



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0379

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1058** - 02/14/2007

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the placement of  
2 juveniles under the jurisdiction of the Department of Corrections.

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

4 Section 1. That chapter 26-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of §§ 26-1-1, 26-6-6.1, and 26-7A-101, a child welfare  
7 agency and the Department of Corrections may provide foster care for a person over the age of  
8 majority but less than twenty-one years of age if the person is under the continuing juvenile  
9 jurisdiction of the Department of Corrections.

10 Section 2. That § 26-7A-26 be amended to read as follows:

11 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely  
12 detained at any time in a jail, lockup, or in any type of detention or temporary care facility  
13 containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may  
14 not be securely detained in a jail, lockup, or in any type of detention or temporary care facility  
15 containing adult prisoners except for approved collocated detention centers as defined in § 26-



1 7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

2 An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six  
3 hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or  
4 release to parents if the child is sight and sound separated from adult prisoners.

5 In any area not designated as a metropolitan statistical area by the United States Bureau of  
6 the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for  
7 up to forty-eight hours excluding holidays and weekends or until the temporary custody hearing,  
8 whichever is earlier, if the facility has been certified by the Department of Corrections as  
9 providing sight and sound separation of juveniles from adults and if no suitable juvenile facility  
10 is available.

11 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being  
12 tried in circuit court as an adult pursuant to § 26-11-3.1 may be held in an adult lockup or jail  
13 if physically separated from adult prisoners.

14 A child who has attained the age of majority who is under the continuing jurisdiction of the  
15 court or the Department of Corrections may be held in an adult jail or lockup.

16 A child under the age of eighteen years who has been transferred to adult court pursuant to  
17 §§ 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held in an  
18 adult jail or lockup.

19 Section 3. That § 26-8B-6 be amended to read as follows:

20 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall  
21 enter a decree of disposition according to the least restrictive alternative available in keeping  
22 with the best interests of the child. The decree shall contain one or more of the following  
23 alternatives:

24 (1) The court may place the child on probation or under protective supervision in the

1 custody of one or both parents, guardian, custodian, relative, or another suitable  
2 person under conditions imposed by the court;

3 (2) The court may require as a condition of probation that the child report for assignment  
4 to a supervised work program, provided the child is not placed in a detention facility  
5 and is not deprived of the schooling that is appropriate to the child's age, needs, and  
6 specific rehabilitative goals. The supervised work program shall be of a constructive  
7 nature designed to promote rehabilitation, shall be appropriate to the age level and  
8 physical ability of the child, and shall be combined with counseling by a court  
9 services officer or other guidance personnel. The supervised work program  
10 assignment shall be made for a period of time consistent with the child's best  
11 interests, but may not exceed ninety days;

12 (3) If the court finds that the child has violated a valid court order, the court may place  
13 the child in a detention facility for not more than ninety days, which may be in  
14 addition to any period of temporary custody, for purposes of disposition if:

15 (a) The child is not deprived of the schooling that is appropriate for the child's  
16 age, needs, and specific rehabilitative goals;

17 (b) The child had a due process hearing before the order was issued; and

18 (c) A plan of disposition from a court services officer is provided to the court;

19 (4) The court may require the child to pay for any damage done to property or for  
20 medical expenses under conditions set by the court if payment can be enforced  
21 without serious hardship or injustice to the child;

22 (5) The court may commit the child to the Department of Corrections for placement in  
23 a juvenile correctional facility, foster home, group home, group care center, ~~or~~  
24 residential treatment center, or other community-based services, if those community-

1 based services were not provided prior to commitment, pursuant to chapter 26-11A.  
2 Prior to placement in a juvenile correctional facility, an interagency team comprised  
3 of representatives from the Department of Human Services, Department of Social  
4 Services, Department of Education, the Department of Corrections, and the Unified  
5 Judicial System shall make a written finding that placement at a Department of  
6 Corrections facility is the least restrictive placement commensurate with the best  
7 interests of the child. Subsequent placement in any other Department of Corrections  
8 facility may be authorized without an interagency review;

9 (6) The court may place a child in an alternative educational program;

10 (7) The court may order the child to be examined and treated at the Human Services  
11 Center;

12 (8) The court may impose a fine not to exceed five hundred dollars;

13 (9) The court may order the suspension or revocation of the child's driving privilege or  
14 restrict the privilege in such manner as the court sees fit or as required by § 32-12-  
15 52.4, including requiring that financial responsibility be proved and maintained;

16 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,  
17 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,  
18 or other party responsible for the child.

19 No adjudicated child in need of supervision may be incarcerated in a detention facility  
20 except as provided in subdivision (3) or (5) of this section.

21 Section 4. That § 26-11A-8 be amended to read as follows:

22 26-11A-8. If a juvenile is committed to the Department of Corrections, the department shall  
23 determine the extent of security and treatment services that are in the best interest of the juvenile  
24 and in the best interest of the state. When the department makes its determination, it shall place

1 the juvenile in a juvenile correctional facility under the department's control pursuant to § 1-15-  
2 1.4 or a group home, group care center, ~~or~~ residential treatment center, or other community-  
3 based services, if those community-based services were not provided prior to commitment.

4 Section 5. That § 26-11A-9 be amended to read as follows:

5 26-11A-9. After the juvenile's initial placement pursuant to § 26-11A-8, the secretary of  
6 corrections may transfer a juvenile to a different Department of Corrections facility or program,  
7 the Human Services Center, detention, shelter, or a group home, group care center, ~~or~~ residential  
8 treatment center, or other community-based services.

9 Section 6. That § 26-11A-20 be amended to read as follows:

10 26-11A-20. The secretary of corrections may ~~at any time order the discharge of a child from~~  
11 ~~the Department of Corrections as a reward for good conduct upon satisfactory evidence of~~  
12 ~~reformation. The discharge of a juvenile from the Department of Corrections as a reward for~~  
13 ~~good conduct upon satisfactory evidence of reformation or for having arrived at the age of~~  
14 ~~twenty-one years shall be a complete release from all penalties incurred by adjudication for the~~  
15 ~~offense for which he was committed.~~ discharge a juvenile from the Department of Corrections  
16 upon the following:

17 (1) As a reward for good conduct and upon satisfactory evidence of reformation;

18 (2) As a result of a conviction for a new crime as an adult, if the juvenile is placed on  
19 adult probation or sentenced to the county jail or state penitentiary;

20 (3) If the juvenile, upon reaching the age of majority, lives outside the jurisdiction of the  
21 State of South Dakota and the interstate compact on juveniles is not available due to  
22 the juvenile's age or circumstances; or

23 (4) If the juvenile is on aftercare and has a suitable placement, and a discharge is  
24 determined to be in the best interests of the juvenile.

1        No adjudicated juvenile may remain within the jurisdiction of the Department of Corrections  
2 beyond the age of twenty-one years. The discharge of a juvenile from the Department of  
3 Corrections constitutes a complete release from all penalties, excluding unpaid fines, fees, or  
4 restitution.

5        Section 7. That chapter 26-11A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7        A risk and needs evaluation shall be conducted for any juvenile under the jurisdiction of the  
8 department who reaches the age of nineteen years who has not been discharged pursuant to § 26-  
9 11A-20. The evaluation shall focus on the amount of progress made while under the jurisdiction  
10 of the department, the ongoing needs of the juvenile, and what risks the juvenile would present  
11 to the community or self if discharged at that point. Additionally, the evaluation shall identify  
12 recommendations regarding treatment and transition services that will prepare the juvenile for  
13 discharge from the jurisdiction of the department. The secretary shall initiate any actions  
14 necessary, including referral or civil commitment to service systems for the mentally ill or  
15 developmentally disabled, to ensure the treatment needs of the juvenile and the safety interests  
16 of the public are best served.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

814N0659

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1174** - 02/15/2007

Introduced by: Representatives Cutler, Bradford, Glenski, Hanks, Kirkeby, McLaughlin, Miles, Rave, and Van Norman and Senators Dempster, Albers, Koetzle, McCracken, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to increase the maximum amount for which used motor  
2 vehicles may be sold or transferred to be exempt from excise tax.

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

4 Section 1. That § 32-5B-2 be amended to read as follows:

5 32-5B-2. Motor vehicles exempted from the provisions of this chapter are as follows:

6 (1) Any motor vehicle exempted in § 32-5-42, 32-5-42.1, or 32-5-1.3;

7 (2) Any motor vehicle acquired by inheritance from or bequest of a decedent;

8 (3) Any motor vehicle previously titled or licensed jointly in the names of two or more  
9 persons and subsequently transferred without consideration to one or more of such  
10 persons;

11 (4) Any motor vehicle transferred without consideration between spouses, between a  
12 parent and child, and between siblings;

13 (5) Any motor vehicle transferred pursuant to any mergers or consolidations of  
14 corporations or plans of reorganization by which substantially all of the assets of a



1 corporation are transferred if the motor vehicle was previously titled, licensed, and  
2 registered in this state;

3 (6) Any motor vehicle transferred by a subsidiary corporation to its parent corporation  
4 for no or nominal consideration or in sole consideration of the cancellation or  
5 surrender of the subsidiary's stock if the motor vehicle was previously titled, licensed,  
6 and registered in this state;

7 (7) Any motor vehicle transferred between an individual and a corporation if the  
8 individual and the owner of the majority of the capital stock of the corporation are  
9 one and the same and if the motor vehicle was previously titled, licensed, and  
10 registered in this state;

11 (8) Any motor vehicle transferred between a corporation and its stockholders or creditors  
12 if to effectuate a dissolution of the corporation it is necessary to transfer the title from  
13 the corporate entity to the stockholders or creditors and if the motor vehicle was  
14 previously titled, licensed, and registered in this state;

15 (9) Any motor vehicle transferred between an individual and a limited or general  
16 partnership if the individual and the owner of the majority interest in the partnership  
17 are one and the same person and if the motor vehicle was previously titled, licensed,  
18 and registered in this state;

19 (10) Any motor vehicle transferred to effect a sale of all or substantially all of the assets  
20 of the business entity if the motor vehicle was previously titled, licensed, and  
21 registered in this state;

22 (11) Any motor vehicle acquired by a secured party or lien holder in satisfaction of a debt;

23 (12) Any motor vehicle sold or transferred which is eleven or more model years old and  
24 which is sold or transferred for ~~one thousand five hundred~~ two thousand two hundred

1           dollars or less before trade-in;

2       (13) Any damaged motor vehicle transferred to an insurance company in the settlement  
3           of an insurance claim;

4       (14) Any motor vehicle owned by a former resident of this state who returns to the state  
5           and who had previously paid vehicle excise tax to this state on the motor vehicle as  
6           evidenced within the department's records or by submission of other acceptable proof  
7           of payment of such tax;

8       (15) Between corporations, both subsidiary and nonsubsidiary, if the individuals who hold  
9           a majority of stock in the first corporation also hold a majority of stock in the second  
10          corporation; but these individuals need not hold the same ratio of stock in both  
11          corporations provided the motor vehicle was previously titled, licensed, and  
12          registered in this state;

13      (16) Any motor vehicle transferred by a trustor to his trustee or from a trustee to a  
14          beneficiary of a trust;

15      (17) Any motor vehicle rented for twenty-eight days or less is subject to the tax imposed  
16          by § 32-5B-20; and

17      (18) Any motor vehicle transferred without consideration to any South Dakota nonprofit  
18          corporation which will donate the motor vehicle to a needy family or individual.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

776N0696

## SENATE ENGROSSED NO. **HB 1241** - 02/21/2007

Introduced by: Representatives Olson (Russell), DeVries, Gassman, Gilson, Halverson, Haverly, Hills, Jerke, Kirkeby, Krebs, McLaughlin, Novstrup (David), Olson (Ryan), Rausch, Steele, Weems, and Wick and Senators McCracken and Koetzle

1 FOR AN ACT ENTITLED, An Act to allow the Board of Regents to sell certain used  
2 computers through university bookstores and to declare an emergency.

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

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of chapters 5-23 or 5-24, if the Board of Regents assesses  
7 a special student fee to students in order to lease personal computers for the use of those  
8 students at a university, the Board of Regents may, upon the expiration of the lease, acquire the  
9 computers and offer them for resale to students, staff or alumni through a university bookstore  
10 or to any political subdivision of the state or in bulk at fair market value on the resale market.

11 Section 2. Whereas, this Act is necessary for the support of the state government and its  
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
13 full force and effect from and after its passage and approval.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

724N0591

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1286** - 02/14/2007

Introduced by: Representatives Vehle, Hills, Krebs, Lust, Moore, Thompson, Turbiville, and Van Etten and Senators Olson (Ed), Dempster, Duenwald, Garnos, Hansen (Tom), Hanson (Gary), Napoli, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to require that records of archaeological sites be maintained  
2 and to provide that certain records remain confidential.

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

4 Section 1. That § 1-20-21 be amended to read as follows:

5 1-20-21. The state archaeologist, on behalf of the State Historical Society Board of Trustees  
6 shall conduct, as part of that board's statewide survey of historic properties, a survey of ~~sites of~~  
7 archaeological sites ~~and anthropological objects and specimens~~ located within the state. ~~The~~  
8 ~~state archaeologist shall make available the results of such survey to all agencies of the state~~  
9 ~~government and its political subdivisions that, in the opinion of the state archaeologist, may~~  
10 ~~conduct activities which may affect such archaeological or anthropological sites~~ and maintain  
11 records of such sites.

12 Section 2. That chapter 1-20 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any records maintained pursuant to § 1-20-21 pertaining to the location of an archaeological



1 site shall remain confidential to protect the integrity of the archaeological site. The state  
2 archaeologist may make the information from the records of an archeological site available to  
3 any agency of state government and any political subdivision of the state or to any tribe, which,  
4 in the opinion of the state archaeologist, may conduct an activity that affects any such site. The  
5 state archaeologist shall also make the information from the records of an archeological site  
6 available to the owner of the land that is an archeological site and may make the information  
7 available to any qualified researcher or research entity.

8 Section 3. That chapter 34-27 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Any record maintained pursuant to § 1-20-21 pertaining to the location of unmarked burials  
11 and other human remains shall remain confidential to protect the integrity of unmarked burials,  
12 human skeletal remains, and associated funerary objects. The state archaeologist may make the  
13 information from the records of such a site available to any agency of state government and any  
14 political subdivision of the state or to any tribe, which, in the opinion of the state archaeologist,  
15 may conduct activities that affect any such burial or human remains. The state archaeologist  
16 shall also make the information from the records of such a site available to the owner of the land  
17 that is such a site and may make the information available to any qualified researcher or research  
18 entity.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

707N0028

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 2** - 02/21/2007

Introduced by: Senators Koetzle, Gray, Hunhoff, Olson (Ed), and Peterson (Jim) and Representatives Pederson (Gordon), Dennert, Heineman, and Putnam at the request of the Constitutional Revision Commission

1 FOR AN ACT ENTITLED, An Act to establish certain procedures regarding the verification  
2 of initiative and referendum signatures.

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

4 Section 1. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Upon the receiving of any initiative petition, referred law petition, or initiated constitutional  
7 amendment petition, the secretary of state shall examine the petition. No signature of a person  
8 may be counted by the secretary of state unless the person is a registered voter in the county  
9 indicated on the signature line. No signature of a person may be counted if the information  
10 required on the petition form is not complete.

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

13 The secretary of state shall verify the signatures pursuant to section 1 of this Act by random  
14 sampling. The random sample of signatures to be verified shall be drawn so that every signature



1 received by the secretary of state shall be given an equal opportunity to be included in the  
2 sample. The secretary of state shall calculate the number of valid signatures by multiplying the  
3 total number of signatures received by the percentage of successfully verified signatures from  
4 the random sample. The secretary of state shall, by rules promulgated pursuant to chapter 1-26,  
5 establish the methodology for conducting the random sample. The random sampling shall be  
6 an examination of five percent of the signatures received.

7 Section 3. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 If the random sample indicates that a sufficient number of qualified electors have signed the  
10 petition, the secretary of state shall certify that the petition has been signed by the required  
11 number of qualified electors and shall place the proposed measure or amendment on the next  
12 general election ballot. If the random sample indicates that an insufficient number of qualified  
13 electors have signed the petition, the secretary of state shall certify that the petition has not been  
14 signed by the required number of qualified electors and may not place the proposed measure or  
15 amendment on the next general election ballot. The secretary of state shall, within five days of  
16 certifying, notify the petition sponsors of the secretary of state's action pursuant to this section.

17 Section 4. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Nothing in this Act prohibits any person from challenging in circuit court the validity of  
20 signatures or other information required on a petition by statute or administrative rule.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

707N0034

## SENATE ENGROSSED NO. **SB 3** - 02/13/2007

Introduced by: Senators Gray, Hunhoff, Koetzle, Olson (Ed), and Peterson (Jim) and Representatives Dennert, Heineman, Pederson (Gordon), and Putnam at the request of the Constitutional Revision Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the circulation and  
2 signing of initiative and referendum petitions and to provide a penalty for violation thereof.

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

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate ~~or submit~~  
6 a constitutional amendment or other measure or to refer legislation to the electors ~~any law~~  
7 pursuant to S.D. Const., Art. III, § 1, shall sign a verification ~~of circulator~~ before filing the  
8 petition with the officer in whose office it is by law required to be filed. The verification shall  
9 prescribe that the circulator made reasonable inquiry and, to the best of the circulator's  
10 knowledge, each person signing the petition is a qualified voter of the state in the county  
11 indicated on the signature line and that no state statute regarding the circulation of petitions was  
12 knowingly violated. The State Board of Elections shall prescribe the form for the verification  
13 ~~of circulator~~. The verification ~~of circulator~~ shall be witnessed by a notary public commissioned  
14 in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1. Any person  
15 who falsely swears to the verification provided for in this section is guilty of a Class 1



1 misdemeanor.

2 Section 2. That § 2-1-6 be amended to read as follows:

3 2-1-6. Every person who is a qualified voter may sign a petition to ~~propose a measure~~  
4 initiate a constitutional amendment or other measure or ~~submit to refer~~ a law. ~~Whoever~~ If a  
5 person, knowing he or she is not a qualified voter of the state or knowing that he or she has  
6 already signed the same petition, signs a petition for initiation ~~or referendum~~ of a constitutional  
7 amendment or other measure or for referral of legislation, ~~when he is not a qualified voter of the~~  
8 ~~state,~~ or if any person signs a name other than his or her own, that person is guilty of a Class 1  
9 misdemeanor.

# 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

400N0261

## SENATE ENGROSSED NO. **SB 47** - 02/05/2007

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

1 FOR AN ACT ENTITLED, An Act to prevent illegal multiple employer welfare arrangements  
2 and other illegal health insurers.

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

4 Section 1. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Terms used in this in this Act mean:

- 7 (1) "Admitted insurer," an insurer licensed to do an insurance business in this state  
8 including an entity authorized pursuant to § 58-18-88, a health maintenance  
9 organization or nonprofit hospital, or medical service corporation under the laws of  
10 this state;
- 11 (2) "Arrangement," a fund, trust, plan, program, or other mechanism by which a person  
12 provides, or attempts to provide, health care benefits;
- 13 (3) "Employee leasing arrangement," a labor leasing, staff leasing, employee leasing,  
14 professional employer organization, contract labor, extended employee staffing or  
15 supply, or other arrangement, under contract or otherwise, whereby one business or



- 1 entity represents that it leases or provides its workers to another business or entity;
- 2 (4) "Employee welfare benefit plan" or "health benefit plan," a plan, fund, or program
- 3 which is or was established or maintained by an employer or by an employee
- 4 organization, or by both, to the extent that the plan, fund, or program is or was
- 5 established or maintained for the purpose of providing for its participants or their
- 6 beneficiaries, through the purchase of insurance or otherwise, medical, surgical or
- 7 hospital care or benefits, or benefits in the event of sickness, accident, disability,
- 8 death, or unemployment;
- 9 (5) "Fully insured," for the health care benefits or coverage provided or offered by or
- 10 through a health benefit plan or arrangement:
- 11 (a) An admitted insurer is directly obligated by contract to each participant to
- 12 provide all of the coverage under the plan or arrangement; and
- 13 (b) The liability and responsibility of the admitted insurer to provide covered
- 14 services or for payment of benefits is not contingent, and is directly to the
- 15 individual employee, member, or dependent;
- 16 (6) "Licensee," a person that is, or that is required to be, licensed or registered under the
- 17 laws of this state as a producer, third party administrator, insurer, or preferred
- 18 provider organization;
- 19 (7) "MEWA," multiple employer welfare arrangement;
- 20 (8) "MEWA contact," the individual or position designated by the division to be the
- 21 MEWA contact as identified on the division web site;
- 22 (9) "Nonadmitted insurer," an insurer not licensed to do insurance business in this state;
- 23 (10) "Preferred provider organization," an entity that engages in the business of offering
- 24 a network of health care providers, whether or not on a risk basis, to employers,

1 insurers, or any other person who provides a health benefit plan including a managed  
2 care contractor registered or required to be registered pursuant to chapter 58-17C;

3 (11) "Producer," a person required to be licensed pursuant to chapter 58-30 of this state  
4 to sell, solicit, or negotiate insurance;

5 (12) "Professional employer organization," an arrangement, under contract or otherwise,  
6 whereby one business or entity represents that it co-employs or leases workers to  
7 another business or entity for an ongoing and extended, rather than a temporary or  
8 project-specific, relationship;

9 (13) "Third party administrator" or "administrator," has the meaning provided in chapter  
10 58-29D.

11 Section 2. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 For purposes of this Act, any of the following acts in this state effected by mail or otherwise  
14 by a nonadmitted insurer or by any person acting with the actual or apparent authority of the  
15 insurer, on behalf of the insurer, constitutes the transaction of an insurance business in or from  
16 this state:

17 (1) The making of or proposing to make, as an insurer, an insurance contract;

18 (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty  
19 or suretyship as a vocation and not merely incidental to any other legitimate business  
20 or activity of the guarantor or surety;

21 (3) The taking or receiving of an application for insurance;

22 (4) The receiving or collection of any premium, commission, membership fees,  
23 assessments, dues, or other consideration for insurance or any part thereof;

24 (5) The issuance or delivery in this state of contracts of insurance to residents of this

- 1 state or to persons authorized to do business in this state;
- 2 (6) The solicitation, negotiation, procurement, or effectuation of insurance or renewals  
3 thereof;
- 4 (7) The dissemination of information as to coverage or rates, or forwarding of  
5 applications, or delivery of policies or contracts, or inspection of risks, the fixing of  
6 rates or investigation or adjustment of claims or losses or the transaction of matters  
7 subsequent to effectuation of the contract and arising out of it, or any other manner  
8 of representing or assisting a person or insurer in the transaction of risks with respect  
9 to properties, risks, or exposures located or to be performed in this state;
- 10 (8) The transaction of any kind of insurance business specifically recognized as  
11 transacting an insurance business within the meaning of the statutes relating to  
12 insurance;
- 13 (9) The offering of insurance; or
- 14 (10) Offering an agreement or contract which purports to alter, amend or void coverage  
15 of an insurance contract.

16 No provision of this section prohibits employees, officers, directors, or partners of a  
17 commercial insured from acting in the capacity of an insurance manager or buyer in placing  
18 insurance on behalf of the employer, if the person's compensation is not based on buying  
19 insurance. The venue of an act committed by mail is at the point where the matter transmitted  
20 by mail is delivered or issued for delivery or takes effect.

21 Section 3. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For the purposes of this Act, the term, transacting of insurance, includes:

- 24 (1) Issuing a stop loss policy covering an employer located in this state. Stop loss policy

1 coverage of an employer for claims incurred under the employer's self-funded health  
2 benefit plan is insurance, not reinsurance, regardless of whether the contract is  
3 described by the insurer as reinsurance;

4 (2) Issuing a stop loss policy to a trust or trustee, whether the trust or trustee is located  
5 in this state or otherwise, with an employer located in this state directly or indirectly  
6 the beneficiary of the trust;

7 (3) Agreeing to loan or advance funds to pay claims incurred under an employer's self-  
8 funded health benefit plan if the availability of funds to advance is significantly  
9 dependent on payment of contributions and the claims experience of two or more  
10 employers who have entered into similar loan or advance agreements; or

11 (4) Engaging in a risk distribution arrangement providing for compensation of loss  
12 through the provision of services, including an arrangement established through  
13 marketing or representations to consumers, without specification in a contract.

14 Section 4. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 For the purposes of this Act, the term, unauthorized health insurance, means health  
17 insurance offered by a nonadmitted insurer except to the extent the laws of this state allow the  
18 coverage to be offered by a nonadmitted insurer licensed in another state through an employer  
19 or group located out of state; and includes health care benefits or coverage offered by a  
20 professional employer organization or an employee leasing arrangement that is not:

21 (1) Fully insured by an admitted insurer; or

22 (2) Licensed or otherwise authorized under the laws of this state to offer a self-funded  
23 health benefit plan.

24 Section 5. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Unauthorized health insurance does not include:

3 (1) Health care benefits or coverage under an employee welfare benefit plan of the  
4 employees of two or more employers (including one or more self-employed  
5 individuals), that is established or maintained under or pursuant to a collective  
6 bargaining agreement under the criteria provided under 29 CFR 2510.3-40 as of  
7 January 1, 2007;

8 (2) Health care benefits or coverage under an employee welfare benefit plan established  
9 or maintained by a rural electric cooperative or a rural telephone cooperative as  
10 defined under 29 U.S.C. § 1002(40)(B) as of January 1, 2007;

11 (3) Health care benefits or coverage under an employee welfare benefit plan of the  
12 employees of two or more employers but only if the employers are within the same  
13 control group so the plan is deemed to be a single employer plan under 29 U.S.C.  
14 § 1002(40)(B) as of January 1, 2007; or

15 (4) Health care benefits or coverage under a church plan as defined under 29 U.S.C  
16 § 1002(33) as of January 1, 2007.

17 Section 6. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 A licensee shall notify the division MEWA contact if the licensee knows a product is, or is  
20 about to be, offered to the public in this state, and the licensee, based on the information known  
21 to the licensee, reasonably should know the product is unauthorized health insurance. A licensee  
22 meets the requirements of this section if that licensee reviews the division's website of admitted  
23 health insurers and either does not notify the division's MEWA contact if that insurer is listed  
24 as an admitted insurer or notifies the division's MEWA contact if that insurer is not listed as an

1 admitted insurer. For the purposes of this section an insurer does not include a stop loss insurer  
2 but a stop loss insurer is a licensee under this section. Knowledge of a producer regarding an  
3 unrelated unauthorized health insurance arrangement is not imputed to licensed insurers  
4 represented by that producer. Circumstances where a licensee knows that a product is, or is  
5 about to be, offered to the public in this state, include if the licensee knows that any person is:

- 6 (1) Recruiting producers to solicit or offer, or is soliciting or offering, a health benefit  
7 plan generally to the public in this state; or
- 8 (2) Seeking an administrator for, or is administering a health benefit plan that is intended  
9 to be offered generally to the public in this state.

10 A licensee complies with this section if the licensee notifies the division within thirty days  
11 or a period reasonable under the circumstances, whichever is later.

12 Section 7. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Circumstances where a licensee reasonably should know that a product is unauthorized  
15 health insurance include the following:

- 16 (1) The licensee knows that the product is represented to be a self-funded plan and that  
17 it is offered widely to the multiple employers or generally to individuals;
- 18 (2) The licensee knows that the product is a professional employer organization self-  
19 funded plan and that it is offered widely to multiple client employers; or
- 20 (3) The licensee knows that the plan is represented to be a self-funded plan established  
21 or maintained pursuant to a collective bargaining agreement and that the plan is  
22 offered widely to multiple employers, or generally to individuals, or both, through  
23 agents who are compensated on a commission or similar basis.

24 A licensee may provide other evidence to the division to indicate that the licensee did not

1 reasonably know that a product is unauthorized. In making its determination regarding whether  
2 a licensee should have known the product is unauthorized and the appropriateness of any penalty  
3 for failing to notify the division of such a product, the division shall consider the prior  
4 experience and the existence or lack of training of that licensee.

5 Section 8. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Any notification made pursuant to section 6 of this Act is confidential and privileged from  
8 disclosure in response to a subpoena or otherwise, and is not subject to discovery or admissible  
9 in evidence in any private action. Nothing in this Act limits the director's authority to use a  
10 report filed or information provided pursuant to this Act in the furtherance of any legal or  
11 regulatory action that the director, in the director's sole discretion, determines to be necessary  
12 to further the purposes of this Act.

13 Section 9. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Nothing in this Act prevents the director from disclosing the contents of a report or  
16 notification filed under this section to the insurance division of any other state or agency of the  
17 federal government at any time, or any other regulatory or law enforcement agency if the agency  
18 or office receiving the report or matters relating thereto agrees to hold it confidential and in a  
19 manner consistent with this Act. A report filed or notification provided under this Act is  
20 confidential and privileged from disclosure in response to a subpoena or otherwise except to the  
21 extent the director determines disclosure is appropriate to accomplish a regulatory purpose.  
22 There is no civil liability imposed on and no cause of action arises from a person's furnishing  
23 information pursuant to this Act concerning suspected, anticipated, or completed acts, if the  
24 information is provided to or received from:

- 1 (1) The director or the director's employees, agents, or representatives;
- 2 (2) Federal, state, or local law enforcement or regulatory officials or their employees,  
3 agents, or representatives;
- 4 (3) A person involved in the prevention and detection of fraudulent insurance acts or that  
5 person's agents, employees, or representatives; or
- 6 (4) The NAIC or its employees, agents, or representatives.

7 Section 10. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 An insurance producer, prior to engaging in or assisting any person to engage in offering a  
10 health benefit plan to an employer or person located in this state, shall carry out appropriate due  
11 diligence to establish that the health benefit plan is not unauthorized health insurance, including  
12 those measures reasonably appropriate to establish:

- 13 (1) For any insurance coverage that is represented as issued relating to the health benefit  
14 plan:
  - 15 (a) The insurer issued the policy;
  - 16 (b) The coverage is as represented;
  - 17 (c) The insurer is an admitted insurer in this state; and
  - 18 (d) The policy has been filed with, and approved by, the division or is exempt  
19 from filing requirements;
- 20 (2) For any health benefit plan that is represented as established or maintained pursuant  
21 to a collective bargaining agreement, the health benefit plan is established or  
22 maintained under or pursuant to a collective bargaining agreement under the criteria  
23 provided under 29 CFR 2510.3-40 as of January 1, 2007;
- 24 (3) For any health benefit plan that is represented as established or maintained by an

1 employee leasing arrangement or professional employer organization, the health  
2 benefit plan is fully insured; or

3 (4) For any health benefit plan that is represented as established by a single employer,  
4 the health benefit plan is covering solely employees and their dependents, and the  
5 employer controls and directs the work of the employee.

6 Section 11. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 An insurance producer, prior to submitting an application for a stop loss policy to an insurer  
9 for a health benefit plan offered to employees, employee dependents, or a person located in this  
10 state, shall carry out appropriate due diligence to establish that the health benefit plan is not  
11 unauthorized health insurance, including measures reasonably appropriate to establish:

12 (1) For any health benefit plan that is represented as established or maintained pursuant  
13 to a collective bargaining agreement, the health benefit plan is established or  
14 maintained under or pursuant to a collective bargaining agreement under the criteria  
15 provided under 29 CFR 2510.3-40 as of January 1, 2007;

16 (2) The health benefit plan that is not offered by an employee leasing arrangement or  
17 professional employer organization to client employers; or

18 (3) For any health benefit plan that is represented as established by a single employer,  
19 that the health benefit plan is covering solely employees, and dependents of  
20 employees, of the employer and the employer controls and directs the work of the  
21 employee.

22 Section 12. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A third party administrator, prior to entering into any administrative contract for a health

1 benefit plan, and prior to assisting any person with administration of a health benefit plan,  
2 covering employees of an employer or a person located in this state, shall carry out appropriate  
3 due diligence to establish that the health benefit plan is not unauthorized health insurance,  
4 including those measures reasonably appropriate to establish:

5 (1) Through initial inquiry, contract provisions and measures to monitor and enforce  
6 compliance with the contract provisions, that for any insurance coverage that is  
7 represented as issued relating to the health benefit plan:

8 (a) The insurer issued the policy;

9 (b) The coverage is as represented;

10 (c) The insurer is an admitted insurer in this state; and

11 (d) The policy has been filed with, and approved by, the division or is exempt  
12 from filing requirements;

13 (2) For any health benefit plan that is represented as established or maintained pursuant  
14 to a collective bargaining agreement, the health benefit plan is established or  
15 maintained under or pursuant to a collective bargaining agreement under the criteria  
16 provided under 29 CFR 2510.3-40 as of January 1, 2007;

17 (3) For any health benefit plan that is represented as established or maintained by an  
18 employee leasing arrangement or professional employer organization, the health  
19 benefit plan is fully insured; or

20 (4) For any health benefit plan that is represented as established by a single employer,  
21 that the health benefit plan is covering solely employees and their dependents, and  
22 the employer controls and directs the work of the employee.

23 Section 13. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 An insurer, prior to issuing a stop loss policy for a health benefit plan covering employees,  
2 employee dependents, or individuals located in this state, shall carry out appropriate due  
3 diligence to establish that the health benefit plan is not unauthorized health insurance, including  
4 those measures reasonably appropriate to establish:

5 (1) For any health benefit plan that is represented as established or maintained pursuant  
6 to a collective bargaining agreement, the health benefit plan is established or  
7 maintained under or pursuant to a collective bargaining agreement under the criteria  
8 provided under 29 CFR 2510.3-40 as of January 1, 2007;

9 (2) The health benefit plan is not offered by an employee leasing arrangement or  
10 professional employer organization to client employers; or

11 (3) For any health benefit plan that is represented as established by a single employer,  
12 the health benefit plan is covering solely employees, and dependents of employees,  
13 of the employer and the employer controls and directs the work of the employee.

14 Section 14. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 No insurer may engage in the transacting of insurance by issuing a stop loss policy unless  
17 the insurer is an admitted insurer in this state and the stop loss policy form has been filed and  
18 approved by the division, unless the form is exempt by law from filing. The transacting of  
19 insurance includes:

20 (1) Issuing a stop loss policy covering an employer located in this state. Coverage of an  
21 employer for claims incurred under the employer's self-funded health benefit plan  
22 with a stop loss policy is insurance, not reinsurance, regardless of whether the  
23 contract is described by the insurer as reinsurance; or

24 (2) Issuing a stop loss policy to a trust or trustee, whether the trust or trustee is located

1 in this state or otherwise, if an employer located in this state is directly or indirectly  
2 the beneficiary of the trust.

3 Section 15. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 No insurer may engage in the transacting of insurance in this state by issuing a stop loss  
6 policy unless, prior to issuing a contract for the stop loss policy, the insurer discloses clearly and  
7 conspicuously to the employer, in writing the following:

- 8 (1) The employer is not covered for claims below the stop loss attachment point;
- 9 (2) A description of the attachment point, including the specific and aggregate  
10 attachment points; and
- 11 (3) The insurer provides no other coverage of the employer's retention.

12 Section 16. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 A preferred provider organization, prior to entering into any contract with a person offering  
15 or providing a health benefit plan in this state, shall carry out appropriate due diligence to  
16 establish that the health benefit plan is not unauthorized health insurance, including those  
17 measures reasonably appropriate to establish:

- 18 (1) Through initial inquiry, contract provisions, and measures to monitor and enforce  
19 compliance with the contract provisions, that for any insurance coverage that is  
20 represented as issued relating to the health benefit plan:
  - 21 (a) The insurer issued the policy;
  - 22 (b) The coverage is as represented;
  - 23 (c) The insurer is an admitted insurer in this state; and
  - 24 (d) The policy has been filed with and approved by the division or is exempt from

1 filing requirements;

2 (2) For any health benefit plan that is represented as established or maintained pursuant  
3 to a collective bargaining agreement, the health benefit plan is established or  
4 maintained under or pursuant to a collective bargaining agreement under the criteria  
5 provided under 29 CFR 2510.3-40 as of January 1, 2007;

6 (3) For any health benefit plan that is represented as established or maintained by an  
7 employee leasing arrangement or professional employer organization, the health  
8 benefit plan is fully insured; or

9 (4) For any health benefit plan that is represented as established by a single employer,  
10 the health benefit plan is covering solely employees, and dependents of employees,  
11 of the employer and the employer controls and directs the work of the employee.

12 Section 17. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 A licensee or other person who acts according to the written advice of the MEWA contact  
15 has a defense to any violation of sections 11 to 16, inclusive, of this Act if the information  
16 provided by the licensee or other person to the MEWA contact, to the extent material to the  
17 MEWA contact's advice, is accurate and complete.

18 For the purpose of this Act, the division's published list of admitted insurers on its web site  
19 is deemed to be accurate. A licensee or other person has a defense to any allegation that a listed  
20 insurer is not an admitted insurer. Nothing in this Act requires a licensee or other person to  
21 notify the division of an unauthorized product or insurer if that licensee or person has reviewed  
22 the division's website and the unauthorized insurer is listed as an admitted insurer.

23 Section 18. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 Any violation of sections 10 to 16, of this Act, is mitigated, and the division shall reduce  
2 or eliminate any sanction otherwise applicable, if a licensee or other person demonstrates all of  
3 the following:

4 (1) The licensee or other person maintained supervisory procedures and controls that  
5 complied with section 20 of this Act;

6 (2) The violation occurred despite the maintenance of those procedures and controls;

7 (3) The licensee or other person promptly reported the health benefit plan to the MEWA  
8 contact once the licensee or other person had actual knowledge that it was  
9 unauthorized health insurance; and

10 (4) The licensee or other person took prompt corrective action.

11 Section 19. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Nothing in sections 17 or 18 of this Act requires a producer, third party administrator,  
14 insurer, or preferred provider organization to conduct due diligence with respect to a health  
15 benefit plan that it is not assisting and with respect to which it does not engage in the transacting  
16 of insurance.

17 Section 20. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 An insurance producer, third party administrator, insurer, preferred provider organization,  
20 or an agent of the same shall establish and maintain documented supervision procedures and  
21 controls that are reasonably designed to achieve compliance with this Act. The supervisory  
22 procedures shall include:

23 (1) Training;

24 (2) Internal controls;

- 1 (3) Periodic audits;
- 2 (4) Supervisory review; and
- 3 (5) Monitoring and enforcement of contractual provisions established under sections 12
- 4 and 16 of this Act.

5 The extent of the supervisory procedures and controls a producer is required to maintain  
6 under this section may appropriately reflect the size and complexity of the producer's operations  
7 and the scope and nature of the producer's insurance activities.

8 Section 21. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 An insurer providing health insurance in this state shall require its listed producers to obtain  
11 not less than one hour of continuing education every four years covering:

- 12 (1) Identification of unauthorized health insurance; and
- 13 (2) The producer's responsibilities under this Act.

14 A third party administrator, preferred provider organization, or insurer shall include in its  
15 application for a license a brief summary of its procedures and controls required under section  
16 20 of this Act. A license or registration application may be denied if the applicant fails to  
17 demonstrate that the applicant maintains the required procedures and controls.

18 Section 22. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 If a preferred provider organization violates a provision of this Act, the organization's  
21 registration may be suspended or revoked or other action may be taken by the director as is  
22 otherwise authorized by this title to ensure that compliance with this Act will be achieved in the  
23 future.

24 Section 23. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Nothing in this Act applies to a joint powers agreement authorized pursuant to chapter 1-24.

3 Section 24. Nothing in this Act applies to an admitted insurer, nonadmitted insurer, or a  
4 MEWA if the arrangement is neither issued to a person in this state nor solicited in this state.

5 For purposes of this section, the phrase, issued to a person, does not include providing a  
6 certificate of coverage, evidence of coverage, or other similar documents to an employee,  
7 participant, or dependent showing coverage under an employer's health benefit plan or  
8 arrangement.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0349

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 57** - 01/19/2007

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

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a straw bale  
2 house at the McCrory Gardens on the campus of South Dakota State University and to make  
3 an appropriation therefor.

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

5 Section 1. The board of the Board of Regents may contract for the construction, completion,  
6 furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water,  
7 sewer, electric facilities, architectural and engineering services, asbestos abatement, removal  
8 of existing roofing and structures, and such other services and improvements as may be required  
9 to erect a straw bale house at the McCrory Gardens on the campus of South Dakota State  
10 University in Brookings, in Brookings County, at an estimated cost of seventeen thousand five  
11 hundred dollars.

12 Section 2. There is hereby appropriated to the Board of Regents the sum of seventeen  
13 thousand five hundred dollars (\$17,500), or so much thereof as may be necessary, from private  
14 donations and grants received by South Dakota State University for the purpose of constructing  
15 the facility described in section 1 of this Act.



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

4       Section 4. The design and construction of the facilities approved by this Act shall be under  
5 the general supervision of the Bureau of Administration as provided in § 5-14-2. The  
6 commissioner of the Bureau of Administration and the executive director of the Board of  
7 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures  
8 authorized by this Act.

9       Section 5. No general fund dollars may be used for the maintenance and repair of the  
10 facilities authorized by this Act.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

556N0050

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 142** - 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: Senators Katus, Apa, Hanson (Gary), Jerstad, Kloucek, Koetzle, and Napoli  
and Representatives Van Norman, Boomgarden, Elliott, Kirkeby, Lucas,  
Moore, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to provide for collection of certain workers' compensation  
2 by court order.

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

4 Section 1. That § 62-7-31 be amended to read as follows:

5 62-7-31. Any party in interest may, after expiration of the time for a petition for review or  
6 appeal, present a memorandum of agreement, approved by the department, or a certified copy  
7 of any portion of an order or decision of the department; from which no petition for review or  
8 appeal has been filed, together with all papers in connection with the case, to the circuit court  
9 for the county in which the injury occurred ~~whereupon~~. Thereupon the court shall render a  
10 judgment in accordance ~~therewith and~~ with the memorandum of agreement or portion of any  
11 order or decision of the department from which no petition for review has been filed, and the  
12 court shall notify the parties. ~~Such~~The judgment shall have the same effect and in all  
13 proceedings in relation thereto be the same as though rendered in an action duly heard and  
14 determined by the court except that ~~there shall be no appeal therefrom~~ may be made on



1 questions of fact.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

625N0491

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 159** - 02/21/2007

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

Introduced by: Senators Gray, Garnos, and Turbak and Representatives Faehn, Lust, Street, Thompson, and Willadsen

1 FOR AN ACT ENTITLED, An Act to allow a taxpayer who is the subject of an audit to provide  
2 certain pertinent papers and documents after the prescribed deadline under limited  
3 circumstances.

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

5 Section 1. That § 10-59-7 be amended to read as follows:

6 10-59-7. The secretary may perform audits of the books and records of any person subject  
7 to tax in the chapters set out in § 10-59-1. Unless the secretary determines that delay may  
8 jeopardize the collection of a tax, the secretary shall mail a notice of intent to audit at least thirty  
9 days before commencement of the audit to the person to be audited. The thirty-day period may  
10 be waived by mutual consent of both parties. Any documents or records required to be kept by  
11 law to evidence reduction, deduction, or exemption from tax not prepared for presentation to  
12 the auditor within sixty days from the commencement date of the audit do not have to be  
13 considered by the auditor or the secretary. However, additional pertinent papers or documents  
14 shall be considered if all the following apply:



- 1       (1)   The additional pertinent papers or documents are material;
- 2       (2)   There were good reasons for failure to present other pertinent papers or documents  
3           as referenced in § 10-45-45 or 10-46-43, within the prescribed time period; and
- 4       (3)   The additional pertinent papers or documents are submitted within a reasonable time  
5           period prior to any hearing scheduled pursuant to § 10-59-9.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

715N0658      **SENATE COMMERCE COMMITTEE ENGROSSED NO.**  
**SB 160 - 01/30/2007**

Introduced by: Senators Gray, Abdallah, Apa, Gant, Garnos, Koetzle, McCracken, and  
Nesselhuf and Representatives Rounds, Faehn, Krebs, and Willadsen

1    FOR AN ACT ENTITLED, An Act to require timely honoring of rebates and to provide a  
2        private cause of action.

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

4        Section 1. Terms used in this Act mean:

5        (1)    "Provider," any cellular phone service provider or manufacturer;

6        (2)    "Rebate fulfillment company," any third party handling rebate claims on behalf of a  
7            cell phone service provider;

8        (3)    "Date of issuance," the date on which the customer purchased a good or service for  
9            which a rebate was offered.

10       Section 2. Any provider offering a rebate shall pay, or ensure payment, of a valid rebate  
11       claim within sixty days of the date of issuance or, in cases where a rebate claim must be mailed  
12       in by a customer, within sixty days of the date on which valid rebate claim was mailed. In no  
13       instance may a provider or rebate fulfillment company require a customer to mail in a rebate  
14       claim later than the date of the next regular billing following the date of issuance. If a provider  
15       or rebate fulfillment company dishonors a rebate claim, the reasons for such dishonor shall be



1 provided to the customer, in writing, along with the original rebate claim and attached  
2 documentation no later than thirty days from the date on which the rebate claim was mailed.  
3 Rebate offers must remain valid for at least nine months from the date of issuance. Any  
4 violation of this section is a Class 2 misdemeanor.

5 Section 3. Any person may bring an action for civil damages against any provider or rebate  
6 fulfillment company who violates section 2 of this Act, in addition to any other penalties  
7 provided by law. The civil damages are limited to:

8 (1) Payment of up to three times the amount of any wrongfully dishonored rebate claim  
9 or rebate claim not honored within the time periods specified in this Act, including  
10 the cost of investigation and litigation; and

11 (2) Payment in the sum of two thousand dollars for each wrongfully dishonored rebate  
12 claim or rebate claim not honored within the time periods specified in this Act.

13 In the event the plaintiff substantially prevails, the court shall award to the plaintiff, in  
14 addition to other relief provided in this section, costs and reasonable attorney fees.