House
Daily Reader

Friday, February 24, 2006

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0321

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. HB 1015 - 02/14/2006

Introduced by: The Committee on Appropriations at the request of the Board of Regents

FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to acquire an equestrian facility for South Dakota State University and to declare an emergency.

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

Section 1. The Board of Regents shall select a site for equestrian facilities including approximately fifty-seven thousand square feet of buildings, ninety-five thousand square feet of site improvements, and approximately fifteen acres of pasture development from within the lands acquired pursuant to section 3, chapter 96, of the 2001 Session Laws. The board shall lease that site, together with such portions of surrounding grounds as may be needed for construction purposes, to the South Dakota State University Foundation to permit the foundation to construct the structures to house the equestrian facilities.

Section 2. In consideration for the lease authorized in section 1 of this Act, the foundation shall construct the project in accordance with the requirements of chapters 5-14 and 5-18 just as though the structures and improvements comprising the equestrian facilities were constructed by the Board of Regents. However, the foundation shall enter into all contracts for the construction of the facility and make all payments therefor, once the payments have been duly

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authorized by the Bureau of Administration and the executive director of the Board of Regents.

Section 3. The term of the lease authorized in section 1 of this Act may not exceed the time required for site preparation and construction through project acceptance plus ten years from the date of acceptance.

Section 4. The Board of Regents shall lease the equestrian facilities constructed pursuant to this Act from the foundation for a period of ten years from the date of acceptance at an annual lease payment of one hundred sixty-five thousand dollars.

Section 5. The South Dakota State University Foundation shall maintain and repair the equestrian facilities during the term of the leaseback.

Section 6. Upon termination of the lease and leaseback authorized by the Act, the foundation shall donate the facility and all right or interest that it may have in the equestrian facilities to the Board of Regents, on behalf of the State of South Dakota, for the use and benefit of South Dakota State University and the Board of Regents may accept the equestrian facilities on behalf of the State of South Dakota, for the use and benefit of South Dakota State University.

Section 7. No general fund dollars may be used for the maintenance and repair or lease payments of the facility authorized by this Act.

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

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0344

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. HB 1020 - 02/17/2006

Introduced by: The Committee on Education at the request of the Bureau of Finance and Management

FOR AN ACT ENTITLED, An Act to reappropriate certain moneys to state aid to general education.

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

Section 1. Notwithstanding the provisions of § 4-8-19, any unencumbered funds in the amount of seven million two hundred thousand dollars ($7,200,000), or so much thereof as may be available, that was appropriated from the state general fund by section 11, chapter 30, of the 2005 Session Laws for state aid to general education is hereby reappropriated to the Department of Education for state fiscal year 2007.

Section 2. The effective date of this Act is June 21, 2006.

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

708M0494

SENATE ENGROSSED NO. HB 1098 - 02/22/2006

Introduced by: Representatives Jensen, Boomgarden, Davis, Dykstra, Haley, Hargens, Olson (Ryan), and Weems and Senators McNenny, Gant, Lintz, Nesselhuf, and Peterson (Jim)

FOR AN ACT ENTITLED, An Act to exempt swine and cattle semen from sales and use taxes.

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

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

There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of swine semen and cattle semen to be used for agricultural purposes.

Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as follows:

There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of swine semen and cattle semen to be used for agricultural purposes.

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0435 **SENATE JUDICIARY COMMITTEE ENGROSSED NO.**

HB 1119 - 02/17/2006

Introduced by: Representatives Rounds, Cutler, Gillespie, Hargens, Hennies, O'Brien, and Rave and Senators Moore, Gray, and Schoenbeck

FOR AN ACT ENTITLED, An Act to repeal certain mandatory minimum sentences for driving under the influence, to expand those substances under which a person may be found to be under the influence, and to revise certain driving under the influence provisions for clarity and consistency.

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

Section 1. That § 32-23-1 be amended to read as follows:

32-23-1. No person may drive or be in actual physical control of any vehicle while:

(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;

(2) Under the influence of an alcoholic beverage<u>, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance</u>;

(3) Under the influence of ~~marijuana or~~ any controlled drug or substance <u>obtained pursuant to a valid prescription, or any other substance,</u> to a degree which renders the person incapable of safely driving; ~~or~~

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(4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Section 2. That § 32-23-1.1 be amended to read as follows:

32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-1 and that such violation occurred prior to or immediately following such traffic accident.

Section 3. That § 32-23-1.2 be amended to read as follows:

32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

Section 4. That § 32-23-2 be amended to read as follows:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the court may in its discretion issue an order upon proof of financial responsibility, pursuant to § 32-35-113, permitting the person to operate a ~~motor~~ vehicle for purposes of ~~the person's~~ employment, attendance at school, or attendance at ~~court-ordered~~ counseling programs ~~during the hours of the day and the days of the week as set forth in the order~~. The court may also order the revocation of the defendant's driving privilege for a further

period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Section 5. That § 32-23-2.1 be amended to read as follows:

32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation shall be paid by the defendant.

Section 6. That § 32-23-3 be amended to read as follows:

32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year. However, upon the successful completion of a court-approved ~~alcohol treatment~~ chemical dependency program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to drive for the ~~purpose~~ purposes of employment ~~and may restrict the privilege by the imposition of such conditions as the court sees fit~~, attendance at school, or attendance at counseling programs. If such person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than three days, which sentence may not be suspended.

Section 7. That § 32-23-4 be amended to read as follows:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall ~~unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than one year from the date sentence is imposed or one year from the date of~~

~~discharge from incarceration~~ order that the driver's license of any person so convicted be revoked for a period of not less than one year from the date sentence is imposed or one year from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 8. That § 32-23-4.3 be amended to read as follows:

32-23-4.3. The plea and election of method of trial by the accused shall be first taken only on the first part of the information described in § 32-23-4.2 but before a plea is made the accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second part. There shall be entered in the minutes of the court the time and place when and where the judge so informed the accused, and like entry thereof shall be made in the judgment.

Section 9. That § 32-23-4.4 be amended to read as follows:

32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon proceeded with, and until such time no information as to the second part of the information ~~shall~~ may be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part of the information, such trial may be had to the same or another jury as the court may direct.

Section 10. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall ~~unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than two years from the date sentence is imposed or two years from the date of discharge from incarceration~~ order that the driver's license of any person so convicted be revoked for a period of not less than two years from the date sentence is imposed or two years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 11. That § 32-23-4.7 be amended to read as follows:

32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall ~~unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than two years from the date sentence is imposed~~

~~or two years from the date of discharge from incarceration~~ order that the driver's license of any person so convicted be revoked for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 12. That § 32-23-6 be amended to read as follows:

32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall~~ is not ~~constitute~~ a defense against any charge of violating ~~said section~~ § 32-23-1.

Section 13. That § 32-23-7 be amended to read as follows:

32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the

defendant's blood, it is presumed that the defendant was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage;

(2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 14. That § 32-23-8 be amended to read as follows:

32-23-8. The provisions of § 32-23-7 ~~shall~~ may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Section 15. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

Any driving permit issued by the court to any person, who has been convicted of a violation of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood, shall be conditioned on the person's total abstinence from the use of alcohol. The court shall immediately revoke the permit upon a showing of proof by a preponderance of the evidence that the person has violated this condition.

Section 16. That § 22-16-41 be amended to read as follows:

22-16-41. Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect death, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court ~~may also order that the driver's license of any person convicted of vehicular homicide be revoked for such period of time as may be determined by the court~~ shall order that the driver's license of any person convicted of vehicular homicide be revoked for a period of not less than ten years from the date sentence is imposed or ten years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

Section 17. That § 22-18-36 be amended to read as follows:

22-18-36. Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect serious bodily injury, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes the serious bodily injury of another person, including an unborn child, is guilty of vehicular battery. Vehicular battery is a Class 4 felony. In addition to any other penalty prescribed by law, the court ~~may also order that the driver's license of any person convicted of vehicular battery be revoked for a period of two years subsequent to release from incarceration~~ shall order that the driver's license of any person convicted of vehicular battery be revoked for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the person is returned

to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

696M0592

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. HB 1143 - 02/17/2006

Introduced by: Representatives Tidemann, Brunner, Dennert, Glenski, Haverly, Heineman, Hunhoff, Jensen, Klaudt, O'Brien, Peters, and Rausch and Senators Smidt, Bartling, Hanson (Gary), and Sutton (Duane)

FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to renovate Wecota Hall at South Dakota State University, and to make an appropriation therefor.

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

Section 1. The Board of Regents may contract for the construction, completion, furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos abatement, and such other services as may be required to renovate Wecota Hall at South Dakota State University, in Brookings, Brookings County, at an estimated cost of two million dollars ($2,000,000).

Section 2. There is hereby appropriated two million dollars ($2,000,000) for the purpose of constructing the facility described in section 1 of this Act from federal and grant funds awarded to the South Dakota State University.

Section 3. The Board of Regents may accept, transfer, and expend any funds obtained for these purposes from federal sources, gifts, contributions, or any other source except general funds, all of which shall be deemed appropriated to the project authorized by this Act.

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Section 4. No general fund dollars may be used for the maintenance and repair or lease payments of the facility authorized by this Act.

Section 5. The design and construction of the facilities approved by this Act shall be under the general supervision of the Bureau of Administration as provided in § 5-14-2. The commissioner of the Bureau of Administration and the executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

951M0347

SENATE ENGROSSED NO. HB 1167 - 02/22/2006

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

Introduced by: Representatives Wick, Boomgarden, Buckingham, Cutler, Deadrick, Dykstra, Faehn, Frost, Garnos, Glover, Hackl, Halverson, Heineman, Hennies, Hills, Hunhoff, Hunt, Jensen, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, McLaughlin, Michels, Murschel, Nelson, Novstrup, Pederson (Gordon), Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tidemann, Turbiville, Van Etten, Vehle, Weems, and Willadsen and Senators Knudson, Apa, Bogue, Broderick, Duenwald, Earley, Gray, Kelly, Koskan, Lintz, McNenny, Peterson (Jim), Smidt, and Sutton (Dan)

FOR AN ACT ENTITLED, An Act to create a tax relief fund and to dedicate certain sales and use tax revenue received by the state through the Streamlined Sales and Use Tax Agreement and to provide compensation to certain retailers for collecting and remitting the sales tax.

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

Section 1. There is hereby created in the state treasury the tax relief fund. The revenue collected pursuant to section 2 of this Act shall be deposited in the tax relief fund for the purpose of reducing the rate of taxation or reducing property taxes. When the balance in the fund exceeds ten million dollars, a collection allowance established pursuant to section 3 of this Act shall become effective the following July first. The fund shall be invested as provided by law, and the interest earned shall be credited to the fund. The Legislature may not appropriate any money from the tax relief fund until the second fiscal year after Congress approves legislation giving states the authority to require retailers to collect South Dakota's sales and use

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tax.

Section 2. The additional net revenue received by the state from voluntary retail licensees shall be deposited in the tax relief fund created pursuant to section 1 of this Act. For the purposes of this Act, a voluntary retail licensee is any person licensed through the Streamlined Sales and Use Tax Agreement to remit sales and use tax pursuant to chapters 10-45 and 10-46 who does not otherwise have a legal obligation to remit such taxes.

Section 3. Any person required to file a return and remit the tax imposed by chapter 10-45 on a monthly basis and who timely files the return and pays the tax is allowed, as compensation for the expense of collecting and paying the tax monthly, a credit equal to one and one-half percent of the gross amount of the tax due. However, the credit may not exceed seventy dollars per month.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

139M0022

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. HB 1181 - 02/16/2006

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

Introduced by: Representatives Jerke, Boomgarden, Davis, Deadrick, Dykstra, Fryslie, Hennies, Hunhoff, Jensen, Koistinen, Kraus, Putnam, and Rave and Senators Koskan, Abdallah, and Broderick

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding humane societies.

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

Section 1. That § 40-2-1 be amended to read as follows:

40-2-1. Any three or more citizens of this state ~~who have heretofore or who shall hereafter incorporate as a body corporate under the general laws for incorporation~~ organized as a nonprofit corporation in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this chapter through an animal control officer subject to the limitations in sections 2 and 3 of this Act. The board of county commissioners in each county may grant authority to exercise the privileges and authority granted by this section to one or more qualified nonprofit corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter.

Section 2. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as follows:

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The board of directors of a humane society incorporated pursuant to § 40-2-1 may appoint society members to act as animal control officers. The appointment shall be in writing. The appointment is effective in a particular county only if an appointee obtains written authorization from a circuit court judge having jurisdiction in the county in which the appointee seeks to enforce this chapter or chapter 40-1. To obtain judicial authorization, an appointee seeking judicial authorization shall provide evidence satisfactory to the judge that the appointee has experience, education, or training that has prepared the appointee to assume the powers granted to animal control officers pursuant to section 3 of this Act. The board of directors shall review appointments every three years and may revoke an appointment at any time by filing a certified revocation with the circuit court that approved the appointment. Any authorization may not exceed three years or trustee termination, whichever occurs first.

Section 3. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as follows:

Any law enforcement agency may enforce the provisions of this chapter or chapter 40-1. An animal care and control agency may enforce the provisions of this chapter or chapter 40-1 in a county or municipality if the legislative authority of the county or municipality has entered into a contract with the agency to enforce the provisions of this chapter and chapter 40-1. An animal control officer enforcing this chapter or chapter 40-1 shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on a law enforcement officer who enforces this chapter, chapter 40-1, and other criminal laws. An animal control officer has the following enforcement powers when enforcing this chapter:

(1) The power to issue citations based on probable cause to offenders for misdemeanor and felony violations of this chapter or chapter 40-1;

(2) The power to request that a law enforcement officer arrest and take into custody any

person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or chapter 40-1. An animal control officer may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate an arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(3) The power to carry protective devices, other than firearms, for personal protection;

(4) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or chapter 40-1, and to seize evidence of those violations.

Section 4. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter and chapter 40-1, an animal care and control agency is any municipal or county animal control agency or authority authorized to enforce municipal or county ordinances regulating the care, control, licensing, or treatment of animals within the municipality or county, and any nonprofit corporation organized under § 40-2-1 that contracts with a municipality or county to enforce the municipal or county ordinances governing animal care and control.

Section 5. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter and chapter 40-1, an animal control officer is any person employed, contracted, or appointed pursuant to section 3 of this Act by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals.

Section 6. That § 40-2-3 be repealed.

~~40-2-3. Any member, officer, or agent of any such society so incorporated who shall by the secretary of such society be duly authorized in writing and confirmed by the board of directors, and if within a municipal corporation, approved by the mayor or president of the board of such municipality, and if within a county beyond the limits of a municipal corporation, approved by the circuit judge and sworn in the same manner as are peace officers, may interfere to prevent the inhumane treatment of any animal pursuant to § 40-2-4 and may use such force as may be necessary to prevent such inhumane treatment and to that end may summon to his aid any peace officer. He may make arrests for the violation of any of the provisions of chapter 40-1, in accordance with the provisions of § 40-2-4 in the same manner as other peace officers. Such member, officer, or agent shall, when making such arrest, exhibit the badge adopted by the society of which he is a member, officer, or agent.~~

Section 7. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as follows:

A veterinarian licensed in the State of South Dakota shall be in attendance during any portion of an investigation of a commercial breeding operation that is conducted on the premises of the commercial breeding operation. For purposes of this section the term, commercial breeding operation, means any person engaged in the business of breeding dogs or cats who sells, exchanges, or leases dogs or cats in return for consideration or who offers to do so, whether or not the dogs or cats are bred, raised, trained, groomed, or boarded by the person. Any person who owns or harbors three or fewer unaltered dogs or cats for breeding purposes that are at least six months of age is not a commercial breeding operation. Any person who sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a commercial breeding operation if all such dogs or cats are sold, exchanged, or leased to a final owner rather

than for later retail sale or brokered trading. Any person knowingly selling, exchanging, or leasing any dogs or cats for later retail sale or for brokered trading is a commercial breeding operation.

Section 8. That § 40-1-5 be amended to read as follows:

40-1-5. Any peace officer, agent of the board, or agent or officer of any humane society finding an animal inhumanely treated, as defined in § 40-1-2.4, shall, pursuant to a warrant or court order, cause the animal to be impounded or otherwise properly cared for, and the expenses of such impoundment or care shall be a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer or agent shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

347M0300 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**

HB 1197 - 02/16/2006

Introduced by: Representatives Kroger, Bradford, Dennert, Elliott, Fryslie, Gassman, Gillespie, Glover, Haley, Halverson, Hargens, Hennies, Howie, Lange, Miles, O'Brien, Roberts, Sigdestad, Street, and Thompson and Senators Koetzle, Bartling, Gray, Hanson (Gary), Hundstad, Kloucek, Kooistra, Moore, Nesselhuf, Sutton (Dan), and Two Bulls

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the reduction of unemployment benefits.

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

Section 1. That § 61-6-20 be amended to read as follows:

61-6-20. An individual is not entitled to any benefits for a week for which ~~he~~ <u>the individual</u> is receiving, has received, or will receive remuneration in the form of:

(1) Termination, vacation, holiday, severance, or dismissal payments or wages in lieu of notice whether legally required or not. However, in the case of lump sum termination, vacation, holiday, severance, or dismissal payments, the lump sum payment shall be allocated over a period of weeks equal to the lump sum divided by the employee's regular pay while employed. However, the payment shall be applied for a period of weeks immediately following the last day of work. Payments made to an individual based entirely on ~~his~~ <u>the individual's</u> contributions to a fund from which

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the payments are made are not vacation pay;

(2) Compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States; or

(3) The prorated weekly amount of any pension, annuity or retirement payment including disability pension payments, based on the previous work of the individual. This subdivision applies only to ~~primary social security retirement benefits and to~~ payments made under a plan contributed to by a base period employer. This does not apply to payments made under Title II of the Social Security Act or the Railroad Retirement Act of 1974, to military service-connected disability payments or to that part, if any, of a pension, annuity or retirement payment that is attributable to contributions of the individual. However, this subdivision shall apply to payments made under Title II of the Social Security Act or the Railroad Retirement Act of 1974 until the balance of the unemployment trust fund reaches thirty million dollars at the end of any calendar quarter.

If ~~such~~ the remuneration is less than the benefits which would otherwise be due under this chapter, ~~he~~ the individual shall receive for ~~such~~ the week, if otherwise eligible, benefits reduced by the amount of ~~such~~ the remuneration.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

571M0617

SENATE ENGROSSED NO. HB 1209 - 02/22/2006

Introduced by: Representatives Cutler, Bradford, Brunner, Buckingham, Dykstra, Gassman, Haley, Haverly, Hennies, Hills, Hunt, Jensen, Klaudt, Kraus, McCoy, Murschel, Rausch, Roberts, Schafer, Sigdestad, Street, Turbiville, Van Etten, and Willadsen and Senators Dempster, Abdallah, Bogue, Duenwald, Earley, Gray, Greenfield, Hanson (Gary), Knudson, Moore, Napoli, Nesselhuf, Olson (Ed), Sutton (Dan), and Sutton (Duane)

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding money lending.

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

Section 1. That § 54-4-36 be amended to read as follows:

54-4-36. Terms used in ~~§§ 54-4-36 to 54-4-63, inclusive, and §§ 54-4-65 and 54-4-66~~ <u>this chapter</u> mean:

(1) "Advertisement," a commercial message in any medium that aids, promotes, or assists, directly or indirectly, the sale of products or services;

(2) "Commission," the State Banking Commission;

(3) "Director," the director of the Division of Banking of the Department of Revenue and Regulation;

(4) "Division," the Division of Banking;

(5) "Finance charge," the amount, however denominated, which is ~~paid or payable for the privilege of paying for goods or services in one or more installments at the~~

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~~beginning of the transaction~~ the direct or indirect cost payable by a borrower for a loan;

(6) "Financing institutions," any person engaged in the business of creating and holding or purchasing or acquiring retail installment contracts;

(7) "Installment loan," a loan made to be repaid in specified amounts over a certain number of months;

(8) "License," a license provided by ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter;

(9) "Installment loan contract" or "contract," an agreement evidencing a installment loan transaction;

(10) "Licensee," any person holding a license;

(11) "Loan," any installment loan, single pay loan, or open-end loan which may be unsecured or secured by real or personal property; ~~and~~

(12) "Payday loan," any ~~small,~~ short-maturity loan on the security of a check, any assignment of an interest in the account of a person at a depository institution, any authorization to debit the person's deposit account, ~~or~~ any assignment of salary or wages payable to a person. A short-maturity loan made in anticipation of an income tax refund is not a payday loan for purposes of this chapter~~.~~;

(13) "Regional revolving loan fund," a regional revolving loan fund with a service area of at least five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio of at least one million dollars, and which is governed by a board of directors that meets at least quarterly;

(14) "Short-term consumer loan,"any loan to any individual borrower with a duration of six months or less, including a payday loan. A title loan is not a short-term consumer loan for purposes of this chapter;

(15) "Title lender," a regulated lender authorized pursuant to this chapter to make title loans; and

(16) "Title loan," a loan for a debtor that is secured by a nonpurchase money security interest in a motor vehicle and that is scheduled to be repaid in a single installment.

Section 2. That § 54-4-58 be amended to read as follows:

54-4-58. The licensee shall disclose in any loan contract the following:

(1) The amount and date of the loan;

(2) The amount of the down payment, if any;

(3) The dates any payments are due and the amount of payments;

(4) A list of any property used to secure the loan;

(5) Any liens or title filings required;

(6) The method used to compute the charges;

(7) An explanation of ~~the charges~~ any fee or charge, including the cost of the loan as an annual percentage rate (APR);

(8) Any fee or charge that may be applied for delinquency;

(9) The conditions for an extension of payment or maturity of the loan; ~~and~~

(10) Refinancing requirements, including any fee or charge; and

(11) The address and telephone number of the Division of Banking and that any improprieties in making the loan or in loan practices may be referred to the division.

The licensee shall provide a copy of the loan contract to the debtor. A violation of this section is a Class 2 misdemeanor.

Section 3. That § 54-4-65 be amended to read as follows:

54-4-65. No licensee may renew, rollover, or flip a ~~payday~~ short-term consumer loan more than four times. No renewal, rollover, or flip is valid unless, at the time of the renewal, rollover,

or flip, the debtor pays the outstanding fee ~~at the time of the renewal~~ and reduces the principal amount of the loan as provided in this section. Upon the first renewal, rollover, or flip and each subsequent renewal, rollover, or flip, the debtor shall reduce the principal amount of the loan by not less than ten percent of the original amount of the loan.

Section 4. That § 54-4-40 be amended to read as follows:

54-4-40. Any person who engages in the business of lending money shall apply for a license as prescribed by ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter. The applicant shall apply for a license under oath on forms supplied by the division. The application shall contain the name of the applicant's business, proof of surety bond, address of the business, the names and addresses of the partners, members, officers, directors, or trustees, and other information the director may consider necessary. The applicant shall pay an original license fee as set by rules of the commission promulgated pursuant to chapter 1-26 not to exceed one thousand dollars. If the application of an existing licensee is for an additional location, the application need only include the location and identity of the location manager, plus any changes from the existing license, or such other information the director may consider necessary. The State of South Dakota, any political subdivision of the state, and any quasi-governmental organization created by an executive order of the State of South Dakota and any subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury Community Development Financial Institution, Small Business Administration Certified Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37 is subject to this chapter but exempt from initial license fees, renewal fees, and surety bond requirements under this chapter.

Section 5. That § 54-4-42 be amended to read as follows:

54-4-42. The applicant shall submit with the application for a license a bond in an amount not to exceed the total of ten thousand dollars for the first license and two thousand five hundred dollars for each additional license. The bond shall be satisfactory to the director and issued by a surety company qualified to do business as a surety in this state. The bond shall be in favor of this state for the use of this state and any person who has a cause of action under ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter against the licensee. The bond shall be conditioned on:

(1) The licensee's faithful performance under ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter and any rules adopted pursuant to ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter; and

(2) The payment of any amounts that are due to the state or another person during the calendar year for which the bond is given.

The aggregate liability of a surety to all persons damaged by a licensee's violation of ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter may not exceed the amount of the bond.

Section 6. That § 54-4-48 be amended to read as follows:

54-4-48. The director may issue a cease and desist order from any practice that does not conform to the requirements set forth in ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter or any commission rule, order, or condition imposed in writing, or any federal statute, rule, or regulation pertaining to consumer credit. A cease and desist order may be issued to any licensee or to any person engaging in the business of lending money without a license. A licensee aggrieved by such order may appeal pursuant to chapters 1-26 and 1-26D.

Section 7. That § 54-4-51 be amended to read as follows:

54-4-51. In addition to any other means provided by law for the enforcement of a restraining order or injunction, the court, in which the action is brought, may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents,

and records, as the court may deem reasonably necessary to prevent violations of ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter. The receiver, when so appointed and qualified, shall control the custody, collection, administration, and liquidation of the property and business.

Section 8. That § 54-4-53 be amended to read as follows:

54-4-53. Any money received by the division pursuant to ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter shall be deposited in the banking revolving fund.

Section 9. That § 54-4-55 be amended to read as follows:

54-4-55. Except for taxes on real property and license fees and other fees imposed by ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter, the tax imposed in § 54-4-54 is in lieu of all other taxes and license fees, state, county, or local, upon the business of the licensee, or upon any money, credits, or other assets of the licensee whether tangible or intangible, and which money, credits, or other assets are used for or in connection with the conduct of business transacted in South Dakota. However, amounts determined to be in excess of business capital requirements are not exempt from other taxes.

Section 10. That § 54-4-57 be amended to read as follows:

54-4-57. The division may annually, or as often as the director considers necessary, conduct an examination of business records and accounts of any licensee licensed under ~~§§ 54-4-36 to 54-4-63, inclusive~~ this chapter. The director may charge back to the licensee any cost associated with an on-site examination. The director may waive an on- site examination and only require an annual self-examination. If a licensee conducts a self-examination, the licensee shall provide any information requested under oath and on forms provided by the division by order or rule. The provisions of § 51A-2-35 apply to records and examination reports required under this chapter.

Section 11. That § 54-4-64 be amended to read as follows:

54-4-64. The provisions of ~~§§ 54-4-36 to 54-4-63, inclusive,~~ this chapter do not apply to any person selling goods or services and providing financing for such goods or services.

Section 12. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

A title loan shall be evidenced by a written agreement in which a title lender agrees to make a title loan to a debtor and the debtor agrees to give the title lender a security interest in a motor vehicle owned by the debtor. The debtor shall give the title lender possession of the certificate of title to such motor vehicle. Except as otherwise provided in this chapter, the provisions of chapter 57A-9 apply to title loans and to persons engaged in the business of making title loans.

Section 13. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

Any title loan shall be for an initial term of no more than one month but may be renewed for additional one-month periods. No title loan may be renewed more than four times except as provided in this section. Upon the fifth renewal of a title loan, and through the eighth renewal, the debtor shall make payment of at least ten percent of the original principal amount of the title loan, in addition to any finance charges that are due. If at any renewal requiring a principal reduction, the debtor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the debtor does not pay at least ten percent of the original loan amount, the title lender may either declare the debtor in default or renew the title loan and defer the required principal payment for an additional period. However, no further finance charges may accrue or be earned against the principal amount so deferred. For purposes of this section, a renewal is any extension or continuation of a title loan for an additional period without any change to the title loan or its terms other than a reduction in principal. After the eighth renewal the title loan is due in full and no further finance charges or fees may accrue or be earned.

Section 14. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

If a debtor defaults in the repayment of a title loan, the title lender's sole remedy is to seek possession and sale of the motor vehicle securing the loan, and the title lender may not pursue the debtor personally in any action or proceeding for repayment of the loan or for any deficiency after the sale. The title lender shall return to the debtor any surplus obtained after the sale that is in excess of the amount owed on the loan after any reasonable expenses of repossession, storage, and sale, including court costs and attorney's fees have been deducted. The remedy limitation provided in this section does not apply in the following circumstances:

(1) If a debtor obtains a title loan from a title lender under false pretenses by not disclosing the existence of a valid prior lien or security interest affecting the motor vehicle; or

(2) If the debtor intentionally conceals, impairs, or destroys the collateral.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

529M0546 **SENATE STATE AFFAIRS COMMITTEE ENGROSSED**

NO. HB 1215 - 02/17/2006

Introduced by: Representatives Hunt, Brunner, Deadrick, Dykstra, Gillespie, Glenski, Haverly, Heineman, Howie, Hunhoff, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Nelson, Novstrup, Pederson (Gordon), Rausch, Rhoden, Tornow, Turbiville, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Abdallah, Earley, Kelly, Kloucek, Koskan, McNenny, Moore, Napoli, and Schoenbeck

FOR AN ACT ENTITLED, An Act to establish certain legislative findings, to reinstate the prohibition against certain acts causing the termination of an unborn human life, to prescribe a penalty therefor, and to provide for the implementation of such provisions under certain circumstances.

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

Section 1. The Legislature accepts and concurs with the conclusion of the South Dakota Task Force to Study Abortion, based upon written materials, scientific studies, and testimony of witnesses presented to the task force, that life begins at the time of conception, a conclusion confirmed by scientific advances since the 1973 decision of Roe v. Wade, including the fact that each human being is totally unique immediately at fertilization. Moreover, the Legislature finds, based upon the conclusions of the South Dakota Task Force to Study Abortion, and in recognition of the technological advances and medical experience and body of knowledge about abortions produced and made available since the 1973 decision of Roe v. Wade, that to fully

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protect the rights, interests, and health of the pregnant mother, the rights, interest, and life of her unborn child, and the mother's fundamental natural intrinsic right to a relationship with her child, abortions in South Dakota should be prohibited. Moreover, the Legislature finds that the guarantee of due process of law under the Constitution of South Dakota applies equally to born and unborn human beings, and that under the Constitution of South Dakota, a pregnant mother and her unborn child, each possess a natural and inalienable right to life.

Section 2. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

Any violation of this section is a Class 5 felony.

Section 3. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in section 2 of this Act may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

Section 4. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

No licensed physician who performs a medical procedure designed or intended to prevent

the death of a pregnant mother is guilty of violating section 2 of this Act. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with conventional medical practice.

Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of this statute.

Nothing in this Act may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

Section 5. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

(1) "Pregnant," the human female reproductive condition, of having a living unborn human being within her body throughout the entire embryonic and fetal ages of the unborn child from fertilization to full gestation and child birth;

(2) "Unborn human being," an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal ages of the unborn child from fertilization to full gestation and childbirth;

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

Section 6. That § 34-23A-2 be repealed.

~~34-23A-2. An abortion may be performed in this state only if it is performed in compliance with § 34-23A-3, 34-23A-4, or 34-23A-5.~~

Section 7. That § 34-23A-3 be repealed.

~~34-23A-3. An abortion may be performed by a physician during the first twelve weeks of~~

~~pregnancy. The abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician during the first twelve weeks of pregnancy.~~

Section 8. That § 34-23A-4 be repealed.

~~34-23A-4. An abortion may be performed following the twelfth week of pregnancy and through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any department, agency, or political subdivision of either or in the case of hospital facilities not being available, in the licensed physician's medical clinic or office of practice subject to the requirements of § 34-23A-6.~~

Section 9. That § 34-23A-5 be repealed.

~~34-23A-5. An abortion may be performed following the twenty-fourth week of pregnancy by a physician only in a hospital authorized under § 34-23A-4 and only if there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life or health of the mother.~~

Section 10. If any court of law enjoins, suspends, or delays the implementation of a provision of this Act, the provisions of sections 6 to 9, inclusive, of this Act are similarly enjoined, suspended, or delayed during such injunction, suspension, or delayed implementation.

Section 11. If any court of law finds any provision of this Act to be unconstitutional, the other provisions of this Act are severable. If any court of law finds the provisions of this Act to be entirely or substantially unconstitutional, the provisions of §§ 34-23A-2, 34-23A-3, 34-23A-4, and 34-23A-5, as of June 30, 2006, are immediately reeffective.

Section 12. This Act shall be known, and may be cited, as the Women's Health and Human Life Protection Act.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0681 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**

HB 1236 - 02/16/2006

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

FOR AN ACT ENTITLED, An Act to create the South Dakota Virtual High School.

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

Section 1. There is created the South Dakota virtual high school. The South Dakota virtual high school shall be under the control of the Department of Education. The South Dakota virtual high school shall provide choice accessibility, flexibility, quality, and equity in curricular offerings for high school-aged students in the state.

Section 2. The South Dakota Virtual High School Advisory Council is established. The council shall advise the Department of Education, the South Dakota Board of Education, education-related organizations, and other education groups on issues related to distance learning. The council shall meet quarterly with the Department of Education to discuss, develop, and make recommendations for the promulgation of rules concerning policies that affect distance delivery.

Section 3. The council shall consist of seven members appointed by the secretary of education with broadly based representation from entities involved in virtual education efforts statewide.

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Section 4. Members of the council shall be appointed for two-year terms, except that four of the members of the initial council shall be appointed to two-year terms, and three of the members of the initial council shall be appointed for one year. All subsequent appointments shall be for terms of two years. Any vacancy on the council that occurs before the incumbent's term has expired shall be filled by appointment to serve the remainder of the unexpired term. The number of terms that a council member may serve is not limited.

Section 5. The Department of Education may promulgate rules pursuant to chapter 1-26 to coordinate course offerings by the South Dakota virtual high school, to award course credits earned by students taking classes from the South Dakota virtual high school, to establish fees or rates for school districts participating in the South Dakota virtual high school, and to establish criteria for school districts to participate in the South Dakota virtual high school. The fees or rates for participation in the virtual high school shall be reasonable and necessary to meet the budgetary needs of the virtual high school advisory council for such things as: review of course credits and offerings; network access; payment for course materials and instructors; testing; and the fee or rate for an individual course or offering may not exceed the cost of providing the course or offering.