22 privilege issued under this chapter or prior law;
- 23 (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while  
24 a licensee, or individual granted privileges under this chapter;

1 (11) Making any false or misleading statement or verification, in support of an application  
2 for a certificate, registration, or permit filed by another; and

3 (12) Dishonesty or ~~gross repeated acts of~~ negligence in the performance of peer reviews.

4 In lieu of or in addition to any remedy specifically provided in this section, the board may  
5 require of a licensee a peer review conducted in ~~such~~ the manner as the board may specify or  
6 satisfactory completion of ~~such~~ the continuing professional education programs as the board  
7 may specify, or both.

8 In any proceeding in which a remedy provided by this section is imposed, the board may  
9 also require the respondent licensee to pay the costs of the proceeding.

10 Section 55. That § 36-21A-14 be amended to read as follows:

11 36-21A-14. Each member of the commission shall be appointed for a term of ~~four~~ three  
12 years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year  
13 term to which the member was originally appointed. Any member appointed to the commission  
14 after July 1, 2005, shall serve a three-year term. No member may serve more than three  
15 consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's  
16 term shall serve for the unexpired portion of the term. The appointment to an unexpired term  
17 is not considered a full term.

18 Section 56. That § 36-24-4 be amended to read as follows:

19 36-24-4. The members of the board enumerated in § 36-24-3 shall be appointed by the  
20 Governor ~~from a list of at least five audiologists submitted by the South Dakota Academy of~~  
21 ~~Audiology and a list of at least five hearing aid dispensers submitted by the South Dakota~~  
22 ~~Hearing Aid Dispenser's Association, or from a list of nominees submitted by any member of~~  
23 ~~the public.~~ No member of the board may concurrently serve in an elected, appointed, or  
24 employed position in any state professional association or governmental regulatory agency

1 which presents a conflict of interest.

2 Section 57. That § 36-24-5 be amended to read as follows:

3 36-24-5. Board members shall be appointed for a term of three years. ~~However, members~~  
4 ~~who are on the board as of July 1, 1997, shall continue to serve until replaced by the Governor.~~

5 Each member shall serve until a successor has been appointed.

6 Section 58. That § 36-24-6 be amended to read as follows:

7 36-24-6. No member of the board may serve more than ~~two~~ three consecutive ~~three-year~~ full  
8 terms or be reappointed to the board until at least one year after the expiration of the member's  
9 ~~second~~ third term of office. The appointment to an unexpired term is not considered a full term.

10 The Governor may remove a member of the board for dishonorable conduct, incompetence, or  
11 neglect of duty.

12 Section 59. That § 36-25-3 be amended to read as follows:

13 36-25-3. Members of the State Plumbing Commission shall be appointed for terms of ~~four~~  
14 three years. ~~The terms of the members who are first appointed after April 14, 1980, shall be: two~~  
15 ~~appointed for a term of one year; two appointed for a term of two years; and one appointed for~~  
16 ~~a term of four years, and such initial terms shall be designated by the Governor. Any member~~  
17 ~~appointed to fill a vacancy arising from other than the natural expiration of a term shall serve~~  
18 ~~for only the unexpired portion of the term. The Governor may stagger the terms to enable the~~  
19 commission to have different terms expire each year. Any member appointed to the commission  
20 prior to July 1, 2005, shall serve the four-year term to which the member was originally  
21 appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year  
22 term. No member may serve more than three consecutive full terms. However, appointment to  
23 fill an unexpired term is not considered a complete term for this purpose.

24 Section 60. That § 36-26-3 be amended to read as follows:

1        36-26-3. ~~There is hereby created the~~ The South Dakota Board of Social Work Examiners,  
 2 ~~which shall consist of five~~ consists of seven members, ~~one of whom must be a lay member who~~  
 3 ~~is a user of the services regulated by the board, two of whom shall be certified social workers,~~  
 4 ~~one of whom shall be a social worker and one of whom shall be a social work associate, all~~  
 5 ~~appointed by the Governor. The term "lay member who is a user" refers to a person who is not~~  
 6 ~~licensed by the board but where practical uses the services licensed, and the meaning shall be~~  
 7 ~~liberally construed to implement the purpose of this section~~ two of whom shall be lay members,  
 8 three of whom shall be certified social workers licensed under the provisions of this chapter to  
 9 engage in private independent practice, two of whom shall be social worker professionals  
 10 licensed under the provisions of this chapter each with a minimum of two years practice in the  
 11 State of South Dakota. The Governor shall appoint all of the members.

12        Section 61. That § 36-26-4 be repealed.

13        ~~36-26-4. In order to be eligible for appointment to the board, a person, other than the lay~~  
 14 ~~member, shall have practiced social work in the State of South Dakota for not less than two~~  
 15 ~~years, and shall be properly licensed under the provisions of this chapter.~~

16        Section 62. That § 36-26-5 be amended to read as follows:

17        36-26-5. Appointments to the board shall be for terms of three years, beginning on July first.  
 18 No member of the board may serve for more than three successive full terms; However,  
 19 appointment of a member to an unexpired term shall be considered is not considered as a full  
 20 term.

21        Section 63. That § 36-27A-3 be amended to read as follows:

22        36-27A-3. ~~There is created a~~ The Board of Examiners of Psychologists ~~which shall consist~~  
 23 ~~of five~~ consists of seven members, ~~one~~ two of whom shall be a ~~lay member~~ lay members. The  
 24 remaining ~~four~~ five members are to be ~~licensed~~ psychologists licensed pursuant to this chapter

1 at the doctoral level for a minimum of two years and broadly representing a cross section of the  
2 profession of psychology. ~~All members shall be appointed by the Governor. The credentials of~~  
3 each psychologist on the board shall be documented and shall be public record as provided in  
4 chapter 1-27. The Governor shall appoint all of the members.

5 Section 64. That § 36-27A-4 be repealed.

6 ~~—36-27A-4. Appointments to the Board of Examiners of Psychologists shall be of individuals~~  
7 ~~qualified under § 36-27A-5. Initial psychologist members of the board shall complete an~~  
8 ~~application for licensure required of applicants for licensure. The board shall act on the~~  
9 ~~application of each initial appointee, with the appointee involved abstaining, in order for~~  
10 ~~licensure to be granted to that appointee. The term "lay member" means a person who is not~~  
11 ~~licensed by the board but who may use the services of a licensed psychologist, and the meaning~~  
12 ~~shall be liberally construed to implement the purpose of this section.~~

13 Section 65. That § 36-27A-5 be repealed.

14 ~~—36-27A-5. To be eligible for appointment to the Board of Examiners of Psychologists, a~~  
15 ~~person, other than a lay member, shall have a doctoral degree from a regionally accredited~~  
16 ~~university or college in a program in psychology and shall have had a supervised psychological~~  
17 ~~internship amounting to not less than one thousand eight hundred hours in duration over a~~  
18 ~~period of not more than two consecutive calendar years and shall have engaged in the~~  
19 ~~postdoctoral practice of psychology in the State of South Dakota for not less than two years. The~~  
20 ~~credentials of each psychologist on the board shall be documented and shall be public record~~  
21 ~~as provided in chapter 1-27.~~

22 Section 66. That § 36-27A-7 be amended to read as follows:

23 36-27A-7. The Governor may remove a member of the Board of Examiners of Psychologists  
24 for cause. If there is a vacancy on the board caused by the death, resignation, or removal from

1 the state of a member or for any other reason, the Governor shall appoint a new member to serve  
2 the unexpired term. No member of the board may serve for more than ~~two~~ three successive full  
3 terms. The appointment ~~of a member~~ to an unexpired term is not considered a full term.

4 Section 67. That § 36-28-2 be amended to read as follows:

5 36-28-2. ~~There is hereby created~~ The the South Dakota State Board for Nursing Facility  
6 Administrators ~~which shall consist~~ consists of eleven members. The members of the board shall  
7 be appointed by the Governor and shall include: one licensed physician and one registered  
8 nurse, neither of whom ~~shall~~ may be an administrator or an employee of a nursing facility nor  
9 have any direct financial interest in nursing facilities; one practicing hospital administrator who  
10 is also licensed as a nursing facility administrator; two practicing administrators of proprietary  
11 nursing facilities; two practicing administrators of nonprofit nursing facilities; a designee of the  
12 secretary of health; a designee of the ~~director of social welfare~~ secretary of social services; and,  
13 two members of the general public who are not administrators or employees of a nursing facility  
14 and who have no direct financial interest in nursing facilities. The terms of all members shall  
15 be three years. No member may serve more than three consecutive full terms. The designees of  
16 the health and ~~welfare~~ social services departments shall serve without compensation and  
17 reimbursement as provided in § 36-28-25, except that their travel expenses shall be paid by their  
18 respective agencies pursuant to § 3-9-2. ~~Appointments to the board shall be made by the~~  
19 ~~Governor after consultation with the associations appropriate to the professions representative~~  
20 ~~of the vacancies to be filled.~~ The appointment to an unexpired term is not considered a full term.

21 Section 68. That § 36-29-8 be amended to read as follows:

22 36-29-8. ~~There is created an~~ The board shall appoint an athletic training committee, ~~which~~  
23 ~~shall be comprised~~ composed of three residents of this state who are licensed to practice athletic  
24 training in the state, one of ~~which~~ whom shall be a registered physical therapist. This committee

1 shall meet at least annually or as deemed necessary to conduct business. The committee shall  
2 assist the Board of Medical and Osteopathic Examiners in conducting exams and shall assist the  
3 board in all matters pertaining to the licensure, practice and discipline of those licensed to  
4 practice athletic training in this state and the establishment of rules ~~and regulations~~ pertaining  
5 to athletic training. ~~The South Dakota Athletic Trainers' Association shall nominate two people~~  
6 ~~for each vacancy at least six months prior to the vacancy.~~ Each person appointed to the  
7 committee after the initial members shall serve for a period of three years. ~~The board shall fill~~  
8 ~~the vacancy from a list of nominees presented by the South Dakota Athletic Trainers'~~  
9 ~~Association.~~ In the event No committee member may be appointed to more than three  
10 consecutive full terms. If a vacancy arises due to death, retirement, or removal from the state,  
11 ~~such~~ the vacancy shall be filled in the same manner as original appointments. The member shall  
12 serve the remainder of the unexpired term. The appointment to an unexpired term is not  
13 considered a full term.

14 Section 69. That § 36-29-19 be amended to read as follows:

15 36-29-19. The proceedings for cancellation, revocation, or suspension of a license may be  
16 initiated when the Board of Medical and Osteopathic Examiners has written information that  
17 any person may have been guilty of any misconduct pursuant to § 36-29-18 or is guilty of ~~gross~~  
18 incompetence or unprofessional or dishonorable conduct.

19 Section 70. That § 36-31-2 be amended to read as follows:

20 36-31-2. ~~There is hereby established an~~ The board shall appoint an occupational therapy  
21 committee ~~consisting~~ composed of three registered occupational therapists or two registered  
22 occupational therapists and one certified occupational therapy assistant, ~~who~~. The committee  
23 shall assist the Board of Examiners in approving qualifications of persons applying for a license  
24 to practice occupational therapy in South Dakota, or the promulgation of rules pertaining to

1 occupational therapy, including guidelines for continuing competency. ~~Committee appointments~~  
2 ~~shall be made within six months of July 1, 1986.~~ The committee shall meet a minimum of two  
3 times per year. ~~The South Dakota occupational therapy association may at a regular or special~~  
4 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~  
5 ~~nominate two persons for each vacancy on the committee.~~ All persons appointed to such the  
6 board after the first members shall serve for a period of three years. ~~The Board of Examiners~~  
7 ~~may select from the list of nominees presented to it, as certified by the secretary of the~~  
8 ~~association, persons to serve on such committee.~~ Any No member may serve more than three  
9 consecutive full terms. Each person nominated to serve on such committee shall have the  
10 following qualifications:

- 11 (1) ~~They~~ The person shall be ~~residents~~ a resident of South Dakota;
- 12 (2) ~~They~~ The person shall be licensed to practice occupational therapy in South Dakota;  
13 and
- 14 (3) ~~They~~ The person shall have practiced occupational therapy a minimum of three years.

15 If any vacancy arises on ~~such the~~ committee ~~by reason of death, retirement, removal from~~  
16 ~~this state, or otherwise of any member serving on such committee, such, the~~ vacancy shall be  
17 filled in the same manner as original appointments ~~thereto are made and the term of the.~~ The  
18 member ~~chosen to fill a vacancy shall be for~~ serve the remainder of the unexpired term ~~of the~~  
19 ~~committee member he is replacing.~~ The appointment to an unexpired term is not considered a  
20 full term.

21 Section 71. That § 36-31-15 be amended to read as follows:

22 36-31-15. A proceeding for cancellation, revocation, or suspension of a license may be  
23 initiated if the board has written information that any person may have been guilty of any  
24 misconduct pursuant to § 36-31-14, or is guilty of ~~gross~~ incompetence or unprofessional or

1 dishonorable conduct.

2 Section 72. That § 36-32-2 be amended to read as follows:

3 36-32-2. ~~There is hereby created the~~ The South Dakota Board of Counselor Examiners,  
4 ~~which shall consist of seven~~ consists of nine members, ~~one of whom shall be a lay member~~  
5 ~~representing consumers of the services regulated by the board, one of whom shall be a counselor~~  
6 ~~educator, one of whom shall be a licensed marriage and family therapist, one of whom shall be~~  
7 ~~a licensed professional counselor--mental health, and two of whom shall be from any~~ three of  
8 whom shall be lay members and six of whom shall be professionals actively engaged in  
9 professional counseling or marriage and family therapy and broadly representing a cross section  
10 ~~of the licensed disciplines governed by this board, all appointed by the Governor. All members~~  
11 ~~with the exception of the lay member and the counselor educator shall be engaged in rendering~~  
12 ~~counseling services. The Governor shall appoint all of the members.~~

13 Section 73. That § 36-32-3 be amended to read as follows:

14 36-32-3. In order to be eligible for appointment to the board as a professional member, a  
15 person, ~~other than the lay member,~~ shall be licensed pursuant to this chapter or chapter 36-33.  
16 ~~However, the initial appointees must meet the qualifications for licensure and shall become~~  
17 ~~licensed professional counselors upon their appointment as members of the board.~~

18 Section 74. That § 36-32-4 be amended to read as follows:

19 36-32-4. Appointments to the board shall be for terms of three years, ~~beginning and begin~~  
20 ~~on July first. No member of the board may serve for more than three successive~~ full terms;  
21 ~~appointment of a member. Appointment to an unexpired term shall be~~ is not considered as a full  
22 term.

23 Section 75. That § 36-33-3 be repealed.

24 ~~36-33-3. The board shall appoint a Marriage and Family Therapists' Advisory Committee~~

1 composed of five members. Four of the members shall be clinical members of the American  
2 Association for Marriage and Family Therapy and the other member shall be an individual  
3 representing the public who is unaffiliated with the profession.

4 — Committee members shall be selected from a list of nominees submitted by the South  
5 Dakota Association for Marriage and Family Therapy. Each committee member shall serve a  
6 term of three years, except initial appointees whose terms shall be staggered so that no more  
7 than two members' terms expire in any one year. If a vacancy occurs, the board shall appoint a  
8 person to fill the unexpired term.

9 — The advisory committee shall assist the board in evaluating the qualifications of applicants  
10 for licensure and reviewing the examination results of applicants. The committee shall also  
11 make recommendations to the board regarding rules promulgated pursuant to this chapter.

12 Section 76. That § 36-34-2 be amended to read as follows:

13 36-34-2. ~~There is hereby created the~~ The South Dakota Certification Board for Alcohol and  
14 Drug Professionals that consists of nine members, three of whom shall be lay members and six  
15 of whom shall be professionals certified pursuant to this chapter. Each professional member  
16 shall be active within the chemical dependency profession and broadly represent a cross section  
17 of the profession of chemical dependency counseling and prevention services. ~~One member~~  
18 ~~shall be a lay member and resident of the state; one member shall be an educator from an~~  
19 ~~addiction studies postsecondary education program; four members shall be certified chemical~~  
20 ~~dependency counselors in active practice within the state and broadly representing a cross~~  
21 ~~section of the profession of chemical dependency counseling; one member shall be a certified~~  
22 ~~prevention specialist; one member shall be an attorney licensed to practice law in the State of~~  
23 ~~South Dakota; and one member shall be a certified practitioner who is an enrolled member of~~  
24 ~~a tribe.~~ This board replaces the functions previously performed by the South Dakota Chemical

1 Dependency Counselor Certification Board, a private nonprofit entity doing business as the  
2 Certification Board for Alcohol and Drug Professionals.

3 Section 77. That § 36-34-3 be amended to read as follows:

4 36-34-3. The Governor shall appoint the members to the board. ~~Initial appointments to the~~  
5 ~~board shall be staggered for terms of one, two, and three years, with three members appointed~~  
6 ~~for one year, three members appointed for two years, and three members appointed for three~~  
7 ~~years. Thereafter, appointments shall be for terms of three years beginning which shall begin~~  
8 ~~on the first day of July. Any board member appointed prior to July 1, 2005, shall complete the~~  
9 ~~member's unexpired term. Thereafter, appointment shall be for a term of three years beginning~~  
10 ~~upon expiration of the term.~~

11 Section 78. That § 36-34-4 be amended to read as follows:

12 36-34-4. The Governor may remove any member of the board for cause. If there is a vacancy  
13 on the board ~~caused by the death, resignation, removal from the state of any member, or for any~~  
14 ~~other reason~~, the Governor shall appoint a new member to serve the unexpired term. No member  
15 of the board may serve for more than ~~two~~ three successive full terms. The appointment to an  
16 unexpired term is not considered a full term.

17 Section 79. The effective date of sections 11, 13, and 15 of this Act is December 30, 2006.

18 Section 80. The effective date of sections 31, 33, and 35 of this Act is September 30, 2006.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

439L0743

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1222 - 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: Representatives O'Brien, Boomgarden, Cutler, Hennies, Kraus, Murschel, and Willadsen and Senators Olson (Ed) and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to establish child neglect and endangerment as criminal  
2 offenses and to provide penalties therefor.

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

4 Section 1. It is a Class 1 misdemeanor for any parent, guardian, or custodian to willfully  
5 deprive his or her child of necessary food, clothing, medical care, shelter, or supervision if the  
6 parent, guardian, or custodian is reasonably able to make the necessary provisions and the  
7 deprivation harms the child's physical, mental, or emotional health.

8 Section 2. It is a Class 6 felony for any parent, guardian, or custodian to knowingly permit  
9 any continuing physical or sexual abuse of his or her child.

10 Section 3. It is a Class 1 misdemeanor for any parent, guardian, or custodian to:

11 (1) Intentionally or recklessly cause or permit his or her child to be placed in a situation  
12 likely to substantially harm the child's physical health or cause the child's death, other  
13 than the inherent risks associated with sports, athletics, or other childhood activities;  
14 or



1       (2)    Knowingly cause or permit his or her child to be present where any person is  
2            manufacturing, using, or distributing methamphetamines or any other unlawfully  
3            manufactured controlled drug or substance.

4        Section 4. It is a defense to prosecution under this Act if, at the time of the offense, there  
5        was a reasonable apprehension in the mind of the defendant that acting to stop or to prevent the  
6        offense would result in substantial bodily harm to the defendant or the child in retaliation.

7        Section 5. The code counsel shall codify this Act in a newly created chapter in Title 22  
8        entitled "Offenses Against the Family."

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

904L0603

SENATE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1229** -  
02/23/2005

Introduced by: Representatives Haverly, Boomgarden, Cutler, Garnos, Halverson, Heineman, Hennies, Miles, Murschel, Roberts, Thompson, and Van Etten and Senators Sutton (Dan), Abdallah, Adelstein, Broderick, Dempster, Duniphan, Nesselhuf, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to require standards for certain family day care providers.

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

3 Section 1. That § 26-6-14.1 be amended to read as follows:

4 26-6-14.1. For the purposes of this chapter, family day care means providing care and  
5 supervision of for not more than twelve children from more than one unrelated family, in a  
6 family home, on a regular basis for part of a day as a supplement to regular parental care,  
7 without transfer of legal custody or placement for adoption, ~~paid for directly or indirectly out~~  
8 ~~of public funds. A family day care home may not be registered for care and supervision of more~~  
9 ~~than twelve children at any one time including. Unless otherwise licensed under § 26-6-14, any~~  
10 ~~person who provides family day care for more than six children or who receives direct or~~  
11 ~~indirect public funds for the provision of family day care shall be registered with the Department~~  
12 ~~of Social Services as a family day care provider. Any children under the age of six living in the~~  
13 home shall be included when calculating the number of children in care.



1        Notwithstanding the provisions of this section, any person who provides family day care for  
2 more than six but not more than twelve children from more than one unrelated family and who  
3 does not receive direct or indirect public funds for the provision of family day care as of July 1,  
4 2005, shall submit his or her name and address to the Department of Social Services by  
5 November 1, 2005. Any such person has until July 1, 2008, to become registered pursuant to  
6 § 26-6-14.2. The department shall provide or arrange for education and training programs on  
7 the applicable laws and rules governing family day care for persons who have submitted their  
8 names and addresses to the department or who are registered pursuant to this section. Any  
9 person who establishes a family day care after June 30, 2005, for more than six children shall  
10 apply for registration and become registered with the department as a family day care provider  
11 pursuant to § 26-6-14.2.

12        Section 2. That § 26-6-14.2 be amended to read as follows:

13        26-6-14.2. Application for registration for operation of a family day care home shall be made  
14 on forms provided by the Department of Social Services and in the manner prescribed by the  
15 department. The secretary of social services shall promulgate rules regulating family day care  
16 homes ~~providing services paid for directly or indirectly out of public funds. The rules shall be~~  
17 ~~promulgated pursuant to chapter 1-26. However, the rules and the registration required by § 26-~~  
18 ~~6-14.1 do not apply to family day care homes providing services not paid for directly or~~  
19 ~~indirectly out of public funds.~~ The department may investigate any family day care home  
20 providing services ~~paid for directly or indirectly out of public funds~~ to verify compliance with  
21 this chapter and the rules promulgated pursuant to this chapter. All registration certificates shall  
22 be in force for two years from the date of issuance unless suspended or revoked as authorized  
23 by ~~§ 26-6-23~~ this chapter. The certificate issued under this chapter may not be assigned or  
24 transferred and applies only to the certificate and the location stated in the application and

1 remains the property of the Department of Social Services.

2 Section 3. That § 26-6-14.8 be amended to read as follows:

3 26-6-14.8. For the purposes of §§ ~~26-6-14.8 to 26-6-14.11, inclusive~~, this chapter  
4 unregistered family day care means ~~the providing care and supervision of~~ for not more than six  
5 children from more than one unrelated family, in a family home, on a regular basis for part of  
6 a day as a supplement to regular parental care, without transfer of legal custody or placement  
7 for adoption, without payment directly or indirectly of any public funds. ~~An unregistered family~~  
8 ~~day care home may not provide care for more than twelve children at any one time including~~  
9 Any children under the age of six living in the home shall be included when calculating the  
10 number of children in care.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

592L0590

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1233** - 02/23/2005

Introduced by: Representatives Hunt, Dykstra, Gillespie, Glenski, Hargens, Heineman, Howie, Jerke, Klautdt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Pederson (Gordon), Putnam, Rave, Rhoden, Schafer, Street, Tornow, Weems, Wick, and Willadsen and Senators Bartling, Abdallah, Broderick, Earley, Hanson (Gary), Kloucek, Lintz, Moore, Peterson (Jim), Schoenbeck, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to establish a task force to study abortion and to provide  
2 for its composition, scope, and administration.

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

4 Section 1. There is hereby established the South Dakota Task Force to Study Abortion. The  
5 task force shall consist of seventeen members. Six members shall be appointed by the Speaker  
6 of the House of Representatives, and six members shall be appointed by the President Pro  
7 Tempore of the Senate, and five members shall be appointed by the Governor. Not all members  
8 appointed by each appointive power may belong to the same political party. If there is a vacancy  
9 on the task force, the vacancy shall be filled in the same manner as the original appointment.

10 Section 2. The task force shall be under the supervision of the Executive Board of the  
11 Legislative Research Council and staffed and funded as an interim legislative committee.

12 Section 3. The task force shall study the practice of abortion since its legalization, the body  
13 of knowledge concerning the development and behavior of the unborn child which has



1 developed because of technological advances and medical experience since the legalization of  
2 abortion, the societal, economic, and ethical impact and effects of legalized abortion, the degree  
3 to which decisions to undergo abortions are voluntary and informed, the effect and health risks  
4 that undergoing abortions has on the women, including the effects on the women's physical and  
5 mental health, including the delayed onset of cancer, and her subsequent life and socioeconomic  
6 experiences, the nature of the relationship between a pregnant woman and her unborn child,  
7 whether abortion is a workable method for the pregnant woman to waive her rights to a  
8 relationship with the child, whether the unborn child is capable of experiencing physical pain,  
9 whether the need exists for additional protections of the rights of pregnant women  
10 contemplating abortion, and whether there is any interest of the state or the mother or the child  
11 which would justify changing the laws relative to abortion. The task force shall prepare a report  
12 detailing its findings, which shall include any proposals for additional legislation as it may deem  
13 advisable, and submit the report to the Governor and Legislature no later than December 1,  
14 2005.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

544L0288

## HOUSE ENGROSSED NO. **SB 143** - 02/23/2005

Introduced by: Senator Knudson and Representative O'Brien

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Environmental Covenants Act.

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

3 Section 1. This Act may be cited as the Uniform Environmental Covenants Act.

4 Section 2. In this Act:

5 (1) "Activity and use limitations," means restrictions or obligations created under this  
6 Act with respect to real property;

7 (2) "Agency," means the Department of Environment and Natural Resources or any other  
8 state or federal agency that determines or approves the environmental response  
9 project pursuant to which the environmental covenant is created;

10 (3) "Common interest community," means a condominium, cooperative, or other real  
11 property with respect to which a person, by virtue of the person's ownership of a  
12 parcel of real property, is obligated to pay property taxes or insurance premiums, or  
13 for maintenance, or improvement of other real property described in a recorded  
14 covenant that creates the common interest community;

15 (4) "Environmental covenant," means a servitude arising under an environmental  
16 response project that imposes activity and use limitations;



1 (5) "Environmental response project," means a plan or work performed for  
2 environmental remediation of real property and conducted:

3 (A) Under a federal or state program governing environmental remediation of real  
4 property, including chapter 34A-10;

5 (B) Incident to closure of a solid or hazardous waste management unit, if the  
6 closure is conducted with approval of an agency; or

7 (C) Under a state voluntary clean-up program;

8 (6) "Holder," means the grantee of an environmental covenant as specified in section  
9 3(a) of this Act;

10 (7) "Person," means an individual, corporation, business trust, estate, trust, partnership,  
11 limited liability company, association, joint venture, public corporation, government,  
12 governmental subdivision, agency, or instrumentality, or any other legal or  
13 commercial entity;

14 (8) "Record," used as a noun, means information that is inscribed on a tangible medium  
15 or that is stored in an electronic or other medium and is retrievable in perceivable  
16 form;

17 (9) "State," means a state of the United States, the District of Columbia, Puerto Rico, the  
18 United States Virgin Islands, or any territory or insular possession subject to the  
19 jurisdiction of the United States.

20 Section 3. (a) Any person, including a person that owns an interest in the real property, the  
21 agency, or a municipality or other unit of local government, may be a holder. An environmental  
22 covenant may identify more than one holder. The interest of a holder is an interest in real  
23 property.

24 (b) A right of an agency under this Act or under an environmental covenant, other than a

1 right as a holder, is not an interest in real property.

2 (c) An agency is bound by any obligation it assumes in an environmental covenant, but an  
3 agency does not assume obligations merely by signing an environmental covenant. Any other  
4 person that signs an environmental covenant is bound by the obligations the person assumes in  
5 the covenant, but signing the covenant does not change obligations, rights, or protections  
6 granted or imposed under law other than this Act except as provided in the covenant.

7 (d) The following rules apply to interests in real property in existence at the time an  
8 environmental covenant is created or amended:

9 (1) An interest that has priority under other law is not affected by an environmental  
10 covenant unless the person that owns the interest subordinates that interest to the  
11 covenant;

12 (2) This Act does not require a person that owns a prior interest to subordinate that  
13 interest to an environmental covenant or to agree to be bound by the covenant;

14 (3) A subordination agreement may be contained in an environmental covenant covering  
15 real property or in a separate record. If the environmental covenant covers commonly  
16 owned property in a common interest community, the record may be signed by any  
17 person authorized by the governing board of the owners' association;

18 (4) An agreement by a person to subordinate a prior interest to an environmental  
19 covenant affects the priority of that person's interest but does not by itself impose any  
20 affirmative obligation on the person with respect to the environmental covenant.

21 Section 4. (a) An environmental covenant must:

22 (1) State that the instrument is an environmental covenant executed pursuant to this Act;

23 (2) Contain a legally sufficient description of the real property subject to the covenant;

24 (3) Describe the activity and use limitations on the real property;

1 (4) Identify every holder;

2 (5) Be signed by the agency, every holder, and every owner of the fee simple of the real  
3 property subject to the covenant; and

4 (6) Identify the name and location of any administrative record for the environmental  
5 response project reflected in the environmental covenant.

6 (b) In addition to the information required by subsection (a), an environmental covenant may  
7 contain other information, restrictions, and requirements agreed to by the persons who signed  
8 it, including any:

9 (1) Requirements for notice following transfer of a specified interest in, or concerning  
10 proposed changes in use of, applications for building permits for, or proposals for any  
11 site work affecting the contamination on, the property subject to the covenant;

12 (2) Requirements for periodic reporting describing compliance with the covenant;

13 (3) Rights of access to the property granted in connection with implementation or  
14 enforcement of the covenant;

15 (4) A brief narrative description of the contamination and remedy, including the  
16 contaminants of concern, the pathways of exposure, limits on exposure, and the  
17 location and extent of the contamination;

18 (5) Limitation on amendment or termination of the covenant in addition to those  
19 contained in sections 9 and 10 of this Act; and

20 (6) Rights of the holder in addition to its right to enforce the covenant pursuant to section  
21 11 of this Act.

22 (c) In addition to other conditions for its approval of an environmental covenant, the agency  
23 may require those persons specified by the agency who have interests in the real property to sign  
24 the covenant.

1 Section 5. (a) An environmental covenant that complies with this Act runs with the land.

2 (b) An environmental covenant that is otherwise effective is valid and enforceable even if:

3 (1) It is not appurtenant to an interest in real property;

4 (2) It can be or has been assigned to a person other than the original holder;

5 (3) It is not of a character that has been recognized traditionally at common law;

6 (4) It imposes a negative burden;

7 (5) It imposes an affirmative obligation on a person having an interest in the real  
8 property or on the holder;

9 (6) The benefit or burden does not touch or concern real property;

10 (7) There is no privity of estate or contract;

11 (8) The holder dies, ceases to exist, resigns, or is replaced; or

12 (9) The owner of an interest subject to the environmental covenant and the holder are the  
13 same person.

14 (c) An instrument that creates restrictions or obligations with respect to real property that  
15 would qualify as activity and use limitations except for the fact that the instrument was recorded  
16 before the effective date of this Act is not invalid or unenforceable because of any of the  
17 limitations on enforcement of interests described in subsection (b) or because it was identified  
18 as an easement, servitude, deed restriction, or other interest. This Act does not apply in any other  
19 respect to such an instrument.

20 (d) This Act does not invalidate or render unenforceable any interest, whether designated  
21 as an environmental covenant or other interest, that is otherwise enforceable under the law of  
22 this state.

23 Section 6. This Act does not authorize a use of real property that is otherwise prohibited by  
24 zoning, by law other than this Act regulating use of real property, or by a recorded instrument

1 that has priority over the environmental covenant. An environmental covenant may prohibit or  
2 restrict uses of real property which are authorized by zoning or by law other than this Act.

3 Section 7. (a) A copy of an environmental covenant shall be provided by the persons and in  
4 the manner required by the agency to:

- 5 (1) Each person that signed the covenant;
- 6 (2) Each person holding a recorded interest in the real property subject to the covenant;
- 7 (3) Each person in possession of the real property subject to the covenant;
- 8 (4) Each municipality or other unit of local government in which real property subject  
9 to the covenant is located; and
- 10 (5) Any other person the agency requires.

11 (b) The validity of a covenant is not affected by failure to provide a copy of the covenant as  
12 required under this section.

13 Section 8. (a) An environmental covenant and any amendment or termination of the  
14 covenant must be recorded in every county in which any portion of the real property subject to  
15 the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

16 (b) Except as otherwise provided in section 9(c) of this Act, an environmental covenant is  
17 subject to the laws of this state governing recording and priority of interests in real property.

18 Section 9. (a) An environmental covenant is perpetual unless it is:

- 19 (1) By its terms limited to a specific duration or terminated by the occurrence of a  
20 specific event;
- 21 (2) Terminated by consent pursuant to section 10 of this Act;
- 22 (3) Terminated pursuant to subsection (b);
- 23 (4) Terminated by foreclosure of an interest that has priority over the environmental  
24 covenant; or

- 1 (5) Terminated or modified in an eminent domain proceeding, but only if:
- 2 (A) The agency that signed the covenant is a party to the proceeding;
- 3 (B) All persons identified in Section 10(a) and (b) of this Act are given notice of
- 4 the pendency of the proceeding; and
- 5 (C) The court determines, after hearing, that the termination or modification will
- 6 not adversely affect human health or the environment.

7 (b) If the agency that signed an environmental covenant has determined that the intended

8 benefits of the covenant can no longer be realized, a court, under the doctrine of changed

9 circumstances, in an action in which all persons identified in Section 10(a) and (b) of this Act

10 have been given notice, may terminate the covenant or reduce its burden on the real property

11 subject to the covenant. The agency's determination or its failure to make a determination upon

12 request is subject to review pursuant to chapter 1-26.

13 (c) Except as otherwise provided in subsections (a) and (b), an environmental covenant may

14 not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax

15 lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver,

16 lack of enforcement, or acquiescence, or a similar doctrine.

17 (d) An environmental covenant may not be extinguished, limited, or impaired by application

18 of chapter 43-30 or 43-30A.

19 Section 10. (a) An environmental covenant may be amended or terminated by consent only

20 if the amendment or termination is signed by:

- 21 (1) The agency;
- 22 (2) The current owner of the fee simple of the real property subject to the covenant;
- 23 (3) Each person that originally signed the covenant, unless the person waived in a signed
- 24 record the right to consent or a court finds that the person no longer exists or cannot

1 be located or identified with the exercise of reasonable diligence; and

2 (4) Except as otherwise provided in subsection (d)(2), the holder.

3 (b) If an interest in real property is subject to an environmental covenant, the interest is not  
4 affected by an amendment of the covenant unless the current owner of the interest consents to  
5 the amendment or has waived in a signed record the right to consent to amendments.

6 (c) Except for an assignment undertaken pursuant to a governmental reorganization,  
7 assignment of an environmental covenant to a new holder is an amendment.

8 (d) Except as otherwise provided in an environmental covenant:

9 (1) A holder may not assign its interest without consent of the other parties;

10 (2) A holder may be removed and replaced by agreement of the other parties specified  
11 in subsection (a); and

12 (3) A court of competent jurisdiction may fill a vacancy in the position of holder.

13 Section 11. (a) A civil action for injunctive or other equitable relief for violation of an  
14 environmental covenant may be maintained by:

15 (1) A party to the covenant;

16 (2) The agency;

17 (3) Any person to whom the covenant expressly grants power to enforce;

18 (4) A person whose interest in the real property or whose collateral or liability may be  
19 affected by the alleged violation of the covenant; or

20 (5) A municipality or other unit of local government in which the real property subject  
21 to the covenant is located.

22 (b) This Act does not limit the regulatory authority of the agency under law other than this  
23 Act with respect to an environmental response project.

24 (c) A person is not responsible for or subject to liability for environmental remediation

1 solely because it has the right to enforce an environmental covenant.

2 Section 12. (a) The secretary of state shall establish and maintain a registry that contains all  
3 environmental covenants and any amendment or termination of those covenants. The registry  
4 may also contain any other information concerning environmental covenants and the real  
5 property subject to them which the secretary of state considers appropriate. The registry is a  
6 public record.

7 (b) After an environmental covenant or an amendment or termination of a covenant is filed  
8 in the registry established pursuant to subsection (a), a notice of the covenant, amendment, or  
9 termination that complies with this section may be recorded in the land records in lieu of  
10 recording the entire covenant. Any such notice must contain:

11 (1) A legally sufficient description and any available street address of the real property  
12 subject to the covenant;

13 (2) The name and address of the owner of the fee simple interest in the real property, the  
14 agency, and the holder if other than the agency;

15 (3) A statement that the covenant, amendment, or termination is available in a registry  
16 at the Office of the Secretary of State which discloses the method of any electronic  
17 access; and

18 (4) A statement that the notice is notification of an environmental covenant executed  
19 pursuant to this Act.

20 (c) A statement in substantially the following form, executed with the same formalities as  
21 a deed in this state, satisfies the requirements of subsection (b):

22 "1. This notice is filed in the land records of the county of [insert name of jurisdiction in  
23 which the real property is located] pursuant to section 12 of this Act.

24 2. This notice and the covenant, amendment, or termination to which it refers may impose

1 significant obligations with respect to the property described below.

2 3. A legal description of the property is attached as Exhibit A to this notice. The address of  
3 the property that is subject to the environmental covenant is [insert address of property] [not  
4 available].

5 4. The name and address of the owner of the fee simple interest in the real property on the  
6 date of this notice is [insert name of current owner of the property and the owner's current  
7 address as shown on the tax records of the jurisdiction in which the property is located].

8 5. The environmental covenant, amendment, or termination was signed by [insert name and  
9 address of the agency].

10 6. The environmental covenant, amendment, or termination was filed in the registry on  
11 [insert date of filing].

12 7. The full text of the covenant, amendment, or termination and any other information  
13 required by the agency is on file and available for inspection and copying in the registry  
14 maintained for that purpose by the Office of the Secretary of State in the State Capitol. The  
15 covenant, amendment, or termination may be found electronically at [www.sdsos.gov](http://www.sdsos.gov)."

16 Section 13. In applying and construing this uniform act, consideration must be given to the  
17 need to promote uniformity of the law with respect to its subject matter among states that enact  
18 it.

19 Section 14. This Act modifies, limits, or supersedes the federal Electronic Signatures in  
20 Global and National Commerce Act (15 U.S.C. 7001 et seq.) but does not modify, limit, or  
21 supersede Section 101 of that Act (15 U.S.C. 7001(a)) or authorize electronic delivery of any  
22 of the notices described in Section 103 of that Act (15 U.S.C. 7003(b)).