

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

400N0295

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 25** - 02/02/2007

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements regarding the ability of the
2 Public Utilities Commission to regulate the sale or other disposition of the property, plant,
3 business, or stock of electric or gas public utilities.

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

5 Section 1. That § 49-34A-35 be amended to read as follows:

6 49-34A-35. ~~No public utility shall sell, lease or otherwise dispose of its property or business~~
7 ~~constituting an operating unit or system in this state to another public utility or purchase the~~
8 ~~property or business constituting an operating unit or system in this state to another public utility~~
9 ~~or merge or consolidate with another public utility operating in this state, without first being~~
10 ~~authorized to do so by the Public Utilities Commission; provided, that in the event such sale,~~
11 ~~lease or other disposition of the property or business of one public utility to another public~~
12 ~~utility does not involve a sale, lease or disposition wherein the actual consideration exceeds two~~
13 ~~hundred thousand dollars, such sale, lease or disposition shall not be subject to the provisions~~
14 ~~of this section~~ No public utility, without first being authorized to do so by the commission, may:

15 (1) Sell, lease, or otherwise dispose of its property or business constituting an operating



1 unit or system in this state to another person;

2 (2) Sell, lease, or otherwise dispose of its operating property or plant used to provide gas
3 or electric service to its customers in this state to another person;

4 (3) Purchase the property or business constituting an operating unit or system in this state
5 of another public utility; or

6 (4) Merge or consolidate with another public utility operating in this state.

7 However, if the sale, lease, merger, consolidation, or other disposition of the property or
8 business of one public utility to another person, as provided in subdivisions (1) to (4), inclusive,
9 does not involve a sale, lease, merger, consolidation, or disposition wherein the fair market
10 value exceeds ten million dollars, the sale, lease, merger, consolidation, or disposition is not
11 subject to the restrictions of this section.

12 No person may acquire or gain control either directly or indirectly of any public utility doing
13 business in this state that has a fair market value exceeding ten million dollars without the
14 commission's prior authorization. As used in this section, the term, control, means the right to
15 direct or cause the direction of the management and policies of the public utility, whether
16 through the ownership of voting securities, by contract, or otherwise.

17 Section 2. That § 49-34A-36 be amended to read as follows:

18 49-34A-36. Upon the filing of an application for the approval ~~and consent~~ of the ~~Public~~
19 ~~Utilities Commission~~ commission to an action described in § 49-34A-35, the commission shall
20 investigate the ~~same~~ application, with or without public hearing, and in case of a public hearing,
21 upon such notice as the commission may require, ~~and if it shall find that the proposed action is~~
22 ~~consistent with the public interests it shall give its consent and approval in writing. In reaching~~
23 ~~its determination, the commission shall take into consideration the reasonable value of the~~
24 ~~property, plant, equipment or securities to be acquired or disposed of or merged and~~

1 ~~consolidated. The commission shall act on the application within one hundred eighty days and~~
2 ~~shall approve the proposed action unless the commission finds that there is a likelihood of~~
3 ~~significant adverse impacts to customers in this state.~~

4 Section 3. That § 49-34A-37 be amended to read as follows:

5 49-34A-37. No public utility subject to the jurisdiction of the ~~Public Utilities Commission~~
6 commission may purchase voting stock in another public utility doing business in South Dakota
7 without first having made application to and received the ~~consent~~ approval of the commission
8 ~~in writing or by order within the time and in the manner provide in section 2 of this Act.~~ An
9 intentional violation of this section is a petty offense. After the first judgment, each day's
10 violation is a separate offense.

11 Section 4. That § 49-34A-38 be repealed.

12 ~~—49-34A-38. The provisions of §§ 49-34A-35 to 49-34A-37, inclusive, shall not apply to any~~
13 ~~transaction which is subject to the jurisdiction of a federal agency or authority.~~

14 Section 5. That § 49-34A-38.1 be repealed.

15 ~~—49-34A-38.1. Notwithstanding the provisions of §§ 49-34A-35 to 49-34A-38, inclusive, no~~
16 ~~person may acquire or control either directly or indirectly more than ten percent of the total~~
17 ~~capital stock of any public utility organized and doing business in this state or of any public~~
18 ~~utility organized under the laws of any other state receiving more than twenty-five percent of~~
19 ~~its gross revenue in this state without first securing authorization to do so from the Public~~
20 ~~Utilities Commission. Any such acquisition or control without the commission's prior~~
21 ~~authorization is void.~~

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0226

SENATE ENGROSSED NO. **SB 32** - 01/12/2007

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the distribution of
2 funds to sparse school districts, and to declare an emergency.

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

4 Section 1. That § 13-13-78 be amended to read as follows:

5 13-13-78. Terms used in § 13-13-79 mean:

6 (1) "Sparse school district," a school district that meets each of the following criteria:

7 (a) Has an average daily membership per square mile of 0.50 or less;

8 (b) Has an average daily membership of five hundred or less;

9 (c) Has an area of four hundred square miles or more;

10 (d) Has at least fifteen miles between its secondary attendance center or centers
11 and that of an adjoining district;

12 (e) Operates a secondary attendance center;

13 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
14 or more; and

15 (g) Has a general fund balance percentage of thirty percent or less excluding
16 revenue received from opting out of property tax limitations pursuant to



1 chapter 10-12;

2 (2) "Sparsity average daily membership for sparse school districts with an adjusted
3 average daily membership as defined in subdivision 13-13-10.1(2) of less than one
4 hundred or greater than two hundred seventy-five," calculated as follows:

5 (a) ~~For sparse school districts with an adjusted average daily membership as~~
6 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~
7 ~~two hundred seventy-five, divide~~ Divide the average daily membership as
8 defined in subdivision 13-13-10.1(1) by the area of the school district in
9 square miles;

10 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;

11 (c) Add 0.0625 to the product obtained in subsection (b); and

12 (d) Multiply the sum obtained in subsection (c) times the average daily
13 membership;

14 (3) "Sparsity adjusted average daily membership for sparse school districts with an
15 adjusted average daily membership as defined in subdivision 13-13-10.1(2) of greater
16 than or equal to one hundred and less than two hundred seventy-five," calculated as
17 follows: ~~For any sparse school district with an adjusted average daily membership as~~
18 ~~defined in subdivision 13-13-10.1(2) of no less than one hundred, but no more than~~
19 ~~two hundred seventy-five, the sparsity adjusted average daily membership is two~~
20 ~~hundred seventy-five~~ Subtract the school district adjusted average daily membership
21 as defined in subdivision 13-13-10.1(2) from two hundred seventy-five.

22 Section 2. That § 13-13-79 be amended to read as follows:

23 13-13-79. At the same time that foundation program state aid is distributed to school
24 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of

1 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~
2 ~~average daily membership calculation or the sparsity adjusted average daily membership~~
3 ~~calculation in § 13-13-78~~ the result of the calculation in subdivision (2) or (3) of § 13-13-78 by
4 the per student allocation as defined in § 13-13-10.1. However, no sparse school district may
5 receive a sparsity benefit in any year that exceeds two hundred fifty thousand dollars.

6 Section 3. Whereas, this Act is necessary for the support of the state government and its
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
8 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0227 SENATE EDUCATION COMMITTEE ENGROSSED NO.
SB 33 - 01/11/2007

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

1 FOR AN ACT ENTITLED, An Act to revise certain kindergarten enrollment requirements and
2 repeal the nursery school age requirement.

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

4 Section 1. That § 13-28-2 be amended to read as follows:

5 13-28-2. Any child who is five years old on the first day of September is eligible for
6 enrollment in kindergarten during that school year. Any child who is six years old by September
7 first is eligible for enrollment in first grade during that school year. ~~Any child in a kindergarten~~
8 ~~or prekindergarten program who was in compliance with the statutory eligibility dates in effect~~
9 ~~at the time of his enrollment may proceed in a continuous educational program without~~
10 ~~interruption.~~ Any child who transfers from another state may proceed in a continuous
11 educational program without interruption.

12 ~~Any child under the age of five is eligible for admittance to a nursery school.~~

13 Section 2. That section 3 of chapter 80 of the 2006 Session Laws be amended to read as
14 follows:

15 Section 3. That § 13-28-2 be amended to read as follows:



1 13-28-2. Any child who is five years old on the first day of September is eligible for
2 enrollment in kindergarten during that school year. ~~Any child who is six years old by September~~
3 ~~first is eligible for enrollment in first grade during that school year. Any child in a kindergarten~~
4 ~~or prekindergarten program who was in compliance with the statutory eligibility dates in effect~~
5 ~~at the time of his enrollment may proceed in a continuous educational program without~~
6 ~~interruption.~~ Any child who transfers from another state may proceed in a continuous
7 educational program without interruption.

8 ~~Any child under the age of five is eligible for admittance to a nursery school.~~

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.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

562N0414

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 70 - 02/14/2007

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

Introduced by: Senators Gant, Garnos, and Napoli and Representatives Weems, Peters, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain fees, continuing education requirements,
2 and examination requirements for massage therapists.

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

4 Section 1. That § 36-35-12 be amended to read as follows:

5 36-35-12. The board may issue a license to engage in the practice of massage to any person
6 who submits an application form and the nonrefundable application fee as approved in § 36-35-
7 17 and who demonstrates the following qualifications:

- 8 (1) Eighteen years of age or older;
- 9 (2) Good moral character;
- 10 (3) High school diploma or equivalent;
- 11 (4) Completion of no less than five hundred hours of training or study in the practice of
12 massage with a facility or instructor recognized by the board;
- 13 (5) Absence of unprofessional conduct;
- 14 (6) ~~Malpractice~~ Professional liability insurance coverage with limits at or above an



1 amount set by the board; and

2 (7) Passing score on an examination administered by a national certification board
3 ~~accredited by the National Commission of Certifying Agencies and in good standing~~
4 ~~with the National Organization of Competency Assurance~~ approved by the board in
5 rules promulgated pursuant to chapter 1-26.

6 A license issued under this chapter is valid for a period of ~~two years~~ one year from the date
7 it was issued and automatically expires unless it is renewed. The board may refuse to grant a
8 license to any person based on failure to demonstrate the requirements of this section. An
9 applicant may appeal the denial of a license in compliance with chapter 1-26.

10 Section 2. That § 36-35-14 be amended to read as follows:

11 36-35-14. ~~For two years following July 1, 2005~~ Until July 1, 2008, the board may issue a
12 license to a person who demonstrates completion of a minimum of one hundred hours of
13 training or study in the practice of massage with a facility or instructor recognized by the board
14 or adequate experience derived from the active practice of massage for at least the three years
15 immediately preceding the date of the application. Any person applying for a license under this
16 section is not required to comply with the examination and training or study requirements of
17 § 36-35-12 but shall meet the other criteria set forth in § 36-35-12. Any person applying for a
18 license under this section shall submit an application as required by § 36-35-12 along with proof
19 of active practice for at least three years prior to the date of application.

20 Section 3. That § 36-35-17 be amended to read as follows:

21 36-35-17. Any applicant for a license under this chapter shall submit a nonrefundable
22 application fee of one hundred dollars. Any person who has a license issued or renewed by the
23 board shall submit a license fee in an amount set by the board, but not to exceed ~~three hundred~~
24 sixty-five dollars.

1 Section 4. That § 36-35-19 be amended to read as follows:

2 36-35-19. Any person licensed under this chapter shall complete eight hours of continuing
3 education relating to competence in the practice of massage on ~~an annual~~ a biennial basis ~~in an~~
4 ~~amount, of a type;~~ and from a facility or instructor approved by the board. No more than four
5 of the required continuing education hours may be obtained by electronic means. The board may
6 waive the continuing education requirement upon proof of illness or hardship.

7 Section 5. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The board may issue an inactive massage therapist license upon payment of the application
10 fee.

11 Section 6. That § 36-35-24 be amended to read as follows:

12 36-35-24. The board may promulgate rules pursuant to chapter 1-26 in the following areas:

- 13 (1) The form and information required for any license application;
- 14 (2) A list of recognized facilities or instructors who may provide training or instruction
15 required for licensure or continuing education requirements;
- 16 (3) The amount of license fees;
- 17 (4) The procedures for conducting disciplinary proceedings; ~~and~~
- 18 (5) The minimum limits of malpractice insurance to be carried by any person licensed
19 under this chapter; and
- 20 (6) The procedures for applying for an inactive license and the procedures to regain
21 active licensure.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

445N0172 **SENATE JUDICIARY COMMITTEE ENGROSSED NO.**
SB 89 - 01/24/2007

Introduced by: Senators Knudson and Heidepriem and Representatives Lust, Cutler, and Engels

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Prudent Management of Institutional
2 Funds Act.

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

4 Section 1. This Act may be cited as the Uniform Prudent Management of Institutional Funds
5 Act.

6 Section 2. In this Act:

7 (1) "Charitable purpose" means the relief of poverty, the advancement of education or
8 religion, the promotion of health, the promotion of a governmental purpose, or any
9 other purpose the achievement of which is beneficial to the community.

10 (2) "Endowment fund" means an institutional fund or part thereof that, under the terms
11 of a gift instrument, is not wholly expendable by the institution on a current basis.
12 The term does not include assets that an institution designates as an endowment fund
13 for its own use.

14 (3) "Gift instrument" means a record or records, including an institutional solicitation,
15 under which property is granted to, transferred to, or held by an institution as an



1 institutional fund.

2 (4) "Institution" means:

3 (A) A person, other than an individual, organized and operated exclusively for
4 charitable purposes;

5 (B) A government or governmental subdivision, agency, or instrumentality, to the
6 extent that it holds funds exclusively for a charitable purpose; and

7 (C) A trust that had both charitable and noncharitable interests, after all
8 noncharitable interests have terminated.

9 (5) "Institutional fund" means a fund held by an institution exclusively for charitable
10 purposes. The term does not include:

11 (A) Program-related assets;

12 (B) A fund held for an institution by a trustee that is not an institution; or

13 (C) A fund in which a beneficiary that is not an institution has an interest, other
14 than an interest that could arise upon violation or failure of the purposes of the
15 fund.

16 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
17 limited liability company, association, joint venture, public corporation, government
18 or governmental subdivision, agency, or instrumentality, or any other legal or
19 commercial entity.

20 (7) "Program-related asset" means an asset held by an institution primarily to accomplish
21 a charitable purpose of the institution and not primarily for investment.

22 (8) "Record" means information that is inscribed on a tangible medium or that is stored
23 in an electronic or other medium and is retrievable in perceivable form.

24 Section 3. (a) Subject to the intent of a donor expressed in a gift instrument, an institution,

1 in managing and investing an institutional fund, shall consider the charitable purposes of the
2 institution and the purposes of the institutional fund.

3 (b) In addition to complying with the duty of loyalty imposed by law other than this Act,
4 each person responsible for managing and investing an institutional fund shall manage and
5 invest the fund in good faith and with the care an ordinarily prudent person in a like position
6 would exercise under similar circumstances.

7 (c) In managing and investing an institutional fund, an institution:

8 (1) May incur only costs that are appropriate and reasonable in relation to the assets, the
9 purposes of the institution, and the skills available to the institution; and

10 (2) Shall make a reasonable effort to verify facts relevant to the management and
11 investment of the fund.

12 (d) An institution may pool two or more institutional funds for purposes of management and
13 investment.

14 (e) Except as otherwise provided by a gift instrument, the following rules apply:

15 (1) In managing and investing an institutional fund, the following factors, if relevant,
16 must be considered:

17 (A) General economic conditions;

18 (B) The possible effect of inflation or deflation;

19 (C) The expected tax consequences, if any, of investment decisions or strategies;

20 (D) The role that each investment or course of action plays within the overall
21 investment portfolio of the fund;

22 (E) The expected total return from income and the appreciation of investments;

23 (F) Other resources of the institution;

24 (G) The needs of the institution and the fund to make distributions and to preserve

1 capital; and

2 (H) An asset's special relationship or special value, if any, to the charitable
3 purposes of the institution.

4 (2) Management and investment decisions about an individual asset must be made not
5 in isolation but rather in the context of the institutional fund's portfolio of
6 investments as a whole and as a part of an overall investment strategy having risk and
7 return objectives reasonably suited to the fund and to the institution.

8 (3) Except as otherwise provided by law other than this Act, an institution may invest in
9 any kind of property or type of investment consistent with this section.

10 (4) An institution shall diversify the investments of an institutional fund unless the
11 institution reasonably determines that, because of special circumstances, the purposes
12 of the fund are better served without diversification.

13 (5) Within a reasonable time after receiving property, an institution shall make and carry
14 out decisions concerning the retention or disposition of the property or to rebalance
15 a portfolio, in order to bring the institutional fund into compliance with the purposes,
16 terms, and distribution requirements of the institution as necessary to meet other
17 circumstances of the institution and the requirements of this Act.

18 (6) A person that has special skills or expertise, or is selected in reliance upon the
19 person's representation that the person has special skills or expertise, has a duty to
20 use those skills or that expertise in managing and investing institutional funds.

21 Section 4. (a) Subject to the intent of a donor expressed in the gift instrument, an institution
22 may appropriate for expenditure or accumulate so much of an endowment fund as the institution
23 determines is prudent for the uses, benefits, purposes, and duration for which the endowment
24 fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment

1 fund are donor-restricted assets until appropriated for expenditure by the institution. In making
2 a determination to appropriate or accumulate, the institution shall act in good faith, with the care
3 that an ordinarily prudent person in a like position would exercise under similar circumstances,
4 and shall consider, if relevant, the following factors:

- 5 (1) The duration and preservation of the endowment fund;
- 6 (2) The purposes of the institution and the endowment fund;
- 7 (3) General economic conditions;
- 8 (4) The possible effect of inflation or deflation;
- 9 (5) The expected total return from income and the appreciation of investments;
- 10 (6) Other resources of the institution; and
- 11 (7) The investment policy of the institution.

12 (b) To limit the authority to appropriate for expenditure or accumulate under subsection (a),
13 a gift instrument must specifically state the limitation.

14 (c) Terms in a gift instrument designating a gift as an endowment, or a direction or
15 authorization in the gift instrument to use only "income", "interest", "dividends", or "rents,
16 issues, or profits", or "to preserve the principal intact", or words of similar import:

- 17 (1) Create an endowment fund of permanent duration unless other language in the gift
18 instrument limits the duration or purpose of the fund; and
- 19 (2) Do not otherwise limit the authority to appropriate for expenditure or accumulate
20 under subsection (a).

21 Section 5. (a) Subject to any specific limitation set forth in a gift instrument or in law other
22 than this Act, an institution may delegate to an external agent the management and investment
23 of an institutional fund to the extent that an institution could prudently delegate under the
24 circumstances. An institution shall act in good faith, with the care that an ordinarily prudent

1 person in a like position would exercise under similar circumstances, in:

2 (1) Selecting an agent;

3 (2) Establishing the scope and terms of the delegation, consistent with the purposes of
4 the institution and the institutional fund; and

5 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
6 and compliance with the scope and terms of the delegation.

7 (b) In performing a delegated function, an agent owes a duty to the institution to exercise
8 reasonable care to comply with the scope and terms of the delegation.

9 (c) An institution that complies with subsection (a) is not liable for the decisions or actions
10 of an agent to which the function was delegated.

11 (d) By accepting delegation of a management or investment function from an institution that
12 is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state
13 in all proceedings arising from or related to the delegation or the performance of the delegated
14 function.

15 (e) An institution may delegate management and investment functions to its committees,
16 officers, or employees as authorized by law of this state other than this Act.

17 Section 6. (a) If the donor consents in a record, an institution may release or modify, in
18 whole or in part, a restriction contained in a gift instrument on the management, investment, or
19 purpose of an institutional fund. A release or modification may not allow a fund to be used for
20 a purpose other than a charitable purpose of the institution.

21 (b) The court, upon application of an institution, may modify a restriction contained in a gift
22 instrument regarding the management or investment of an institutional fund if the restriction has
23 become impracticable or wasteful, if it impairs the management or investment of the fund, or
24 if, because of circumstances not anticipated by the donor, a modification of a restriction will

1 further the purposes of the fund. To the extent practicable, any modification must be made in
2 accordance with the donor's probable intention.

3 (c) If a particular charitable purpose or a restriction contained in a gift instrument on the use
4 of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful,
5 the court, upon application of an institution, may modify the purpose of the fund or the
6 restriction on the use of the fund in a manner consistent with the charitable purposes expressed
7 in the gift instrument.

8 (d) If an institution determines that a restriction contained in a gift instrument on the
9 management, investment, or purpose of an institutional fund is unlawful, impracticable,
10 impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole
11 or part, if:

- 12 (1) The institutional fund subject to the restriction has a total value of less than twenty-
13 five thousand dollars;
- 14 (2) More than twenty years have elapsed since the fund was established; and
- 15 (3) The institution uses the property in a manner consistent with the charitable purposes
16 expressed in the gift instrument.

17 Section 7. Compliance with this Act is determined in light of the facts and circumstances
18 existing at the time a decision is made or action is taken, and not by hindsight.

19 Section 8. This Act applies to institutional funds existing on or established after July 1,
20 2007. As applied to institutional funds existing on July 1, 2007, this Act governs only decisions
21 made or actions taken on or after that date. This Act does not apply to any funds directly held
22 or managed by a governmental agency.

23 Section 9. This Act modifies, limits, and supersedes the Electronic Signatures in Global and
24 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or

1 supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery
2 of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

3 Section 10. In applying and construing this uniform act, consideration shall be given to the
4 need to promote uniformity of the law with respect to its subject matter among states that enact
5 it.

6 Section 11. That §§ 55-14-1 to 55-14-7, inclusive, be repealed.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

824N0518

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 125** - 02/13/2007

Introduced by: Senators Napoli, Gray, Greenfield, Hundstad, Koetzle, Maher, McCracken, McNenny, Olson (Ed), Peterson (Jim), and Schmidt (Dennis) and Representatives Hunt, Brunner, Dennert, Dykstra, Gillespie, Koistinen, Moore, Novstrup (Al), Rave, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to allow an abandoned mobile home or manufactured home
2 to be moved under certain conditions and to require property taxes to be abated on certain
3 abandoned mobile homes and manufactured homes.

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

5 Section 1. If a mobile home or manufactured home as defined in chapter 32-7A has been
6 abandoned and left on leased real property, the owner of real property may sell the mobile home
7 or manufactured home under the provisions of chapter 21-54. A mobile home or manufactured
8 home is considered abandoned if the owner of the mobile home or manufactured home has not
9 removed the home from the real property owner's land within thirty days of the court issuing a
10 writ of possession as provided in chapter 21-16. Upon issuance of the writ of possession by the
11 court, the owner of real property shall give the owner of the mobile home or manufactured home
12 and any lienholder with a lien properly noted pursuant to chapter 32-3, written notice of intent
13 to sell the home pursuant to chapter 21-54 if the home is not removed from the real property
14 owner's property within thirty days. The notice shall be sent to the owner of the mobile home



1 or manufactured home at the owner's last known address. The Department of Revenue and
2 Regulation shall promulgate rules pursuant to chapter 1-26 to prescribe a form for the written
3 notice. Any written notice shall be sent by certified mail. The sale is subject to any taxes owed
4 on the home and unpaid lot rent but such unpaid lot rent lien may not exceed two month's lot
5 rent at the price previously agreed to by the owner of real property and owner of the mobile
6 home or manufactured home.

7 Section 2. After the owner of the abandoned mobile home or manufactured home has been
8 provided thirty days written notice, and before the owner of real property proceeds with the sale
9 of the abandoned mobile home or manufactured home, the owner of the real property shall
10 provide written notice of intent to sell the abandoned property to the county treasurer where the
11 home is located. The Department of Revenue and Regulation shall promulgate rules pursuant
12 to chapter 1-26 to prescribe a form for the written notice. If the treasurer has not issued a distress
13 warrant and informed the owner of real property of such issuance within thirty days of the notice
14 required by this section or the mobile home or manufactured home has not been removed by its
15 owner or any lien holder within thirty days of the notice provided by section 1 of this Act, the
16 owner of real property may proceed with the sale pursuant to chapter 21-54.

17 Section 3. If an abandoned mobile home or manufactured home fails to sell at a sale held
18 pursuant to chapter 21-54, title to the mobile home or manufactured home is irrevocably vested
19 with the owner of the real property. The owner of the real property on which the mobile home
20 or manufactured home resides, may obtain an abandoned title without payment or obligation to
21 pay any taxes owed on the home or any lien on the home at the time of acquisition. However,
22 if the owner of the real property intends any use of the abandoned mobile home or manufactured
23 home other than disposal, the owner of the real property may obtain an abandoned title after
24 paying any taxes owed on the home. The department shall promulgate rules pursuant to chapter

1 1-26 to prescribe a form that shall be used to apply for the abandoned title.

2 Section 4. If an owner of the real property obtains a title to a mobile home or manufactured
3 home pursuant to section 3 of this Act, the owner of the real property shall obtain a permit
4 pursuant to § 32-5-16.3 to move the abandoned mobile home or manufactured home. If the
5 owner of the real property files an affidavit with the county treasurer stating that the owner is
6 going to move the abandoned mobile home or manufactured home for the sole purpose of
7 disposal, the county treasurer shall issue the permit provided by § 32-5-16.3 without receiving
8 payment of the current year's taxes. The Department of Revenue and Regulation shall
9 promulgate rules pursuant to chapter 1-26 to prescribe a form for the affidavit.

10 Section 5. The county treasurer shall deliver the affidavit filed pursuant to section 4 of this
11 Act to the board of county commissioners after issuance of the permit. Upon receipt of the
12 affidavit, the board of county commissioners shall abate any taxes owed on the mobile home
13 or manufactured home.