Senate
Daily Reader

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State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0331

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. SB 17 - 02/23/2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To establish the information requirements and procedures that every utility must follow when filing plans with the commission regarding its ~~existing and proposed energy conversion facilities, and for~~ proposed and existing ~~transmission~~ facilities; ~~and~~

(2) To establish procedures for utilities to follow when filing an application for a permit to construct ~~an energy conversion facility or a transmission~~ a facility, and the information required to be included in the application; and

(3) To require bonds, guarantees, insurance, or other requirements to provide funding for the decommissioning and removal of a wind energy facility.

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

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

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0369

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

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

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

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

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

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

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

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

(1) Income taxes ~~withheld figured on the basis of two dependent exemptions for a single taxpayer paid monthly rather than actual amount withheld~~ <u>payable based on the applicable tax rate for a single taxpayer with one withholding allowance and a monthly payroll period rather than the actual tax rate</u>;

(2) ~~Estimated income taxes payable, prorated monthly~~ <u>Social security and medicare taxes based on the applicable tax rate for an employee or a self-employed taxpayer</u>;

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

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

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

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

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

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

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

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

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

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

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

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

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

25-7-6.13. All orders for support entered and in effect prior to July 1, ~~2001~~ 2005, may be modified in accordance with this chapter without requiring a showing of a change in circumstances from the entry of the order.

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

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

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

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

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

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

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

costs.

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

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

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

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

after July 1, 1997:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

563L0511

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. SB 95 - 02/18/2005

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

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

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

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

42-7-56. The commission shall:

(1) Provide for racing under the certificate system;

(2) Perform quasi-legislative, quasi-judicial, and advisory functions excluding special budgetary functions as defined in § 1-32-1;

(3) Set racing dates;

(4) Promulgate rules pursuant to chapter 1-26 for effectively preventing the use of any substance, compound items, or combination thereof of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racing animal unless specifically authorized by the commission;

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(5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and equipment used within the state;

(6) Promulgate rules pursuant to chapter 1-26 governing, restricting, or regulating bids on licensees' concessions and leases on equipment;

(7) Approve all proposed extensions, additions, or improvements to the buildings, stables, or tracts upon property owned or leased by a licensee;

(8) Exclude from race courses or other pari-mutuel facilities any person who violates the racing laws or any rule~~, regulation,~~ or order of the commission or is not eligible for licensing in another racing jurisdiction;

(9) Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which ~~such~~ the financial records shall be kept;

(10) Investigate the operations of any licensee and cause the various places where the certificate system is operated to be visited and inspected at reasonable intervals for the purpose of satisfying itself that the rules ~~and regulations~~ are strictly complied with;

(11) Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and animals that are lawfully on the race track;

(12) License all participants in the racing industry and require and obtain such information as the commission deems necessary from licensed applicants;

(13) Promulgate and enforce additional rules pursuant to chapter 1-26, and conditions under which all horse and dog races held shall be conducted and promulgate rules pursuant to chapter 1-26 to preserve the integrity and security of racing; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Any action or attempted action by a person contrary to the provisions of this chapter and law;

(2) Corrupt practices, which include but are not limited to:

(a) Prearranging or attempting to prearrange the order of finish of a race;

(b) Failing to properly pay the winnings to a bettor or to properly return change to a bettor upon purchasing a ticket;

(c) Falsifying or manipulating the odds on any entrant in a race;

(3) Any violation of the rules of racing adopted by the commission;

(4) ~~Willful falsification~~ Falsification or misstatement of fact in an application for ~~racing privileges~~ any license issued pursuant to this chapter;

(5) Material false statement to a racing official or to the commission;

(6) Willful disobedience of a commission order or of a lawful order of a racing official other than a commissioner;

(7) Continued failure or inability to meet financial obligations connected with the licensee's business, occupation or profession performed or engaged on the track grounds;

(8) Failure or inability to maintain properly a race track;

(9) The refusal to license, or the suspension, or the revocation of a racing license by another racing jurisdiction.

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

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

547L0547

HOUSE COMMERCE COMMITTEE ENGROSSED NO. SB 109 - 02/22/2005

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

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

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

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

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

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

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

(1) Modifying the circumstances under which a finance charge will be imposed;

(2) Altering the method used to calculate finance charges;

(3) Increasing finance charges, fees, and other costs; or

(4) Increasing the required minimum payment.

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

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

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

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

664L0662

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. SB 119 - 02/23/2005

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

Introduced by: Senators Adelstein and Napoli and Representative Hennies

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

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

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

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

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

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

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

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

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

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

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

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

follows:

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

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

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

625L0535

HOUSE COMMERCE COMMITTEE ENGROSSED NO. SB 139 - 02/24/2005

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

Introduced by: Senator Nesselhuf and Representative Rounds

FOR AN ACT ENTITLED, An Act to establish certain requirements for insurance policies covering certain long-term care services.

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

Section 1. That chapter 58-17B be amended by adding thereto a NEW SECTION to read as follows:

If an insured is receiving benefits for long-term care services in a nursing home or assisted living facility under a long-term care policy or certificate subject to this chapter, and temporarily leaves the nursing home or assisted living facility for a period not to exceed fourteen days annually, the insurer may not reduce or limit benefits for long-term care charges incurred by the insured during that temporary absence unless otherwise provided in the policy or certificate. The insurer may not consider that absence in determining whether the insured qualifies or continues to qualify for a waiver of premium or other policy or certificate benefits or eligibility requirements. This Act applies to all policies or certificates that are issued after June 30, 2005.

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State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

565L0732

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. SB 178 - 02/16/2005

Introduced by: Senators Schoenbeck and Gray and Representatives Murschel, Cutler, Faehn, and Koistinen

FOR AN ACT ENTITLED, An Act to provide for the creation of county interdisciplinary child information teams and to regulate their memberships, authority, and responsibilities.

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

Section 1. The following persons and agencies operating within a county may, by written agreement, form a county interdisciplinary child information team:

(1) The state's attorney;

(2) The county sheriff;

(3) The chief of police of any municipality;

(4) The superintendent or the chief executive officer of any school district;

(5) The Department of Social Services;

(6) The Department of Corrections; and

(7) The administrator of the county teen court.

Section 2. The persons and agencies signing a written agreement to form a county interdisciplinary child information team may, from time to time, by majority vote, allow the following persons to sign the written agreement and join the team:

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(1) Any physician, psychologist, psychiatrist, nurse, or other provider of medical and mental health care;

(2) Any administrator of any private elementary and secondary school;

(3) Any attorney practicing law in the county; and

(4) Any responsible person that has a legitimate interest in one or more of the children that the team is serving.

Section 3. The county interdisciplinary child information team may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or specific children with a particular type of problem, or for any other purpose. Each auxiliary team is subject to the written agreement. Each member of an auxiliary team must be a person who has personal knowledge of or experience with some child serviced by the auxiliary team.

Section 4. The county interdisciplinary child information team and the written agreement shall facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions, specialities, interests, or occupations for the purpose of holding each child accountable, ensuring the safety of the child and the community, and providing early intervention to avert more serious problems. Information regarding any child that a team member supplies to other team members is confidential and may not be disseminated beyond the team.

Section 5. The terms of the written agreement shall provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, the means by which the confidentiality of the information will be safeguarded, and any other matters necessary to the purpose and functions of the team. The terms of the written agreement shall also provide how the team will coordinate its efforts with child protection teams as provided in § 26-8A-17 and local interagency teams, if any, as provided in § 27A-15-54. The

written agreement shall be filed with the county auditor.

Section 6. To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication by a court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. South Dakota school districts may release education records to the team. The terms of the written agreement, as provided for in section 5 of this Act, shall include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student.

Section 7. Any person serving as a member of a county interdisciplinary child information team as provided in section 1 of this Act whose action in facilitating the exchange and sharing of information in serving any child in the course of their professions, specialities, interests, or occupations for the purpose of holding each child accountable, ensuring the safety of the child and the community, and providing early intervention to avert more serious problems, is immune from any civil liability, arising out of any good faith act relevant to participation on any county interdisciplinary child information team, that might otherwise be incurred or imposed.

Section 8. Any agreement pursuant to this Act shall include a requirement for notice to the parent or guardian unless the parent or guardian is the subject of an investigation by one of the participating agencies with respect to the child's conduct or welfare.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

435L0754

HOUSE ENGROSSED NO. SB 191 - 02/28/2005

Introduced by: Senators Moore and Koskan and Representatives Hargens, Pederson (Gordon), and Rhoden

FOR AN ACT ENTITLED, An Act to establish certain conditions related to the issuance of hunting and fishing licenses.

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

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

Any licensing agent appointed pursuant to § 41-2-33 may use manual, electronic, telephonic, or other methods in the issuance of hunting and fishing licenses. However, no such licensing agent is required to use electronic or telephonic means in the course of issuing any hunting or fishing license.

Section 2. The provisions of this Act are repealed on July 1, 2008.

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State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

616L0473

HOUSE ENGROSSED NO. SB 193 - 02/28/2005

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

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

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

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

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

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by certified mail, the time of delivery shall be deemed to occur at twelve noon on the next day on which regular mail delivery takes place, subsequent to mailing.

No notice is required under this section if:

(1) The attending physician certifies in the pregnant unemancipated minor's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists ~~that so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function~~ and there is insufficient time to provide the required notice. Unless the unemancipated minor gives notice of her intent to seek a judicial waiver, a good faith effort shall be made by the attending physician or the physician's agent to verbally inform the parent within twenty-four hours after the performance of the emergency abortion, that an emergency abortion was performed on the unemancipated minor and shall also be sent a written notice, in the manner described in this section, of the performed emergency abortion. If the unemancipated minor, upon whom an emergency abortion was performed, elects not to allow the notification of her parent, any judge of a circuit court shall, upon petition, or motion, and after an appropriate hearing, authorize the waiving of the required notice of the performed abortion if the judge determines, by clear and convincing evidence that the unemancipated minor is mature and capable of determining whether notification should be given, or that the waiver would be in the unemancipated minor's best interest; or

(2) The person who is entitled to notice certifies in writing that ~~he~~ the person has been notified. The certification is valid only if the signature has been notarized. If the

person does not provide a notarized signature, the person shall be sent a written notice as described in this section. No abortion as described in this section may be performed until at least forty-eight hours after written notice of the pending operation has been delivered in the manner specified in this section; or

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

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

34-23A-7.1. In any proceeding pursuant to subdivision 34-23A-7(1) or 34-23A-7(3), the pregnant female may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Proceedings in the court under ~~this~~ subdivision 34-23A-7(1) or 34-23A-7(3) shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant female. A judge of the court who conducts proceedings under ~~this~~ subdivision 34-23A-7(1) or

34-23A-7(3) shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

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

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

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