

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

229N0064

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1005 - 02/05/2007

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

Introduced by: Representative Cutler and Senator Abdallah

1 FOR AN ACT ENTITLED, An Act to revise the reporting requirements involving sex offense
2 victims.

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

4 Section 1. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a state's attorney charges a person for a sex offense, as set forth in this chapter, and the
7 offense involves a victim eighteen years of age or older, the state's attorney shall report
8 information regarding the crime to the Department of Social Services. The reports required
9 herein shall be submitted quarterly to the department in a written or electronic format provided
10 by the department and shall not include the name, address, or social security number of the
11 victim. The department shall maintain a database of such reports and shall make information
12 regarding the incidence and frequency of sex offenses available to the public.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0209

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1048** - 02/07/2007

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

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

1 FOR AN ACT ENTITLED, An Act to reform certain campaign finance requirements and to
2 establish certain fines and penalties.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or
6 other measure submitted to voters at any election;

7 (2) "Ballot question committee," a person or organization that raises, collects, or
8 disburses contributions solicited for the placement of a ballot question on the ballot
9 or the adoption or defeat of any ballot question. A ballot question committee is not
10 a person, political committee, or political party that makes a contribution to a ballot
11 question committee. A ballot question committee is not an organization that makes
12 a contribution to a ballot question committee from treasury funds;

13 (3) "Candidate campaign committee," any entity organized by a candidate to receive
14 contributions and make expenditures for the candidate. Only one candidate campaign



1 committee may be organized for each candidate;

2 (4) "Candidate," any person who seeks nomination for or election to public office, and
3 for the purpose of this Act a person is deemed a candidate if the person raises,
4 collects, or disburses contributions in excess of five hundred dollars; has authorized
5 the solicitation of contributions or the making of expenditures; or has created a
6 candidate campaign committee for the purpose of obtaining public office. The person
7 is also deemed a candidate if the person has taken all actions required by state law
8 to qualify for nomination for or election to public office;

9 (5) "Clearly identified," the appearance of the name, nickname, a photograph or a
10 drawing of a candidate or public office holder, or the unambiguous reference to the
11 identity of a candidate or public office holder;

12 (6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any
13 other valuable consideration, or any contract, promise or agreement to do so; any
14 discount or rebate not available to the general public; any forgiveness of indebtedness
15 or payment of indebtedness by another person; or the use of services or property
16 without full payment made or provided by any person, political committee, or
17 political party whose primary business is to provide such services or property for the
18 purpose of influencing:

19 (a) The nomination, election, or re-election of any person to public office; or

20 (b) The placement of a ballot question on the ballot or the adoption or defeat of
21 any ballot question submitted.

22 The term does not include services provided by a person as a volunteer for or on
23 behalf of any candidate, political committee, or political party, including the free or
24 discounted use of a person's residence. Nor does the term include the purchase of any

1 item of value or service from any political committee or political party. The purchase
2 price of the item may not exceed the fair market value and may not include an intent
3 to contribute beyond the item's value. A contribution does not include administration
4 and solicitation of a contribution for a political action committee established by an
5 organization and associated expenses, nor the use of an organization's real or
6 personal property located on its business premises for such purposes. A contribution
7 does not include nominal use of a candidate's real or personal property or nominal
8 use of resources available at a candidate's primary place of business;

9 (7) "County office," any elected office at a county in this state;

10 (8) "Election," any election for public office; any general, special, primary, or runoff
11 election; and any election on a ballot question;

12 (9) "Expressly advocate," any communication which:

13 (a) In context has no other reasonable meaning than to urge the election or defeat
14 of one or more clearly identified candidates, public office holders, or the
15 placement of a ballot question on the ballot or the adoption or defeat of any
16 ballot question; or

17 (b) When taken as a whole and with limited reference to external events, such as
18 the proximity to the election, may only be interpreted by a reasonable person
19 as containing advocacy of the election or defeat of one or more clearly
20 identified candidates, public office holders, or the placement of a ballot
21 question on the ballot or the adoption or defeat of any ballot question because:

22 (i) The electoral portion of the communication is unmistakable,
23 unambiguous, and suggestive of only one meaning; and

24 (ii) Reasonable minds could not differ as to whether it encourages actions

1 to elect or defeat one or more clearly identified candidates, public office
2 holders, or the placement of a ballot question on the ballot or the
3 adoption or defeat of any ballot question or encourages some other kind
4 of action;

5 (10) "Immediate family," a spouse of a candidate or public office holder, or a person under
6 the age of eighteen years who is claimed by that candidate or public office holder or
7 that candidate's or public office holder's spouse as a dependent for federal income tax
8 purposes or any relative within the third degree of kinship of the candidate or the
9 candidate's spouse, and the spouses of such relatives;

10 (11) "Independent expenditure," an expenditure made by a person, organization, political
11 committee, or political party to expressly advocate the election or defeat of a clearly
12 identified candidate or the placement of a ballot question on the ballot or the
13 adoption or defeat of any ballot question, but which is not made to, controlled by,
14 coordinated with, requested by, or made upon consultation with a candidate, political
15 committee, or agent of a candidate or political committee. The term does not include
16 administration and solicitation of any contribution for a political action committee
17 established by an organization and associated expenses, nor the use of an
18 organization's real or personal property located on its business premises for such
19 purposes;

20 (12) "In-kind," a good or service provided at no charge or for less than its fair market
21 value. The term does not include the value of services provided by a person as a
22 volunteer for or on behalf of any candidate, political committee, or political party,
23 including the free or discounted use of any person's residence or office;

24 (13) "Legislative office," the Senate and the House of Representatives of the South

1 Dakota Legislature;

2 (14) "Loan," a transfer of money, property, guarantee, or anything of value in exchange
3 for an obligation, conditional or not, to repay in whole or part;

4 (15) "National political party," the organization which is responsible for the day-to-day
5 operation of a political party at the national level, as determined by the Federal
6 Election Commission;

7 (16) "Organization," any business corporation, limited liability company, nonprofit
8 corporation, limited liability partnership, limited partnership, partnership,
9 cooperative, business trust, association, club, labor union, collective bargaining
10 organization, local, state, or national organization to which a labor organization pays
11 membership or per capita fees, based upon its affiliation and membership, trade or
12 professional association that receives its funds from membership dues or service fees,
13 whether organized inside or outside the state, any entity organized in a corporate
14 form under federal law or the laws of this state, or any group of persons acting in
15 concert which is not defined as a political committee or political party in the Act;

16 (17) "Person," a natural person;

17 (18) "Political action committee," a person or organization that raises, collects or
18 disburses contributions to influence the outcome of an election and who is not a
19 candidate, candidate campaign committee, ballot question committee, or a political
20 party. A political action committee is not any:

21 (a) Person that makes a contribution to a political committee or political
22 party; or

23 (b) Organization that makes a contribution to a ballot question committee from
24 treasury funds;

1 (19) "Political committee," any candidate campaign committee, political action
2 committee, or ballot question committee;

3 (20) "Political party," any state or county political party qualified to participate in a
4 primary or general election, including any auxiliary organization of such political
5 party. An auxiliary organization is any organization designated as an auxiliary
6 organization in the political party's bylaws or constitution except any secondary or
7 post-secondary student organization that only accepts contributions to support
8 volunteer student activities of the organization and does not make monetary
9 contributions to any political committee;

10 (21) "Public office," any statewide office, legislative office, or county office;

11 (22) "Qualified nonprofit corporation," any nonprofit corporation, subject to the
12 provisions of chapters 47-22 to 47-28, inclusive, that was organized for the purpose
13 of promoting political ideas and cannot engage in business activities, has no
14 shareholders or other persons affiliated so as to have a claim on the assets or
15 earnings, was not established by a corporation, and has not accepted more than de
16 minimus amount of funds from any corporation;

17 (23) "Statewide office," the offices of Governor, lieutenant governor, secretary of state,
18 attorney general, state auditor, state treasurer, commissioner of school and public
19 lands, and public utilities commissioner;

20 (24) "Volunteer," a person who provides services free of charge.

21 Section 2. A political committee shall have a chair and a treasurer, which may be the same
22 person. The chair and treasurer for a candidate campaign committee shall be appointed by the
23 candidate, and the candidate may serve as either, or both, such officers. No political committee
24 may receive or make contributions or pay expenses while the office of treasurer is vacant. A

1 violation of this section is a Class 2 misdemeanor.

2 Section 3. A political committee shall file a statement of organization with the secretary of
3 state not later than fifteen days after the date upon which the committee made contributions,
4 received contributions, or paid expenses in excess of five hundred dollars unless such activity
5 falls within thirty days of any statewide election in which case the statement of organization
6 shall be filed within forty-eight hours. Any candidate for public office shall organize a candidate
7 campaign committee not later than fifteen days after becoming a candidate and shall file a
8 statement of organization with the secretary of state. A political committee that regularly files
9 a campaign finance disclosure statement with the Federal Election Commission is not required
10 to file a statement of organization. A violation of this section is a Class 2 misdemeanor.

11 Section 4. A political committee may incorporate and not be subject to the provisions of
12 section 18 of this Act if the political committee incorporates for liability purposes only.
13 Notwithstanding the corporate status of the political committee, the treasurer of an incorporated
14 political committee remains personally responsible for carrying out the treasurer's duties under
15 this Act.

16 Section 5. A political committee created prior to the effective date of this Act that has not
17 filed a termination statement shall file a statement of organization with the secretary of state not
18 later than fifteen days after this Act becomes effective. A violation of this section is a Class 2
19 misdemeanor.

20 Section 6. The statement of organization shall include:

- 21 (1) The name, street address, postal address, and daytime telephone number of the
22 committee;
- 23 (2) The name, street address, postal address, and daytime telephone number of the chair
24 and the treasurer of the committee;

- 1 (3) A statement of the type of political committee that has been or is being organized;
- 2 (4) In the case of a candidate campaign committee, the name, street address, and postal
3 address of the candidate;
- 4 (5) In the case of a political action committee or ballot question committee, a concise
5 statement of its purpose and goals, and the full name, street address, and postal
6 address of the organization with which the committee is connected or affiliated, or
7 if the committee is not connected or affiliated with any one organization, the trade,
8 profession, or primary interest of the committee;
- 9 (6) If the committee is organized as a corporation under federal or state laws for liability
10 purposes only as authorized by section 4 of this Act, a statement affirming such
11 organization; and
- 12 (7) The name, street address, postal address, and telephone number of each financial
13 institution where an account or depository is maintained.

14 The statement shall be signed by the candidate and treasurer for a candidate campaign
15 committee and by the chair and treasurer for other political committees. A political committee
16 continues to exist until a termination statement is filed pursuant to sections 25 and 26 of this
17 Act.

18 The candidate or treasurer of a political committee shall file an updated statement of
19 organization not later than fifteen days after any change in the information contained on the
20 most recently filed statement of organization.

21 Section 7. If the contributor is a person, no candidate for statewide office or the candidate's
22 campaign committee may accept any contribution which in the aggregate exceeds four thousand
23 dollars during any calendar year. A candidate campaign committee may accept contributions
24 from any candidate campaign committee, political action committee, or political party. The

1 limitation on any contribution from a person in this section does not apply to any contribution
2 by the candidate or the candidate's immediate family. A violation of this section is a Class 1
3 misdemeanor.

4 Section 8. If the contributor is a person, no candidate for legislative or county office or the
5 candidate's campaign committee may accept any contribution which in the aggregate exceeds
6 one thousand dollars during any calendar year. A candidate campaign committee may accept
7 contributions from any candidate campaign committee, political action committee, or political
8 party. The limitation on any contribution from a person in this section does not apply to any
9 contribution by the candidate or the candidate's immediate family. A violation of this section
10 is a Class 1 misdemeanor.

11 Section 9. If the contributor is a person, no political action committee may accept any
12 contribution which in the aggregate exceeds ten thousand dollars during any calendar year. A
13 political action committee may accept contributions from any candidate campaign committee,
14 political action committee, or political party. A violation of this section is a Class 1
15 misdemeanor.

16 Section 10. If the contributor is a person, no political party may accept any contribution
17 which in the aggregate exceeds ten thousand dollars during any calendar year. A political party
18 may accept contributions from any candidate campaign committee, political action committee,
19 or political party. A violation of this section is a Class 1 misdemeanor.

20 Section 11. No person, organization, candidate, political committee, or political party may
21 give or accept a contribution unless the name and residence address of the contributor is made
22 known to the person receiving the contribution. Any contribution, money, or other thing of value
23 received by a candidate, political committee, or political party from an unknown source shall
24 be donated to a nonprofit charitable organization. A violation of this section is a Class 2

1 misdemeanor.

2 Section 12. No person may make a contribution in the name of another person, make a
3 contribution in a fictitious name, make a contribution on behalf of another person, or knowingly
4 permit another to use his or her name to make a contribution. A violation of this section is a
5 Class 1 misdemeanor.

6 Section 13. Equipment, supplies, and materials purchased with contributions are property
7 of the political committee or political party, and are not property of the candidate or any other
8 person.

9 Section 14. The sale of any property shall be reported in the campaign finance disclosure
10 statement. A violation of this section is a Class 1 misdemeanor.

11 Section 15. Any printed material or communication made, purchased, paid for, or authorized
12 by a candidate, political committee, or political party which expressly advocates for or against
13 a candidate, public office holder, ballot question, or political party shall prominently display or
14 clearly speak the statement: "Paid for by (Name of candidate, political committee, or political
15 party)." This section does not apply to buttons, balloons, pins, pens, matchbooks, clothing, or
16 similar small items upon which the inclusion of the statement would be impracticable. A
17 violation of this section is a Class 1 misdemeanor.

18 Section 16. Any person or qualified nonprofit corporation that makes an independent
19 expenditure for a communication which expressly advocates for or against a candidate, public
20 office holder, ballot question, or political party totaling five hundred dollars or more shall file
21 a statement with the secretary of state that is received within forty-eight hours of the time that
22 the communication is disseminated, broadcast, or otherwise published.

23 Any organization that makes an independent expenditure for a communication which
24 expressly advocates for or against a public office holder, ballot question, or political party

1 totaling five hundred dollars or more shall file a statement with the secretary of state that is
2 received within forty-eight hours of the time that the communication is disseminated, broadcast,
3 or otherwise published.

4 The statement shall include the name of the person, qualified nonprofit corporation, or
5 organization and its street address, city, and state, the name of each candidate, public office
6 holder, ballot question, or political party mentioned in the communication, the amount spent on
7 the communication, and a description of the content of the communication.

8 Further, if the independent expenditure is made by an organization comprised of twenty or
9 fewer members or shareholders, the statement shall include the name and address of each
10 shareholder or member who owns ten percent or more of the organization. A violation of this
11 section is a Class 1 misdemeanor.

12 For the purposes of this section, the term, communication, does not include:

- 13 (1) Any news articles, editorial endorsements, opinion, or commentary writings, or letter
14 to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical
15 not owned or controlled by a candidate, political committee, or political party;
- 16 (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or
17 controlled by a candidate, political committee, or political party;
- 18 (3) Any communication by a person made in the regular course and scope of the person's
19 business or ministry or any communication made by a membership organization
20 solely to members of the organization and the members' families; and
- 21 (4) Any communication that refers to any candidate only as part of the popular name of
22 a bill or statute.

23 Section 17. Any person, political committee, political party, or organization that makes a
24 payment or promise of payment totaling one thousand dollars or more for a communication that

1 clearly identifies a candidate or public office holder, but does not expressly advocate the
2 election or defeat of the candidate or public office holder, and that is disseminated, broadcast,
3 or otherwise published within sixty days of an election, shall file a statement with the secretary
4 of state disclosing the name, street address, city, and state of such person, political committee,
5 political party, or organization. The statement shall also include the name of the candidate or
6 public office holder mentioned in the communication, the amount spent on the communication,
7 and a description of the content of the communication. The statement shall be received and filed
8 within forty-eight hours of the time that the communication is disseminated, broadcast, or
9 otherwise published. A violation of this section is a Class 1 misdemeanor.

10 For the purposes of this section, the term, communication, does not include:

- 11 (1) Any news articles, editorial endorsements, opinion or commentary writings, or letter
12 to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical
13 not owned or controlled by a candidate, political committee, or political party;
- 14 (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or
15 controlled by a candidate, political committee, or political party;
- 16 (3) Any communication by a person made in the regular course and scope of the person's
17 business or ministry or any communication made by a membership organization
18 solely to members of the organization and the members' families; and
- 19 (4) Any communication that refers to any candidate only as part of the popular name of
20 a bill or statute.

21 Section 18. No organization may make a contribution to a candidate committee, political
22 action committee, or political party or make an independent expenditure expressly advocating
23 the election or defeat of a candidate. An organization may make a contribution to a ballot
24 question committee organized solely for the purpose of influencing an election on a ballot

1 question and independent expenditures regarding the placement of a ballot question on the ballot
2 or the adoption or defeat of a ballot question. The prohibitions of this section do not apply to
3 independent expenditures expressly advocating the election or defeat of a candidate by a
4 qualified nonprofit corporation from its treasury funds. An organization may create a political
5 action committee. A violation of this section is a Class 1 misdemeanor.

6 Section 19. Any organization that makes a contribution to a ballot question committee
7 pursuant to section 18 of this Act shall file a statement:

8 (1) As a domestic or foreign entity in good standing with the Office of the Secretary of
9 State of this state, or

10 (2) If the organization is not filed as a domestic or foreign entity in good standing with
11 the Office of the Secretary of State of this state, the organization shall include with
12 any contribution to a ballot question committee a statement providing the following
13 information:

14 (a) The name of the organization;

15 (b) The name of the state or country under whose law the organization is
16 incorporated or organized; and

17 (c) The street address of the organization's principal office; or

18 (3) However, if subdivisions 1 and 2 do not apply to the organization, then the
19 organization shall include with any contribution to a ballot question committee a
20 statement providing the following information:

21 (a) The name of the organization;

22 (b) The street address of the organization's principal office; and

23 (c) The names and street addresses of any owners, directors, or officers of the
24 organization including the name and street address of the person authorizing

1 the contribution.

2 Further, if any contribution from an organization to a ballot question committee exceeds ten
3 thousand dollars in the aggregate, and the organization is comprised of twenty or fewer
4 members or shareholders, the contribution shall include a statement with the name and address
5 of each shareholder or member who owns ten percent or more of the organization. The ballot
6 question committee shall disclose all information provided in the statement in the applicable
7 campaign financial disclosure statement or supplemental statement.

8 If any of the information required by this section is not delivered to the treasurer of the ballot
9 question committee, the treasurer shall return the contribution. A violation of this section is a
10 Class 1 misdemeanor.

11 Section 20. The state, an agency of the state, and the governing body of a county,
12 municipality, or other political subdivision of the state may not expend or permit the
13 expenditure of public funds for the purpose of influencing the nomination or election of any
14 candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any
15 ballot question. This section may not be construed to limit the freedom of speech of any officer
16 or employee of the state or such political subdivisions in his or her personal capacity. This
17 section does not prohibit the state, its agencies, or the governing body of any political
18 subdivision of the state from presenting factual information solely for the purpose of educating
19 the voters on a ballot question.

20 Section 21. No candidate, political committee, or political party may accept any contribution
21 from any state, state agency, political subdivision of the state, foreign government, Indian tribe,
22 federal agency, or the federal government. A violation of this section is a Class 1 misdemeanor.

23 Section 22. A campaign financial disclosure statement shall be filed with the secretary of
24 state by every:

- 1 (1) Candidate or candidate campaign committee for any statewide or legislative office;
- 2 (2) Political action committee;
- 3 (3) Political party; and
- 4 (4) Ballot question committee.

5 The statement shall be signed by the treasurer of the political committee or political party.

6 The statement shall be received by the secretary of state and filed by 5:00 p.m. each February
7 first and shall cover the contributions and expenditures for the preceding calendar year.

8 However, no statement is required to be filed by a candidate campaign committee for legislative
9 or county office on February first following a year in which there is not an election. A statement
10 shall also be received by the secretary of state and filed by 5:00 p.m. on the second Friday prior
11 to each primary and general election complete through the fifteenth day prior to that election.

12 No county, local, or auxiliary committee of any political party qualified to participate in a
13 primary or general election is required to file a campaign financial disclosure statement prior
14 to a statewide primary election. No candidate without opposition in a primary election is
15 required to file a campaign financial disclosure statement prior to a primary election. Any
16 statement filed pursuant to this section shall be consecutive and shall cover contributions and
17 expenditures since the last statement filed. A political committee that regularly files a campaign
18 finance disclosure statement with the Federal Election Commission is not required to file a
19 campaign finance disclosure statement. A violation of this section is a Class 1 misdemeanor.

20 Section 23. A campaign finance disclosure statement shall be received by the secretary of
21 state and filed by any statewide ballot question committee by 5:00 p.m. on the fifth day of July
22 during the year in which the ballot question is to be voted on complete through the month of
23 June. A violation of this section is a Class 1 misdemeanor.

24 Section 24. A campaign finance disclosure statement shall include the following

1 information:

- 2 (1) Political committee or political party name, street address, postal address, city, state,
3 zip code, daytime and evening telephone number, and e-mail address;
- 4 (2) Type of campaign statement (pre-primary, pre-general, mid-year, year-end,
5 amendment, supplement, or termination);
- 6 (3) If a ballot question committee, the ballot question number and whether the committee
7 is for or against the measure;
- 8 (4) The balance of cash and cash equivalents on hand at the beginning of the reporting
9 period;
- 10 (5) The total amount of all contributions received during the reporting period;
- 11 (6) The total amount of all in-kind contributions received during the reporting period;
- 12 (7) The total of refunds, rebates, interest, or other income not previously identified
13 during the reporting period;
- 14 (8) The total of contributions, loans, and other receipts during the reporting period;
- 15 (9) The total value of loans made to any person, political committee, or political party
16 during the reporting period;
- 17 (10) The total of expenditures made during the reporting period;
- 18 (11) The total amount of all expenditures incurred but not yet paid. An expenditure
19 incurred but not yet paid shall be reported on each report filed after the date of receipt
20 of goods or services until payment is made to the vendor. A payment shall be listed
21 as an expenditure when the payment is made;
- 22 (12) The statement shall state the cash balance on hand as of the close of the reporting
23 period;
- 24 (13) The total amount of contributions of one hundred dollars or less in the aggregate

- 1 from one source received during the reporting period;
- 2 (14) The name, residence address, city, and state of each person contributing a
3 contribution of more than one hundred dollars in the aggregate during the reporting
4 period and the amount of the contribution. Any contribution from any political
5 committee or political party shall be itemized. Any contribution from a federal
6 political committee or political committee organized outside this state shall also
7 include the name and internet website address of the filing office where campaign
8 finance disclosure statements are regularly filed for the committee. If all of the
9 information required is not on file, the political committee or political party may not
10 deposit the contribution;
- 11 (15) The statement shall contain the same information for in-kind contributions as for
12 monetary contributions, and shall also include a description of the in-kind
13 contribution;
- 14 (16) Upon the request of the treasurer, a person making an in-kind contribution shall
15 provide all necessary information to the treasurer, including the value of the
16 contribution;
- 17 (17) Any monetary or in-kind contribution made by the reporting political committee or
18 political party to any political committee, political party, or nonprofit charitable
19 organization shall be itemized;
- 20 (18) A categorical description and the amount of the refunds, rebates, interest, sale of
21 property, or other receipts not previously identified during the reporting period;
- 22 (19) A categorical description and the amount of funds or donations by any organization
23 to its political committee for establishing and administering the political committee
24 and for any solicitation costs of the political committee;

- 1 (20) The total balance of loans owed by the political committee or political party;
- 2 (21) The balance of loans owed by the political committee or political party, itemized by
- 3 lender's name, street address, city, and state, including the terms, interest rate, and
- 4 repayment schedule of each loan;
- 5 (22) The total balance of loans owed to the political committee or political party;
- 6 (23) The amount of each loan made during the reporting period. The name, street address,
- 7 city, and state of the recipient of the loan;
- 8 (24) The balance of each loan owed to the political committee or political party, itemized
- 9 by name, street address, city, and state;
- 10 (25) The expenditures made during the reporting period shall be categorized.
- 11 Disbursements to consultants, advertising agencies, credit card companies, and
- 12 similar firms shall be itemized into expense categories. Any contribution made by the
- 13 reporting political committee or political party that is not in exchange for any item
- 14 of value or service shall be itemized;
- 15 (26) The expenditures incurred but not yet paid during the reporting period and to whom
- 16 the expenditure is owed;
- 17 (27) The amount of each independent expenditure, as defined in this Act, made during the
- 18 reporting period, the name of the candidate, public office holder, or ballot question
- 19 related to the expenditure and a description of the expenditure;
- 20 (28) The information contained in any statement provided under section 19 of the Act; and
- 21 (29) The statement shall include a certification that the contents of the statement is true
- 22 and correct signed by the treasurer of the political committee or political party.

23 Section 25. The last campaign finance statement filed shall be a termination statement. The
24 termination statement shall be filed within thirty days following disposition of all funds and

1 property and the payment of all obligations.

2 Section 26. A political committee may not dissolve until the political committee has settled
3 all of its debts, disposed of all of its assets, and filed a termination statement.

4 Section 27. Any candidate, treasurer, or other person filing a statement pursuant to this Act,
5 shall file an amended statement within three days of discovering any omission, inaccuracy, or
6 other change necessary to make the statement accurate. A person responsible for filing a
7 statement pursuant to this Act, who willfully fails to report a material change or correction, is
8 guilty of a Class 1 misdemeanor. A person responsible for filing a statement pursuant to this
9 Act, who willfully fails to file an amendment pursuant to this section is subject to the civil
10 penalty in section 30 of this Act beginning on the first day following the third day after the
11 candidate, treasurer, or other person is notified of the omission, inaccuracy, or other change
12 necessary to make the statement accurate.

13 Section 28. If any candidate campaign committee for statewide office, political action
14 committee, ballot question committee, or political party required to file a campaign finance
15 disclosure statement pursuant to this Act receives a contribution of five hundred dollars or more
16 within the fourteen days immediately prior to an election for which a campaign finance
17 disclosure statement may be filed, a supplemental statement shall be filed. The statement shall
18 state the name, street address, city, and state of the contributor and the amount and date of the
19 contribution, and information contained in any statement provided under section 19 of this Act,
20 if applicable. The statement shall be filed within forty-eight hours of the receipt of the
21 contribution. A violation of this section is a Class 1 misdemeanor.

22 Section 29. The treasurer of a political committee and political party shall maintain and
23 preserve detailed and accurate records of the following:

24 (1) Each contribution and in-kind contribution received by the political committee or

1 political party;

2 (2) In the case of a ballot question committee, the information required by section 19 of
3 this Act for any organization contribution;

4 (3) Each loan received or made by the political committee or political party;

5 (4) Each refund, rebate, interest, or other income received by the political committee or
6 political party;

7 (5) All receipts, invoices, bills, canceled checks, or other proofs of payment, with an
8 explanation of each, for each expenditure;

9 (6) The name and address of any financial institution where an account or depository for
10 the political committee or political party is maintained including the account number.

11 The treasurer shall maintain and preserve the records for a period of seven years or three
12 years past the date of filing the termination statement for the election for which the contribution
13 or expenditure was made, whichever is earlier. A violation of this section is a Class 1
14 misdemeanor.

15 Section 30. Notwithstanding the provisions of § 12-25-33, the failure to timely file any
16 statement, amendment, or correction required by this Act subjects the treasurer responsible for
17 filing to a civil penalty of fifty dollars per day for each day that the statement remains
18 delinquent. The civil penalty shall be in addition to any criminal sanctions and shall be paid to
19 the secretary of state and deposited in the state general fund.

20 Section 31. The secretary of state shall adopt forms for statements of organization and
21 campaign finance disclosure statements. Each person filing a statement of organization or
22 campaign finance disclosure statement shall subscribe to an oath or affirmation verifying that
23 the contents of the statement are true and correct to the best of the knowledge and belief of the
24 signer.

1 Section 32. The secretary of state shall endorse the date of the filing on each statement filed
2 pursuant to this Act, and shall preserve the statement among the public records of the office.
3 However, the statement may be destroyed if the Records Destruction Board, acting pursuant to
4 § 1-27-19, declares the records to have no further administrative, legal, fiscal, research, or
5 historical value.

6 Section 33. No information copied, or otherwise obtained, from any statement, or copy,
7 reproduction, or publication thereof, filed with the secretary of state, county auditor, or other
8 person in charge of conducting the election under this Act may be sold or utilized by any person
9 for any commercial purpose or for the purpose of soliciting contributions. Any violation of this
10 section shall be a Class 2 misdemeanor.

11 Section 34. Any person who intentionally makes any false, fraudulent, or misleading
12 statement or entry in any statement of organization, campaign finance disclosure statement,
13 other statement, or amendment filed pursuant to this Act is guilty a Class 5 felony.

14 Section 35. The attorney general shall investigate violations of the provisions of this Act
15 relating to a legislative office, statewide office, or statewide ballot question and prosecute any
16 violation thereof. In lieu of bringing a criminal action, the attorney general may elect to file a
17 civil action. In a civil action, in addition to other relief, the court may impose a civil penalty in
18 the amount provided by statute, or if not provided, in an amount not to exceed ten thousand
19 dollars for each violation. Any civil penalty recovered shall be paid to the state general fund. A
20 civil action brought by the attorney general shall be commenced in Hughes County, in the
21 county where the person resides, or in the county where the organization, political party, or
22 political committee has its principal office.

23 Section 36. The attorney general may, for the purpose of enforcing the provisions of this
24 Act, inspect or examine any political committee or political party records required to be

1 maintained by this Act. It is a Class 1 misdemeanor for any person having charge, control, or
2 possession of political committee or political party records to neglect or refuse the attorney
3 general reasonable access to any records required to be maintained by this Act which are
4 necessary to enforce the provisions of this Act.

5 Section 37. The attorney general shall keep each record inspected or examined confidential
6 except when the records are used to enforce provisions of this Act associated with a criminal
7 or civil action.

8 Section 38. If any candidate is proved in a contest of an election or is proved to have
9 violated any provision of this Act punishable by a felony, the candidate may not be certified for
10 election or the candidate shall forfeit his or her office. The office shall be declared vacant and
11 shall be filled in the manner provided by law for filling vacancies occasioned by death or
12 resignation.

13 Section 39. The provisions of this Act apply to each statewide office, legislative office,
14 statewide ballot question, county offices and ballot questions in counties with population greater
15 than five thousand according to the most recent Federal census, and school district offices and
16 ballot questions in school districts with more than two thousand average daily membership. Any
17 school district election covered by this Act shall conform to the contribution limits applicable
18 to legislative offices. This Act does not apply to the unified judicial system, nor does this Act
19 apply to any township, municipal, or special purpose district offices or ballot questions.
20 However, the governing body of any county, township, municipality, school district, or special
21 purpose district not otherwise covered by this Act may adopt an ordinance or resolution to make
22 the provisions of this Act, with or without amendments, applicable to county, township,
23 municipal, school district, or special purpose district elections.

24 Section 40. The state's attorney shall investigate any violation of the provisions of this Act

1 relating to elections for county and school district office or ballot questions, and prosecute any
2 violation thereof. In lieu of bringing a criminal action, the state's attorney may elect to file a civil
3 action for any violation of this Act. In a civil action, in addition to other relief, the court may
4 impose a civil penalty in the amount provided by statute, or if not provided, in an amount not
5 to exceed one thousand dollar for each violation. Any civil penalty recovered shall be paid to
6 the county general fund if the violation arose out of a county office or ballot question or the
7 school district general fund if the violation arose out of a school district office or ballot question.
8 A civil enforcement action for a violation of the Act concerning a school district office or ballot
9 question may, with the consent of the state's attorney, be brought by the school district's
10 attorney. A civil action brought under this section shall be commenced in the county where
11 filings under the Act are required, in the county where the person resides or in the county where
12 the organization, political party, or political committee has its principal office.

13 Section 41. Any statement required to be filed under this Act may be filed by facsimile
14 device or electronic mail in accordance with the methods approved by the secretary of state. To
15 be timely filed, any statement received by facsimile device or electronic mail shall be legible
16 and readable when received by the means it was delivered. The original shall be filed with the
17 secretary of state within one week following the date the facsimile or electronic mail
18 transmission was received.

19 Section 42. Any statement, form, or filing required by this Act shall be filed with the
20 secretary of state in the case of a statewide office or legislative office election. Any statement,
21 form, or filing required by this Act shall be filed with the county auditor in the case of a county
22 office election, with the school business manager in the case of a school district office election,
23 or with the person in charge of the election in the case of other political subdivisions or special
24 purpose districts.

1 Section 43. That §§ 12-25-1 to 12-25-26, inclusive, be repealed.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

645N0403

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1145 - 02/07/2007

Introduced by: Representatives Turbiville, Brunner, Burg, Cutler, Davis, DeVries, Faehn, Gilson, Halverson, Hargens, Heineman, Hills, Howie, Juhnke, Kirkeby, Lucas, McLaughlin, Miles, Moore, Novstrup (Al), Olson (Betty), Olson (Russell), Pederson (Gordon), Peters, Pitts, Rausch, Rhoden, Rounds, Sigdestad, Steele, Tidemann, Van Etten, Vanneman, Weems, and Willadsen and Senators Lintz, Albers, Bartling, Dempster, Duenwald, Gant, Garnos, Gray, Greenfield, Hanson (Gary), Koetzle, Maher, McCracken, McNenny, Napoli, Peterson (Jim), Schmidt (Dennis), and Smidt (Orville)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning utility right-of-way
2 away maintenance.

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

4 Section 1. That § 21-3-10 be amended to read as follows:

5 21-3-10. ~~For wrongful injury to timber, trees, or underwood upon the land of another, or~~
6 ~~removal thereof, the measure of damages is three times such a sum as would compensate for the~~
7 ~~actual detriment, except where the trespass was casual and involuntary, or committed under the~~
8 ~~belief that the land belonged to the trespasser, or where the wood was taken by the authority of~~
9 ~~highway officers for the purpose of a highway; in which case the damages are a sum equal to~~
10 ~~the actual detriment.~~ The Guide for Plant Appraisal, Ninth Edition, as published by the
11 International Society of Arboriculture as of January 1, 2007, shall be used as a guide to measure
12 the actual damages for the wrongful injury to trees or plants.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

553N0410

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1155** -
02/07/2007

Introduced by: Representatives Van Etten, Boomgarden, Heineman, Jerke, Kirkeby, Lucas, Miles, Rave, Steele, and Weems and Senators Hansen (Tom), Dempster, Gant, Maher, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning wholesale drug
2 distributors.

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

4 Section 1. That § 36-11A-1 be amended to read as follows:

5 36-11A-1. Terms used in this chapter mean:

6 (1) "Authentication," to affirmatively verify before any wholesale distribution of a
7 prescription drug occurs that each transaction listed on the pedigree has occurred;

8 (2) "Board," the State Board of Pharmacy;

9 (3) "Chain pharmacy warehouse," a physical location for prescription drugs that acts as
10 a central warehouse and performs intracompany sales or transfers of such drugs to
11 a group of chain pharmacies that have the same common ownership and control;

12 (4) "Co-licensed product," a prescription drug in which two or more parties have the
13 right to engage in the manufacturing or marketing, or both, of such drug;

14 (~~2~~)(5) "Drug," "prescription drug," any ~~human~~ drug, including any biological product,



1 except for blood and blood components intended for transfusion or biological
2 products that are also medical devices required by federal law or federal regulation
3 to be dispensed only by a prescription, including finished dosage forms and active
4 ingredients bulk drug substances subject to § 503(b) of the Federal Food, Drug and
5 Cosmetic Act as amended through January 1, 1991;

6 ~~(3)~~(6) "Drug coupon," a form which may be redeemed at no cost or at reduced cost for a
7 prescription drug;

8 (7) "Drug Enforcement Agency," the Drug Enforcement Agency of the United States
9 Department of Justice;

10 ~~(4)~~(8) "Drug sample," a unit of a prescription drug that is not intended to be sold and is
11 intended to promote the sale of the drug;

12 (9) "Facility," a facility of a wholesale distributor where prescription drugs are stored,
13 handled, repackaged, or offered for sale;

14 ~~(5)~~(10) "Manufacturer," ~~anyone who is engaged in manufacturing, preparing,~~
15 ~~propagating, compounding, processing, packaging, repackaging or labeling of~~
16 ~~a prescription drug~~ a person licensed or approved by the federal Food and
17 Drug Administration to engage in the manufacture of drugs or devices;

18 ~~(6)~~(11) "Out-of-state wholesale drug distributor," a wholesale drug distributor with no
19 physical facilities located in this state;

20 ~~(7)~~(12) "Pharmacy," a place registered by the board under chapter 36-11 in which
21 prescription drugs are sold at retail;

22 (13) "Pedigree," a document or electronic file containing information that records each
23 wholesale distribution of any given prescription drug;

24 (14) "Repackage," repackaging or otherwise changing the container, wrapper, or labeling

1 to further the distribution of a prescription drug excluding that completed by the
2 pharmacist responsible for dispensing the drug to the patient;

3 (15) "Repackager," a person who repackages.

4 Section 2. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 For the purposes of this chapter, an authorized distributor of record is a wholesale distributor
7 with whom a manufacturer has established an ongoing relationship to distribute the
8 manufacturer's prescription drug. An ongoing relationship is deemed to exist between such
9 wholesale distributor and a manufacturer when the wholesale distributor, including any
10 affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue
11 Code, complies with any one of the following:

- 12 (1) The wholesale distributor has a written agreement currently in effect with the
13 manufacturer evidencing such ongoing relationship; and
- 14 (2) The wholesale distributor is listed on the manufacturer's current list of authorized
15 distributors of record, which is updated by the manufacturer on no less than a
16 monthly basis.

17 Section 3. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 For the purposes of this Act, drop shipment is the sale of a prescription drug to a wholesale
20 distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensed
21 product partner, that manufacturer's third party logistics provider, or that manufacturer's
22 exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title
23 but not physical possession of such prescription drug and the wholesale distributor invoices the
24 pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or

1 administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other
2 authorized person receives delivery of the prescription drug directly from the manufacturer, or
3 that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

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

6 For the purposes of this Act, a manufacturer's exclusive distributor is any person who
7 contracts with a manufacturer to provide or coordinate warehousing, distribution, or other
8 services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug,
9 but who does not have general responsibility to direct the sale or disposition of the
10 manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as
11 a wholesale distributor under this Act, and to be considered part of the normal distribution
12 channel must also be an authorized distributor of record.

13 Section 5. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 For the purposes of this Act, a normal distribution channel is a chain of custody for a
16 prescription drug that goes from a manufacturer of the prescription drug, or from that
17 manufacturer to that manufacturer's co-licensed partner, or from that manufacturer to that
18 manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's
19 exclusive distributor, directly or by drop shipment, to:

- 20 (1) A pharmacy to a patient or other designated persons authorized by law to dispense
21 or administer such drug to a patient;
- 22 (2) A wholesale distributor to a pharmacy to a patient or other designated persons
23 authorized by law to dispense or administer such drug to a patient;
- 24 (3) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy

1 warehouse's intracompany pharmacy to a patient or other designated persons
2 authorized by law to dispense or administer such drug to a patient; or

3 (4) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany
4 pharmacy to a patient or other designated persons authorized by law to dispense or
5 administer such drug to a patient.

6 Section 6. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 For the purposes of this Act, a third party logistics provider is any person who contracts with
9 a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other
10 services on behalf of a manufacturer, but does not take title to the prescription drug or have
11 general responsibility to direct the prescription drug's sale or disposition. Such third party
12 logistics provider must be licensed as a wholesale distributor under this Act, and to be
13 considered part of the normal distribution channel must also be an authorized distributor of
14 record.

15 Section 7. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 For the purposes of this Act, a wholesale distributor is any person engaged in the wholesale
18 distribution of prescription drugs, including manufacturers; repackagers; own-label distributors;
19 private-label distributors; jobbers; brokers; warehouses, including manufacturers' and
20 distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record;
21 drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale
22 distributors; third party logistics providers; retail pharmacies that conduct wholesale
23 distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be
24 considered part of the normal distribution channel such wholesale distributor must also be an

1 authorized distributor of record.

2 Section 8. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 For the purposes of this Act, wholesale distribution is distribution of prescription drugs to
5 persons other than a consumer or patient, but does not include:

6 (1) Intracompany sales of prescription drugs, meaning any transaction or transfer
7 between any division, subsidiary, parent or affiliated or related company under
8 common ownership and control of a corporate entity, or any transaction or transfer
9 between co-licensees of a co-licensed product;

10 (2) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to
11 sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical
12 reasons;

13 (3) The distribution of prescription drug samples by manufacturers' representatives;

14 (4) Drug returns, when conducted by a hospital, health care entity, or charitable
15 institution in accordance with 21 C.F.R. § 203.23;

16 (5) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed
17 practitioners for office use;

18 (6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or
19 the dispensing of a drug pursuant to a prescription;

20 (7) The sale, transfer, merger, or consolidation of all or part of the business of a
21 pharmacy or pharmacies from or with another pharmacy or pharmacies, whether
22 accomplished as a purchase and sale of stock or business assets;

23 (8) The sale, purchase, distribution, trade, or transfer of a prescription drug from one
24 authorized distributor of record to one additional authorized distributor of record

1 when the manufacturer has stated in writing to the receiving authorized distributor
2 of record that the manufacturer is unable to supply such prescription drug and the
3 supplying authorized distributor of record states in writing that the prescription drug
4 being supplied had until that time been exclusively in the normal distribution
5 channel;

6 (9) The delivery of, or offer to deliver, a prescription drug by a common carrier solely
7 in the common carrier's usual course of business of transporting prescription drugs,
8 and such common carrier does not store, warehouse, or take legal ownership of the
9 prescription drug;

10 (10) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired,
11 damaged, returned, or recalled prescription drugs to the original manufacturer or to
12 a third party returns processor.

13 Section 9. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any wholesale distributor who engages in the wholesale distribution of prescription drugs
16 in this state must be licensed by the board, in accordance with this Act, before engaging in
17 wholesale distributions of wholesale prescription drugs. The board shall exempt manufacturers
18 distributing their own FDA-approved drugs and devices from any licensing, to the extent not
19 required by federal law or regulation.

20 Section 10. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The board shall require the following minimum information from each wholesale distributor
23 applying to obtain a license under section 9 of this Act:

24 (1) The name, full business address, and telephone number of the licensee;

- 1 (2) Any trade or business name used by the licensee;
- 2 (3) The address, telephone number, and the name of any contact person for any facilities
3 used by the licensee for the storage, handling, and distribution of prescription drugs;
- 4 (4) The type of ownership or operation;
- 5 (5) The name of the owner and the operator of the licensee, including:
 - 6 (a) If a person, the name of the person;
 - 7 (b) If a partnership, the name of each partner, and the name of the partnership;
 - 8 (c) If a corporation, the name and title of each corporate officer and director, the
9 corporate names, and the name of the state of incorporation; and
 - 10 (d) If a sole proprietorship, the full name of the sole proprietor and the name of
11 the business entity;
- 12 (6) A list of all licenses and permits issued to the applicant by any other state that
13 authorizes the applicant to purchase or possess prescription drugs;
- 14 (7) The name of the applicant's designated representative for the facility, together with
15 the personal information statement and fingerprints, required pursuant to subdivision
16 (8) for such person;
- 17 (8) Each person required by subdivision (7) to provide a personal information statement
18 and fingerprints, if required, shall provide the following information to the board:
 - 19 (a) The person's places of residence for the past seven years;
 - 20 (b) The person's date and place of birth;
 - 21 (c) The person's occupations, positions of employment, and offices held during
22 the past seven years;
 - 23 (d) The principal business and address of any business, corporation, or other
24 organization in which each such office of the person was held or in which each

- 1 such occupation or position of employment was carried on;
- 2 (e) Whether the person has been, during the past seven years, the subject of any
3 proceeding for the revocation of any license or any criminal violation and, if
4 so, the nature of the proceeding and the disposition of the proceeding;
- 5 (f) Whether, during the past seven years, the person has been enjoined, either
6 temporarily or permanently, by a court of competent jurisdiction from
7 violating any federal or state law regulating the possession, control, or
8 distribution of prescription drugs or had any criminal violations of such laws,
9 together with details concerning any such event;
- 10 (g) A description of any involvement by the person with any business, including
11 any investments, other than the ownership of stock in a publicly traded
12 company or mutual fund, during the past seven years, which manufactured,
13 administered, prescribed, distributed, or stored pharmaceutical products and
14 any lawsuits in which such businesses were named as a party;
- 15 (h) A description of any misdemeanor or felony criminal offense of which the
16 person, as an adult, was found guilty, regardless of whether adjudication of
17 guilt was withheld or whether the person pled guilty or nolo contendere. If the
18 person indicates that a criminal conviction is under appeal and submits a copy
19 of the notice of appeal of that criminal offense, the applicant shall, within
20 fifteen days after the disposition of the appeal, submit to the board a copy of
21 the final written order of disposition; and
- 22 (i) A photograph of the person taken in the previous one hundred eighty days.

23 The information required pursuant to this section shall be provided under oath.

24 Section 11. That chapter 36-11A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The board may not issue a wholesale distributor license to an applicant, unless the board or
3 a nationally recognized accreditation program approved by the board:

4 (1) Conducts a physical inspection of the facility at the address provided by the applicant
5 as required in subdivision (1) of section 10 of this Act; and

6 (2) Determines that the designated representative meets the following qualifications:

7 (a) Is at least twenty-one years of age;

8 (b) Has been employed full time for at least three years in a pharmacy or with a
9 wholesale distributor in a capacity related to the dispensing and distribution
10 of, and recordkeeping relating to, prescription drugs;

11 (c) Is employed by the applicant full time in a managerial level position;

12 (d) Is actively involved in and aware of the actual daily operation of the wholesale
13 distributor;

14 (e) Is physically present at the facility of the applicant during regular business
15 hours, except when the absence of the designated representative is authorized,
16 including sick leave and vacation leave;

17 (f) Is serving in the capacity of a designated representative for only one applicant
18 at a time, except where more than one licensed wholesale distributor is co-
19 located in the same facility and such wholesale distributors are members of an
20 affiliated group, as defined in Section 1504 of the Internal Revenue Code;

21 (g) Does not have any convictions under any federal, state, or local laws relating
22 to wholesale or retail prescription drug distribution or distribution of
23 controlled substances; and

24 (h) Does not have any felony convictions under federal or state laws.

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

3 The board may require the applicant to submit the fingerprints provided by a person with
4 a license application for a statewide criminal record check and for forwarding to the Federal
5 Bureau of Investigation for a national criminal record check of the person.

6 Section 13. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The board shall require every wholesale distributor applying for a license to submit a bond
9 of at least one hundred thousand dollars, or other equivalent means of security acceptable to the
10 board, such as an irrevocable letter of credit or a deposit in a trust account or financial
11 institution, payable to a fund established by the board. The board shall establish a fund, separate
12 from its other accounts, in which to deposit the wholesale distributor bonds. Any chain
13 pharmacy warehouse that is not engaged in wholesale distribution is exempt from the bond
14 requirement. The purpose of the bond is to secure payment of any fines or penalties imposed by
15 the board and any fees and costs incurred by the board regarding that license, which are
16 authorized pursuant to statute and which the licensee fails to pay thirty days after the fines,
17 penalties, or costs become final. The board may make a claim against such bond or security until
18 one year after the licensee's license ceases to be valid. A single bond may suffice to cover all
19 facilities operated by the applicant in the state.

20 If a wholesale distributor distributes prescription drugs from more than one facility, the
21 wholesale distributor shall obtain a license for each facility.

22 Section 14. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 In accordance with each licensure renewal, the board shall send to each wholesale distributor

1 licensed under section 9 of this Act a form setting forth the information that the wholesale
2 distributor provided pursuant to section 10 of this Act. Within thirty days of receiving such
3 form, the wholesale distributor shall identify and state under oath to the board any changes or
4 corrections to the information that was provided pursuant to section 10 of this Act. Changes in,
5 or corrections to, any information in section 10 of this Act shall be submitted to the board as
6 required by such authority. The board may suspend or revoke the license of a wholesale
7 distributor if such authority determines that the wholesale distributor no longer qualifies for the
8 license issued under section 10 of this Act.

9 Section 15. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The designated representative identified pursuant to subdivision (7) of section 10 of this Act
12 shall receive and complete continuing training in applicable federal and state laws governing
13 wholesale distribution of prescription drugs.

14 The information provided under section 10 of this Act may not be disclosed to any person
15 or entity other than a state board or agency, government board, or government agency,
16 determined to be comparable by the board, provided such licensing authority, government
17 board, or agency needs such information for licensing or monitoring purposes.

18 Section 16. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A wholesale distributor shall receive prescription drug returns or exchanges from a
21 pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement
22 between the wholesale distributor and the pharmacy or chain pharmacy warehouse, including
23 the returns of expired, damaged, and recalled pharmaceutical product to either the original
24 manufacturer or a third party returns processor. The returns or exchanges are not subject to the

1 pedigree requirement of section 21 of this Act, so long as they are exempt from pedigree under
2 the Federal Food and Drug Administration's currently applicable Prescription Drug Marketing
3 Act guidance. Wholesale distributors and pharmacies shall be held accountable for
4 administering their returns process and ensuring that the aspects of this operation are secure and
5 do not permit the entry of adulterated and counterfeit product.

6 Section 17. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A manufacturer or wholesale distributor shall furnish prescription drugs only to a person or
9 entity licensed by the appropriate board. Before furnishing prescription drugs to a person or
10 entity not known to the manufacturer or wholesale distributor, the manufacturer or wholesale
11 distributor shall affirmatively verify that the person or entity is legally authorized to receive the
12 prescription drugs by contacting the appropriate board.

13 Section 18. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered
16 only to the premises listed on the license. However, the manufacturer or wholesale distributor
17 may furnish prescription drugs to an authorized person or agent of that person at the premises
18 of the manufacturer or wholesale distributor if:

- 19 (1) The identity and authorization of the recipient is properly established; and
- 20 (2) This method of receipt is employed only to meet the immediate needs of a particular
21 patient of the authorized person.

22 Section 19. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a

1 pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing
2 the type and quantity of the prescription drug so received. Any discrepancy between receipt and
3 the type and quantity of the prescription drug actually received shall be reported to the
4 delivering manufacturer or wholesale distributor by the next business day after the delivery to
5 the pharmacy receiving area.

6 Section 20. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A manufacturer or wholesale distributor may not accept payment for, or allow the use of,
9 a person or entity's credit to establish an account for the purchase of prescription drugs from any
10 person other than the owner of record, the chief executive officer, or the chief financial officer
11 listed on the license of a person or entity legally authorized to receive prescription drugs. Any
12 account established for the purchase of prescription drugs must bear the name of the licensee.

13 Section 21. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Each person who is engaged in wholesale distribution of prescription drugs, including
16 repackagers, but excluding the original manufacturer of the finished form of the prescription
17 drug that leave, or have ever left, the normal distribution channel shall, before each wholesale
18 distribution of such drug, provide a pedigree to the person who receives such drug.

19 A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this
20 section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution
21 of prescription drugs, as defined in section 8 of this Act.

22 Section 22. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 The board shall determine by July 1, 2009, a targeted implementation date for electronic

1 track and trace pedigree technology. Such a determination shall be based on consultation with
2 manufacturers, distributors, and pharmacies responsible for the sale and distribution of
3 prescription drug products in this state. After consultation with interested stakeholders and prior
4 to implementation of the electronic pedigree, the board shall determine that the technology is
5 universally available across the entire prescription pharmaceutical supply chain. The
6 implementation date for the mandated electronic track and trace pedigree technology shall be
7 no sooner than July 1, 2010, and may be extended by the board in one year increments if it
8 appears the technology is not universally available across the entire prescription pharmaceutical
9 supply chain.

10 Section 23. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Each person who is engaged in the wholesale distribution of a prescription drug including
13 repackagers, but excluding the original manufacturer of the finished form of the prescription
14 drug, who is provided a pedigree for a prescription drug and attempts to further distribute that
15 prescription drug, shall affirmatively verify before any distribution of a prescription drug occurs
16 that each transaction listed on the pedigree has occurred.

17 Section 24. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The pedigree shall include all necessary identifying information concerning each sale in the
20 chain of distribution of the product from the manufacturer, or the manufacturer's third party
21 logistics provider, co-licensed product partner, manufacturer's exclusive distributor, through
22 acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy
23 or other person dispensing or administering the drug. At minimum, the necessary chain of
24 distribution information shall include:

- 1 (1) Name, address, telephone number, and if available, the e-mail address, of each owner
- 2 of the prescription drug, and each wholesale distributor of the prescription drug;
- 3 (2) Name and address of each location from which the product was shipped, if different
- 4 from the owner's;
- 5 (3) Transaction dates; and
- 6 (4) Certification that each recipient has authenticated the pedigree.

7 Section 25. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 In addition to the requirements of section 24 of this Act, the pedigree shall also include the
10 following minimum requirements:

- 11 (1) Name and national drug code number of the prescription drug;
- 12 (2) Dosage form and strength of the prescription drug;
- 13 (3) Size of the container;
- 14 (4) Number of containers;
- 15 (5) Lot number of the prescription drug; and
- 16 (6) Name of the manufacturer of the finished dosage form.

17 Section 26. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Each pedigree or electronic file shall be:

- 20 (1) Maintained by the purchaser and the wholesale distributor for three years from the
- 21 date of sale or transfer; and
- 22 (2) Available for inspection or use within two business days upon a request of an
- 23 authorized officer of the law.

24 Section 27. That chapter 36-11A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The board shall issue an order requiring the appropriate person including any distributor or
3 retailer of the drug to immediately cease distribution of the drug within this state if the board
4 finds that there is a reasonable probability that:

5 (1) A wholesale distributor, other than a manufacturer, has:

6 (a) Violated a provision of this Act; or

7 (b) Falsified a pedigree, or sold, distributed, transferred, manufactured,
8 repackaged, handled, or held a counterfeit prescription drug intended for
9 human use;

10 (2) The prescription drug at issue as a result of a violation in subdivision (1) could cause
11 serious, adverse health consequences or death; and

12 (3) Other procedures would result in unreasonable delay.

13 An order under this section shall provide the person subject to the order with an opportunity
14 for an informal hearing, to be held not later than ten days after the date of the issuance of the
15 order, on the actions required by the order. If, after providing an opportunity for such a hearing,
16 the board determines that inadequate grounds exist to support the actions required by the order,
17 the board shall vacate the order.

18 Section 28. That chapter 36-11A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 It is unlawful for a person to perform or cause the performance of or aid and abet any of the
21 following acts in this state:

22 (1) Failure to obtain a license in accordance with this Act, or operating without a valid
23 license when a license is required by this Act;

24 (2) If the requirements of section 16 of this Act are applicable and are not met, the

- 1 purchasing or otherwise receiving a prescription drug from a pharmacy;
- 2 (3) If a state license is required pursuant to section 17 of this Act, the sale, distribution,
- 3 or transfer of a prescription drug to a person that is not authorized under the law of
- 4 the jurisdiction in which the person receives the prescription drug to receive the
- 5 prescription drug;
- 6 (4) Failure to deliver prescription drugs to specified premises, as required by section 18
- 7 of this Act;
- 8 (5) Accepting payment or credit for the sale of prescription drugs in violation of section
- 9 20 of this Act;
- 10 (6) Failure to maintain or provide pedigrees as required by this Act;
- 11 (7) Failure to obtain, pass, or authenticate a pedigree, as required by this Act;
- 12 (8) Providing the state or any of its representatives or any federal official with false or
- 13 fraudulent records or making false or fraudulent statements regarding any matter
- 14 within the provisions of this Act;
- 15 (9) Obtaining or attempting to obtain a prescription drug by fraud, deceit,
- 16 misrepresentation or engaging in misrepresentation or fraud in the distribution of a
- 17 prescription drug;
- 18 (10) Except for the wholesale distribution by manufacturers of a prescription drug that has
- 19 been delivered into commerce pursuant to an application approved under federal law
- 20 by the Food and Drug Administration, the manufacture, repacking, sale, transfer,
- 21 delivery, holding, or offering for sale any prescription drug that is adulterated,
- 22 misbranded, counterfeit, suspected of being counterfeit, or has otherwise been
- 23 rendered unfit for distribution;
- 24 (11) Except for the wholesale distribution by manufacturers of a prescription drug that has

1 been delivered into commerce pursuant to an application approved under Federal law
2 by the Food and Drug Administration, the adulteration, misbranding, or
3 counterfeiting of any prescription drug;

4 (12) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained
5 by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or
6 proffered delivery of such drug for pay or otherwise; and

7 (13) The alteration, mutilation, destruction, obliteration, or removal of the whole or any
8 part of the labeling of a prescription drug or the commission of any other act with
9 respect to a prescription drug that results in the prescription drug being misbranded.

10 Any person who violates this section is guilty of a Class 1 misdemeanor for the first
11 conviction and a Class 6 felony for any subsequent conviction.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

249N0574

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1194 - 02/07/2007

Introduced by: Representatives Miles, Ahlers, Peters, Pitts, Rounds, and Weems and
Senators Koetzle, Abdallah, Albers, and Hauge

1 FOR AN ACT ENTITLED, An Act to authorize the disclosure of certain confidential
2 information when a person who is subject to commitment proceedings has communicated
3 a serious threat of serious physical injury against a reasonably identifiable victim.

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

5 Section 1. That § 27A-12-29 be amended to read as follows:

6 27A-12-29. Information may be disclosed in the discretion of the holder of the record:

- 7 (1) As necessary or beneficial in order for the person, or persons acting on behalf of the
8 person, to apply for and acquire benefits for the person, including third-party
9 financial payments, assistance, or services and follow-up, care, and treatment by local
10 centers serving the area to which a person is expected to go upon temporary or
11 permanent release or discharge; ~~or~~
- 12 (2) As necessary or beneficial for evaluation and accreditation; ~~or~~
- 13 (3) As necessary or beneficial to train persons enrolled in an accredited course leading
14 to a degree and qualification, certification, or registration as a qualified mental health
15 professional, licensed practical nurse, registered nurse, psychologist, social worker,



- 1 physical therapist, occupational therapist, laboratory technician, medical records
2 professional, dietician, or other health care professional; ~~or~~
- 3 (4) Upon request of the Human Services Center, with disclosure of records limited to
4 relevant medical and psychiatric records; or
- 5 (5) If any person subject to the proceedings under this chapter has communicated a
6 serious threat of serious physical injury against a reasonably identifiable victim, the
7 person with knowledge of the threat may disclose the threat to the potential victim
8 or to any law enforcement officer, or both. No cause of action may arise under this
9 chapter against the person who, in good faith, discloses the threat to a potential
10 victim or law enforcement officer pursuant to the provisions of this subdivision.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

445N0741

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1278** -
02/02/2007

Introduced by: Representatives Van Etten, Boomgarden, Dreyer, Heineman, Miles, Nygaard,
Olson (Betty), Rave, and Weems and Senators Hansen (Tom) and Dempster

1 FOR AN ACT ENTITLED, An Act to require emergency medical technicians to be trained in
2 the administration of epinephrine.

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

4 Section 1. That § 36-4B-1 be amended by adding thereto NEW SUBDIVISIONS to read as
5 follows:

6 "Epinephrine auto-injector," a spring-loaded needle and syringe with a single dose of
7 epinephrine that will automatically release and inject the medicine, any similar automatic pre-
8 filled cartridge injector, or any similar automatic injectable equipment;

9 "Emergency medical technician," any class of emergency medical technician as defined in
10 this section;

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

13 The department, under the direction of the board, shall train each emergency medical
14 technician to use an auto-injector in the administration of epinephrine in emergency cases of



1 anaphylactic shock.

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

4 Any basic life support ambulance or rescue unit used by an emergency medical technician
5 for life-saving purposes shall be equipped with epinephrine auto-injectors for use in accordance
6 with all relevant medical protocols. Any such basic life support ambulance or rescue unit shall
7 be equipped with epinephrine auto-injectors appropriate for use on emergency patients of any
8 age.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0236

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 15** - 02/02/2007

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

1 FOR AN ACT ENTITLED, An Act to require certain immunizations for students attending
2 postsecondary educational institutions.

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

4 Section 1. Terms in this Act mean:

5 (1) "Public or private postsecondary educational institution" or "institution," any entity
6 permitted to offer postsecondary education credits or degrees in South Dakota under
7 § 13-49-27.1;

8 (2) "Student," any person born after 1956 who is registering for more than one class
9 during an academic term, such as a quarter or a semester. The term includes any
10 person who meets face-to-face at least once per week to receive instruction. The term
11 does not include any person who receives non-credit-bearing or on-the-job training
12 services.

13 Section 2. Any student entering a public or private postsecondary education institution in
14 this state for the first time after July 1, 2008, shall, within forty-five days after the start of
15 classes, present to the appropriate institution certification from a licensed physician that the



1 student has received or is in the process of receiving the required two doses of immunization
2 against measles, rubella, and mumps. As an alternative to the requirement for a physicians's
3 certification, the student may present:

4 (1) Certification from a licensed physician stating the physical condition of the student
5 would be such that immunization would endanger the student's life or health;

6 (2) Certification from a licensed physician stating the student has experienced the natural
7 disease against which the immunization protects;

8 (3) Confirmation from a laboratory of the presence of adequate immunity; or

9 (4) A written statement signed by the student that the student is an adherent to a religious
10 doctrine whose teachings are opposed to such immunizations. If the student is under
11 the age of eighteen, the written statement shall be signed by one parent or guardian.

12 Section 3. The institution shall require that the documentation from the student, provided
13 for by section 2 of this Act, be submitted within forty-five days after the start of classes.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0240

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 18** - 01/22/2007

Introduced by: The Committee on Health and Human Services at the request of the Board of
Chiropractic Examiners

1 FOR AN ACT ENTITLED, An Act to revise the chiropractic scope of practice.

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

3 Section 1. That § 36-5-1 be amended to read as follows:

4 36-5-1. Chiropractic is ~~hereby defined to be~~ the science of locating and removing the cause
5 of any abnormal transmission of nerve energy including diagnostic and ~~externally~~ applied
6 mechanical measures incident thereto. ~~Chiropractors shall not be entitled to~~ Integral to
7 chiropractic is the treating of specific joints and articulations of the body and adjacent tissues,
8 to influence joints or neurophysiological functions of the body, or both, including the use of
9 examination and treatment by manipulation, adjustment, and mobilization of a joint. No
10 chiropractor may practice obstetrics or treat communicable diseases. ~~The requirements of this~~
11 section do not apply to those licensed pursuant to chapter 36-4.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0306

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 39 - 01/29/2007

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide claims information to commercial property
2 casualty insureds.

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

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any carrier who is or has provided commercial property casualty coverage in this state shall
7 provide, at the written request of the insured, annual reports of the claims experience of that
8 insured for the immediate past policy period and for any time frames which are not in excess
9 of three years prior to the policy period for which the request was made. A carrier is not required
10 to provide any claim information that pertains to a prior carrier's experience with that insured.
11 The claims report shall be in sufficient detail so as to provide the insured with data sufficient
12 to assess the insured's future commercial property casualty insurance needs. The director may
13 promulgate rules pursuant to chapter 1-26 regarding the content and time frames for the annual
14 reports.

