



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0209

## SENATE ENGROSSED NO. **HB 1048** - 02/22/2007

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

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

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

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

4 Section 1. Terms used in this Act mean:

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

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

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



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

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

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

- 18 (a) The nomination, election, or re-election of any person to public office; or
- 19 (b) The placement of a ballot question on the ballot or the adoption or defeat of  
20 any ballot question submitted.

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

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

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

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

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

12 (a) In context has no other reasonable meaning than to urge the election or defeat  
13 of one or more clearly identified candidates, public office holders, or the  
14 placement of a ballot question on the ballot or the adoption or defeat of any  
15 ballot question by use of explicit words of advocacy of election or defeat. The  
16 following words convey a message of express advocacy: vote, re-elect,  
17 support, cast your ballot for, reject, and defeat; or

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

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

1                   (ii) Reasonable minds could not differ as to whether it encourages actions  
2                                   to elect or defeat one or more clearly identified candidates, public office  
3                                   holders, or the placement of a ballot question on the ballot or the  
4                                   adoption or defeat of any ballot question or encourages some other kind  
5                                   of action;

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

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

24           (12) "In-kind," a good or service provided at no charge or for less than its fair market

1 value. The term does not include the value of services provided by a person as a  
2 volunteer for or on behalf of any candidate, political committee, or political party,  
3 including the free or discounted use of any person's residence or office;

4 (13) "Legislative office," the Senate and the House of Representatives of the South  
5 Dakota Legislature;

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

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

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

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

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

1 (a) Person that makes a contribution to a political committee or political  
2 party; or

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

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

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

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

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

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

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

1 Section 2. A political committee shall have a chair and a treasurer, which may be the same  
2 person. The chair and treasurer for a candidate campaign committee shall be appointed by the  
3 candidate, and the candidate may serve as either, or both, such officers. No political committee  
4 may receive or make contributions or pay expenses while the office of treasurer is vacant. A  
5 violation of this section is a Class 2 misdemeanor.

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

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

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

24 Section 6. The statement of organization shall include:

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

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

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

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

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

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

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

24 Section 11. No person, organization, candidate, political committee, or political party may

1 give or accept a contribution unless the name and residence address of the contributor is made  
2 known to the person receiving the contribution. Any contribution, money, or other thing of value  
3 received by a candidate, political committee, or political party from an unknown source shall  
4 be donated to a nonprofit charitable organization. A violation of this section is a Class 2  
5 misdemeanor.

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

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

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

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

22 Section 16. Any person or qualified nonprofit corporation that makes an independent  
23 expenditure for a communication which expressly advocates for or against a candidate, public  
24 office holder, ballot question, or political party totaling five hundred dollars or more shall file

1 a statement with the secretary of state that is received within forty-eight hours of the time that  
2 the communication is disseminated, broadcast, or otherwise published.

3 Any organization that makes an independent expenditure for a communication which  
4 expressly advocates for or against a public office holder, ballot question, or political party  
5 totaling five hundred dollars or more shall file a statement with the secretary of state that is  
6 received within forty-eight hours of the time that the communication is disseminated, broadcast,  
7 or otherwise published.

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

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

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

- 17 (1) Any news articles, editorial endorsements, opinion, or commentary writings, or letter  
18 to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical  
19 not owned or controlled by a candidate, political committee, or political party;
- 20 (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or  
21 controlled by a candidate, political committee, or political party;
- 22 (3) Any communication by a person made in the regular course and scope of the person's  
23 business or ministry or any communication made by a membership organization  
24 solely to members of the organization and the members' families; and

1       (4) Any communication that refers to any candidate only as part of the popular name of  
2           a bill or statute.

3       Section 17. Any person, political committee, political party, or organization that makes a  
4       payment or promise of payment totaling one thousand dollars or more for a communication that  
5       clearly identifies a candidate or public office holder, but does not expressly advocate the  
6       election or defeat of the candidate or public office holder, and that is disseminated, broadcast,  
7       or otherwise published within sixty days of an election, shall file a statement with the secretary  
8       of state disclosing the name, street address, city, and state of such person, political committee,  
9       political party, or organization. The statement shall also include the name of the candidate or  
10      public office holder mentioned in the communication, the amount spent on the communication,  
11      and a description of the content of the communication. The statement shall be received and filed  
12      within forty-eight hours of the time that the communication is disseminated, broadcast, or  
13      otherwise published. A violation of this section is a Class 1 misdemeanor.

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

15      (1) Any news articles, editorial endorsements, opinion or commentary writings, or letter  
16           to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical  
17           not owned or controlled by a candidate, political committee, or political party;

18      (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or  
19           controlled by a candidate, political committee, or political party;

20      (3) Any communication by a person made in the regular course and scope of the person's  
21           business or ministry or any communication made by a membership organization  
22           solely to members of the organization and the members' families; and

23      (4) Any communication that refers to any candidate only as part of the popular name of  
24           a bill or statute.

1 Section 18. No organization may make a contribution to a candidate committee, political  
2 action committee, or political party or make an independent expenditure expressly advocating  
3 the election or defeat of a candidate. An organization may make a contribution to a ballot  
4 question committee organized solely for the purpose of influencing an election on a ballot  
5 question and independent expenditures regarding the placement of a ballot question on the ballot  
6 or the adoption or defeat of a ballot question. The prohibitions of this section do not apply to  
7 independent expenditures expressly advocating the election or defeat of a candidate by a  
8 qualified nonprofit corporation from its treasury funds. An organization may create a political  
9 action committee. A violation of this section is a Class 1 misdemeanor.

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

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

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

18 (a) The name of the organization;

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

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

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

- 1           (a) The name of the organization;
- 2           (b) The street address of the organization's principal office; and
- 3           (c) The names and street addresses of any owners, directors, or officers of the
- 4                 organization including the name and street address of the person authorizing
- 5                 the contribution.

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

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

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

24           Section 21. No candidate, political committee, or political party may accept any contribution

1 from any state, state agency, political subdivision of the state, foreign government, Indian tribe,  
2 federal agency, or the federal government. A violation of this section is a Class 1 misdemeanor.

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

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

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

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

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

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

24 Section 23. A campaign finance disclosure statement shall be received by the secretary of

1 state and filed by any statewide ballot question committee by 5:00 p.m. on the fifth day of July  
2 during the year in which the ballot question is to be voted on complete through the month of  
3 June. A violation of this section is a Class 1 misdemeanor.

4 Section 24. A campaign finance disclosure statement shall include the following  
5 information:

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

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

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

1       (29) The statement shall include a certification that the contents of the statement is true  
2               and correct signed by the treasurer of the political committee or political party.

3       Section 25. The last campaign finance statement filed shall be a termination statement. The  
4 termination statement shall be filed within thirty days following disposition of all funds and  
5 property and the payment of all obligations.

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

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

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

1 contribution. A violation of this section is a Class 1 misdemeanor.

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

4 (1) Each contribution and in-kind contribution received by the political committee or  
5 political party;

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

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

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

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

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

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

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

24 Section 31. The secretary of state shall adopt forms for statements of organization and

1 campaign finance disclosure statements. Each person filing a statement of organization or  
2 campaign finance disclosure statement shall subscribe to an oath or affirmation verifying that  
3 the contents of the statement are true and correct to the best of the knowledge and belief of the  
4 signer.

5 Section 32. The secretary of state shall endorse the date of the filing on each statement filed  
6 pursuant to this Act, and shall preserve the statement among the public records of the office.  
7 However, the statement may be destroyed if the Records Destruction Board, acting pursuant to  
8 § 1-27-19, declares the records to have no further administrative, legal, fiscal, research, or  
9 historical value.

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

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

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

1 county where the person resides, or in the county where the organization, political party, or  
2 political committee has its principal office.

3 Section 36. The attorney general may, for the purpose of enforcing the provisions of this  
4 Act, inspect or examine any political committee or political party records required to be  
5 maintained by this Act. It is a Class 1 misdemeanor for any person having charge, control, or  
6 possession of political committee or political party records to neglect or refuse the attorney  
7 general reasonable access to any records required to be maintained by this Act which are  
8 necessary to enforce the provisions of this Act.

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

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

17 Section 39. The provisions of this Act apply to each statewide office, legislative office,  
18 statewide ballot question, county offices and ballot questions in counties with population greater  
19 than five thousand according to the most recent Federal census, and school district offices and  
20 ballot questions in school districts with more than two thousand average daily membership. Any  
21 school district election covered by this Act shall conform to the contribution limits applicable  
22 to legislative offices. This Act does not apply to the unified judicial system, nor does this Act  
23 apply to any township, municipal, or special purpose district offices or ballot questions.  
24 However, the governing body of any county, township, municipality, school district, or special

1 purpose district not otherwise covered by this Act may adopt an ordinance or resolution to make  
2 the provisions of this Act, with or without amendments, applicable to county, township,  
3 municipal, school district, or special purpose district elections.

4 Section 40. The state's attorney shall investigate any violation of the provisions of this Act  
5 relating to elections for county and school district office or ballot questions, and prosecute any  
6 violation thereof. In lieu of bringing a criminal action, the state's attorney may elect to file a civil  
7 action for any violation of this Act. In a civil action, in addition to other relief, the court may  
8 impose a civil penalty in the amount provided by statute, or if not provided, in an amount not  
9 to exceed one thousand dollar for each violation. Any civil penalty recovered shall be paid to  
10 the county general fund if the violation arose out of a county office or ballot question or the  
11 school district general fund if the violation arose out of a school district office or ballot question.  
12 A civil enforcement action for a violation of the Act concerning a school district office or ballot  
13 question may, with the consent of the state's attorney, be brought by the school district's  
14 attorney. A civil action brought under this section shall be commenced in the county where  
15 filings under the Act are required, in the county where the person resides or in the county where  
16 the organization, political party, or political committee has its principal office.

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

23 Section 42. Any statement, form, or filing required by this Act shall be filed with the  
24 secretary of state in the case of a statewide office or legislative office election. Any statement,

1 form, or filing required by this Act shall be filed with the county auditor in the case of a county  
2 office election, with the school business manager in the case of a school district office election,  
3 or with the person in charge of the election in the case of other political subdivisions or special  
4 purpose districts.

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

6 Section 44. For the purposes of any statement filed by a political party pursuant to sections  
7 22 to 24, inclusive, of this Act, the political party shall itemize all contributions to and  
8 expenditures from each fund and each subfund that the political party maintains.

# 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

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

400N0253

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB 41** - 02/22/2007

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

1 FOR AN ACT ENTITLED, An Act to revise the procedures used to assess and collect unpaid  
2 cigarette taxes, to establish certain penalties, to revise certain provisions regarding the  
3 seizure of contraband cigarettes, and to declare an emergency.

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

5 Section 1. That § 10-50-6 be amended to read as follows:

6 10-50-6. ~~Any~~ No cigarette on which the tax imposed by this chapter has been paid, ~~such the~~  
7 payment being evidenced by the affixing of ~~such stamp or imprint~~, is not the stamp required by  
8 § 10-50-18 is subject to a further tax under this chapter. ~~However, any person, who possesses~~  
9 ~~two thousand or more cigarettes that do not bear a tax stamp or imprint indicating that the South~~  
10 ~~Dakota cigarette tax has been paid, shall pay the tax imposed pursuant to § 10-50-3 plus a~~  
11 ~~penalty equal to ten percent of the total tax due.~~ Any person who possesses or receives any  
12 cigarettes that do not bear a tax stamp indicating that the tax imposed by this chapter has been  
13 paid, shall pay the tax imposed pursuant to § 10-50-3, plus interest at the rate of one and  
14 one-quarter percent for each month or part of a month the tax is unpaid, beginning thirty days  
15 after the person's first possession or receipt of the cigarettes.



1 Any person who possesses or receives:

2 (1) More than two thousand but less than six thousand cigarettes that do not bear a tax  
3 stamp indicating that the tax imposed by this chapter has been paid, shall pay the tax  
4 imposed pursuant to § 10-50-3, and interest imposed by this Act, plus a penalty of  
5 twenty percent of the total tax due; and

6 (2) Six thousand or more cigarettes that do not bear a tax stamp indicating that the tax  
7 imposed by this chapter has been paid, shall pay the tax imposed pursuant to  
8 § 10-50-3, and interest imposed by this Act, plus a penalty of one hundred percent  
9 of the total tax due.

10 In addition to the requirements to pay the tax, penalty, and interest, any person who  
11 possesses or receives:

12 (1) Six thousand or more but less than fourteen thousand cigarettes that do not bear a tax  
13 stamp indicating that the tax imposed by this chapter has been paid is guilty of a  
14 Class 1 misdemeanor; and

15 (2) Fourteen thousand or more cigarettes that do not bear a tax stamp or imprint  
16 indicating that the tax imposed by this chapter has been paid is guilty of a Class 4  
17 felony.

18 Except as otherwise provided in this section, the provisions of chapter 10-59 apply to the  
19 assessment and collection of the tax, penalty, and interest.

20 Section 2. That § 10-50-61 be amended to read as follows:

21 10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a  
22 sale occurs, a tax upon all tobacco products in this state and upon any person engaged in  
23 business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty-five percent  
24 of the wholesale purchase price of such tobacco products. ~~Such~~ The tax shall be imposed at the

1 time the distributor or wholesaler brings or causes to be brought into this state tobacco products  
2 for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state;  
3 ~~or ships or transports tobacco products to dealers in this state to be sold by those dealers; or at~~  
4 the time a person possesses or receives untaxed tobacco products. For the purposes of this  
5 chapter, wholesale purchase price is the price for which a manufacturer sells tobacco products  
6 to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

7 Section 3. That § 10-50-35 be amended to read as follows:

8 10-50-35. Any cigarettes found at any place in this state without the stamps affixed thereto  
9 ~~or without bearing the imprint impressed by a suitable metering machine approved by the~~  
10 ~~secretary of revenue and regulation as required~~ required to be affixed by this chapter ~~unless such~~  
11 ~~cigarettes shall be in the possession of a licensed distributor or wholesaler in the original~~  
12 ~~unopened shipping package or unless they shall be in a course of transit from without this state~~  
13 ~~and consigned to a licensed distributor or a licensed wholesaler are declared to be contraband~~  
14 ~~goods and may be seized by the secretary, his agents, or employees, or by any peace officer of~~  
15 ~~this state when directed by the secretary to do so, without a warrant, unless the cigarettes are in:~~

- 16 (1) The possession of a licensed distributor or wholesaler in the original unopened  
17 shipping package; or  
18 (2) A course of transit from without this state and consigned to a licensed distributor or  
19 a licensed wholesaler.

20 Section 4. Whereas, this Act is necessary for the support of the state government and its  
21 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
22 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

580N0185

## SENATE ENGROSSED NO. **SB 76** - 01/29/2007

Introduced by: Senators Hunhoff, Heidepriem, Knudson, Koetzle, and Turbak and  
Representatives Feinstein, Cutler, Gillespie, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding health care decisions  
2 by agents.

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

4 Section 1. That § 59-7-2.5 be amended to read as follows:

5 59-7-2.5. The attorney-in-fact or agent may make any health care decisions for the principal  
6 which the principal could make individually if ~~he~~ the principal had decisional capacity.  
7 However, all such decisions shall be made in accordance with accepted medical ~~practice~~  
8 standards. Whenever making any health care decision for the principal, the attorney-in-fact or  
9 agent shall consider the recommendation of the attending physician, the decision that the  
10 principal would have made if the principal then had decisional capacity, if known, and the  
11 decision that would be in the best interest of the principal.

12 Section 2. That § 59-7-2.7 be amended to read as follows:

13 59-7-2.7. The attorney-in-fact or agent may not authorize the withholding or withdrawal of  
14 comfort care from the principal ~~of comfort care and nutrition or hydration. However, artificial~~  
15 ~~nutrition or hydration may be withheld or withdrawn if.~~ The attorney-in-fact or agent may



1 authorize that artificial nutrition or hydration be withheld or withdrawn if one or more of the  
2 following exist:

3 (1) Artificial nutrition or hydration is not needed for comfort care or the relief of pain  
4 and the attending physician reasonably believes that the principal's death ~~will occur~~  
5 ~~within approximately one week~~ is imminent; or

6 (2) Artificial nutrition or hydration cannot be physically assimilated by the principal; or

7 (3) The burden of providing artificial nutrition or hydration outweighs its benefit,  
8 provided that the determination of burden refers to the provision of artificial nutrition  
9 or hydration itself and not to the quality of the continued life of the principal; or

10 (4) ~~There is clear and convincing evidence that artificial nutrition or hydration was~~  
11 ~~refused by the person prior to loss of decisional capacity; or the power of attorney~~  
12 ~~directs that artificial nutrition or hydration not be given or specifically authorizes the~~  
13 ~~attorney-in-fact or agent to make that decision; or prior to the loss of decisional~~  
14 ~~capacity there is clear and convincing evidence that the principal expressed the desire~~  
15 ~~that artificial nutrition or hydration not be given.~~

16 ~~— Even in the exceptions listed in subdivisions (1), (2), (3) and (4) of this section, artificial~~  
17 ~~nutrition or hydration may not be withheld or withdrawn if it is needed for comfort or the relief~~  
18 ~~of pain~~ There is clear and convincing evidence that the principal expressed the desire that  
19 artificial nutrition or hydration be withheld, or refused artificial nutrition or hydration prior to  
20 the loss of decisional capacity; or

21 (5) The principal expressed in the document creating the power of attorney that artificial  
22 nutrition or hydration be withheld; or

23 (6) The principal expressly authorized, in the writing creating the power of attorney, the  
24 attorney-in-fact or agent to direct the withholding of artificial nutrition or hydration.

1 Section 3. That § 59-7-8 be amended to read as follows:

2 59-7-8. A physician or other ~~healthcare~~ health care provider as defined in subdivision 34-  
3 12C-1(5) acting in reliance on a health care decision by an attorney-in-fact or agent whom the  
4 physician or ~~healthcare~~ health care provider believes in good faith is authorized by this chapter  
5 to make a health care decision for the principal or a physician or other ~~healthcare~~ health care  
6 provider declining to act in reliance on a health care decision by an attorney-in-fact or agent  
7 whom the physician or ~~healthcare~~ health care provider believes in good faith is not authorized  
8 by this chapter to make a health care decision for the principal is not subject to criminal  
9 prosecution, civil liability, or professional disciplinary action on the ground that the  
10 attorney-in-fact or agent either had or did not have authority to make a health care decision or  
11 for disclosing to the attorney-in-fact or agent medical records or other information.

12 A physician or other ~~healthcare~~ health care provider who in good faith believes that the  
13 principal has or does not have decisional capacity under § 59-7-2.6 is not subject to criminal  
14 prosecution, civil liability, or professional disciplinary action for making that determination.

# 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 (houghoused) 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.