

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

637N0106

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1091 - 02/21/2007

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to permit magistrate courts to administer adult probationary
2 drug court programs under certain circumstances.

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

4 Section 1. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any magistrate court with a magistrate judge presiding has authority, upon assignment of
7 the presiding judge of the circuit, to act in lieu of a circuit judge having jurisdiction to
8 administer and preside over an adult probationary drug court program.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

913N0632

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1200 - 02/21/2007

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

Introduced by: Representatives Cutler, Gilson, Hargens, Lucas, Miles, Moore, Novstrup (David), Nygaard, Peters, Street, and Vehle and Senators Albers, Abdallah, Gray, Jerstad, and Koetzle

1 FOR AN ACT ENTITLED, An Act to increase the penalty for multiple violations of disorderly
2 conduct.

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

4 Section 1. That § 22-18-35 be amended to read as follows:

5 22-18-35. Any person who intentionally causes serious public inconvenience, annoyance,
6 or alarm to any other person, or creates a risk thereof by:

7 (1) Engaging in fighting or in violent or threatening behavior;

8 (2) Making unreasonable noise;

9 (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or

10 (4) Obstructing vehicular or pedestrian traffic;

11 is guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor. However, if the
12 defendant has been convicted of, or entered a plea of guilty to, three or more violations of this
13 section, within the preceding ten years, the defendant is guilty of a Class 1 misdemeanor for any
14 fourth or subsequent offense.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

763N0736

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1288 - 02/21/2007

Introduced by: Representatives Cutler, Dykstra, Feinstein, Krebs, Nygaard, Olson (Russell), Olson (Ryan), Peters, and Rave and Senators Gray, Abdallah, Dempster, Gant, Knudson, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to permit trustees to decant a trust under certain
2 circumstances.

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

4 Section 1. Unless the terms of the instrument expressly provide otherwise, a trustee who has
5 discretionary authority, under the terms of a testamentary instrument or irrevocable inter vivos
6 trust agreement, to make a distribution of income or principal to, or for the benefit of, one or
7 more beneficiaries of a trust (the "first trust"), may instead exercise such authority by appointing
8 all or part of the income or principal subject to the power in favor of a trustee of a trust (the
9 "second trust") under an instrument other than that under which the power to distribute is
10 created or under the same instrument, in the event that the trustee of the first trust decides that
11 the appointment is necessary or desirable after taking into account the purposes of the first trust,
12 the terms and conditions of the second trust, and the consequences of the distribution. However,
13 the following apply:

14 (1) The second trust has as beneficiaries only one or more of those beneficiaries of the



1 first trust to or for whom a discretionary distribution may be made from the first trust
2 and who are proper objects of the exercise of the power, or one or more of those
3 other beneficiaries of the first trust to or for whom a distribution of income or
4 principal may have been made in the future from the first trust at a time or upon the
5 happening of an event specified under the first trust;

6 (2) No trustee of the first trust may:

7 (a) Exercise such authority to make a distribution from the first trust if the trustee
8 is a beneficiary of the first trust, or if any beneficiary may change the trustees
9 of the first trust, unless the exercise of such authority is for health, education,
10 maintenance, or support; or

11 (b) Exercise such authority to the extent that doing so would have the effect either
12 of (i) increasing the distributions that can be made in the future from the
13 second trust to the trustee of the first trust or to a beneficiary who may change
14 the trustees of the first trust, or (ii) removing restrictions on discretionary
15 distributions imposed by the agreement under which the first trust was created,
16 except that in either case participating in a change that is needed for the health,
17 education, maintenance, or support of any such beneficiary is permitted;

18 (3) In the case of any trust contributions which have been treated as gifts qualifying for
19 the exclusion from gift tax described in § 2503(b) of the Internal Revenue Code of
20 1986, by reason of the application of I.R.C. § 2503(c), the governing instrument for
21 the second trust shall provide that the beneficiary's remainder interest shall vest and
22 become distributable no later than the date upon which such interest would have
23 vested and become distributable under the terms of the governing instrument for the
24 first trust;

1 (4) The exercise of such authority does not reduce any income interest of any income
2 beneficiary of a trust for which a marital deduction has been taken for federal tax
3 purposes under I.R.C. § 2056 or § 2523 or for state tax purposes under any
4 comparable provision of applicable state law; and

5 (5) The exercise of such authority does not apply to trust property subject to a presently
6 exercisable power of withdrawal held by a trust beneficiary to whom, or for the
7 benefit of whom, the trustee has authority to make distributions.

8 Section 2. Any action that may not be taken by a trustee of the first trust by reason of the
9 restrictions in subdivision (2) of section 1 of this Act may instead be taken by any other trustee
10 of the first trust who is not so restricted, or, if none, by the next available party who can be a
11 successor trustee and who is not so restricted. The second trust may be a trust created or
12 administered under the laws of any jurisdiction, within or without the United States.

13 Section 3. For the purposes of section 1 of this Act, a beneficiary shall be considered to have
14 the power to "change the trustees" if he or she can name himself or herself as a trustee or can
15 remove a trustee and replace that trustee with a new trustee who is the beneficiary or who is
16 related or subordinate (as defined in § 672 of the I.R.C.) to the beneficiary.

17 Section 4. The exercise of the power to distribute the income or principal of the trust under
18 section 1 of this Act shall be by an instrument in writing, signed and acknowledged by the
19 trustee and filed with the records of the trust.

20 Section 5. The exercise of the power to distribute the income or principal of the trust under
21 section 1 of this Act shall be considered the exercise of a power of appointment (other than a
22 power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the
23 trustee's estate).

24 Section 6. The power under section 1 of this Act may not be exercised to suspend the power

1 to alienate trust property or extend the first trust beyond any applicable termination date under
2 the terms of the instrument of the first trust or the permissible period of any rule against
3 perpetuities applicable to the first trust.

4 Section 7. No provision of this Act may be construed to abridge the right of any trustee who
5 has power to distribute income or principal in further trust which arises under statute or common
6 law.

7 Section 8. That § 55-4-38 be amended to read as follows:

8 55-4-38. Unless the terms of the trust refer to this section and provide otherwise, a power,
9 including the power to make a distribution to another trust under section 1 of this Act, that is
10 exercisable by or attributable to a person, other than the settlor, in such person's capacity as a
11 trustee to make discretionary distribution of either principal or income:

12 (1) To or for the benefit of himself or herself ~~shall be~~ is exercisable by the person only
13 for the person's health, education, maintenance, and support in the person's
14 accustomed manner of living; or

15 (2) To or for the benefit of others, ~~may not be~~ is not exercisable to discharge any of the
16 person's own legal obligations.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0225

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **SB 31** - 02/23/2007

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 Appropriations at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to appropriate money to the Dakota Valley school district.

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

3 Section 1. There is hereby appropriated from the general fund the sum of forty-six thousand
4 four hundred twenty dollars (\$46,420) to the Department of Education to pay the Dakota Valley
5 school district for general state aid to education which was not received due to an out of court
6 settlement which resulted in the lowering of the assessed valuation of certain property in Union
7 County after the local effort of the school district had already been calculated by the state.

8 Section 2. There is also hereby appropriated from the general fund the sum of four thousand
9 nine hundred ninety-three dollars (\$4,993) to the Department of Education to pay the Dakota
10 Valley school district for state aid to special education which also was not received due to an
11 out of court settlement which resulted in the lowering of the assessed valuation of certain
12 property in Union County after the local effort of the school district had already been calculated
13 by the state.

14 Section 3. The secretary of the Department of Education shall approve vouchers and the



1 state auditor shall draw warrants to pay expenditures authorized by this Act.

2 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by

3 June 30, 2008, shall revert in accordance with § 4-8-21.

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

400N0265

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 42 - 01/31/2007

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 discount provided to tobacco distributors
2 purchasing tobacco stamps and to revise and repeal certain provisions regarding the cigarette
3 tax.

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

5 Section 1. That § 10-50-18 be amended to read as follows:

6 10-50-18. The secretary of revenue and regulation shall secure stamps, of ~~such~~ the design
7 and denomination as ~~he shall prescribe~~ the secretary prescribes, suitable to be affixed to
8 packages of cigarettes as evidence of the payment of the tax imposed by this chapter. ~~He~~ The
9 secretary shall sell ~~such~~ the stamps to licensed distributors at a discount of ~~three and one-half~~
10 two percent of their face value and to no other person.

11 Section 2. That § 10-50-4 be amended to read as follows:

12 10-50-4. The payment of the tax imposed by § 10-50-3 shall be evidenced by the affixing
13 of stamps ~~or by the impression of an imprint by suitable metering machines approved by the~~
14 ~~secretary of revenue and regulation as provided by this chapter~~, to the packages containing the
15 cigarettes as ~~hereinafter indicated. Provided, that~~ provided by this chapter. However, for



1 cigarettes offered by manufacturers for gratis distribution as samples, ~~such~~ the stamps are not
2 required to be affixed to sample packages if the manufacturer of the cigarette reports and pays
3 the tax directly to the state tax authority.

4 Section 3. That § 10-50-6 be amended to read as follows:

5 10-50-6. Any cigarette on which a tax has been paid, ~~such~~ the payment being evidenced by
6 the affixing of ~~such~~ the stamp ~~or imprint~~, is not subject to a further tax under this chapter.
7 However, any person, who possesses two thousand or more cigarettes that do not bear a tax
8 stamp ~~or imprint~~ indicating that the South Dakota cigarette tax has been paid, shall pay the tax
9 imposed pursuant to § 10-50-3 plus a penalty equal to ten percent of the total tax due.

10 Section 4. That § 10-50-22 be repealed.

11 ~~10-50-22. If the secretary of revenue and regulation determines that it is practicable to stamp~~
12 ~~by impression packages of cigarettes by means of a metering machine, the secretary may, in lieu~~
13 ~~of the distributor affixing stamps as provided by this chapter, authorize any licensed distributor~~
14 ~~to use any metering machine approved by the secretary, such machine to be sealed by the~~
15 ~~secretary of revenue before being used and to be used in accordance with the procedure~~
16 ~~established by rule promulgated by the secretary pursuant to chapter 1-26.~~

17 Section 5. That § 10-50-23 be repealed.

18 ~~10-50-23. Any licensed distributor authorized by the secretary of revenue and regulation to~~
19 ~~affix stamps to packages by means of a metering machine shall file with the secretary a bond~~
20 ~~issued by a surety company licensed to do business in this state in such amount as the secretary~~
21 ~~may fix, conditioned upon the payment of the tax upon cigarettes so stamped, or shall enter into~~
22 ~~a depository agreement with the secretary for the deposit of money or any other property to~~
23 ~~secure payment of the tax and conditioned upon the payment of the tax upon cigarettes. The~~
24 ~~bond shall be in full force and effect for a period of one year and a day after the expiration of~~

1 ~~the bond, unless a certificate be issued by the secretary of revenue and regulation to the effect~~
2 ~~that all taxes due to the state under this chapter have been paid. The depository agreement~~
3 ~~hereinbefore provided shall be in full force and effect for a period of one year and a day after~~
4 ~~the expiration of the same, or until or unless a certificate be issued by the secretary of revenue~~
5 ~~and regulation to the effect that all taxes due to the state under this chapter have been paid.~~

6 Section 6. That § 10-50-24 be repealed.

7 ~~—10-50-24. The secretary of revenue and regulation shall cause each metering machine~~
8 ~~approved by him to be read and inspected at least once a month and shall determine as of the~~
9 ~~time of such inspection the amount of tax due from the distributor using such machine after~~
10 ~~allowing for the discount, if any, as provided in § 10-50-18, which tax shall be due and payable~~
11 ~~to the secretary of revenue upon demand of the secretary or his duly authorized agent.~~

12 Section 7. That § 10-50-24.1 be repealed.

13 ~~—10-50-24.1. The secretary of revenue and regulation may designate and appoint one or more~~
14 ~~county treasurers as agents to read, inspect, sell stamp impressions and collect therefor, from~~
15 ~~any meter machine approved by the secretary and under the procedure established by rule~~
16 ~~promulgated by the secretary pursuant to chapter 1-26. Such county treasurer shall, on or before~~
17 ~~the fifth day of each calendar month, transmit to the secretary of revenue and regulation a report~~
18 ~~showing the number of stamp impressions sold, to whom sold, together with a remittance for~~
19 ~~the stamp impressions sold during the period for which the report is made.~~

20 Section 8. That § 10-50-25 be amended to read as follows:

21 10-50-25. ~~When~~ If the secretary of revenue and regulation ~~shall find~~ finds that the collection
22 of the tax imposed by this chapter would be facilitated thereby, ~~he~~ the secretary may authorize
23 any person, resident or located outside this state, engaged in the business of selling and shipping
24 cigarettes into this state and purchasing at least seventy-five percent of ~~such~~ the cigarettes from

1 the manufacturers thereof, and who is a resident of any state authorizing by law the licensing
2 of nonresidents, including residents of this state, to distribute cigarettes therein, upon complying
3 with the requirements of the secretary of revenue and regulation, to affix or cause to be affixed
4 the stamps required by this chapter on behalf of the purchasers of ~~such the~~ cigarettes, who would
5 otherwise be taxable therefor, ~~and the~~. The secretary of revenue and regulation may sell ~~such~~
6 the stamps to such person as hereinbefore provided, ~~or the secretary of revenue and regulation~~
7 ~~may authorize the use of a metering machine by such person as hereinbefore provided.~~

8 Section 9. That § 10-50-30 be amended to read as follows:

9 10-50-30. Each distributor shall affix or cause to be affixed, in ~~such the~~ manner as the
10 secretary of revenue and regulation may specify in rules promulgated pursuant to chapter 1-26,
11 to each individual package of cigarettes, to cartons containing more than one individual package
12 of three, four, or five cigarettes sold or distributed by such distributor, stamps of the proper
13 denomination, as required by this chapter, ~~or, in lieu thereof, an imprint impressed by means of~~
14 ~~a suitable metering machine approved by the secretary of revenue and regulation. Such. The~~
15 stamps ~~or imprint~~ shall be affixed by a distributor before the cigarettes are transferred out of the
16 distributor's premises, or in lieu thereof the amount of the tax due shall be entered on the invoice
17 and stamps sufficient in denominations and amount shall accompany ~~such the~~ invoice on every
18 delivery of cigarettes.

19 Section 10. That § 10-50-31 be amended to read as follows:

20 10-50-31. Each dealer upon opening any shipping package containing any unstamped
21 taxable articles for purposes of sale or delivery to consumers, shall immediately affix ~~or imprint~~
22 the tax stamps required by this chapter.

23 Section 11. That § 10-50-32 be amended to read as follows:

24 10-50-32. No person, other than a person licensed pursuant to § 10-50-9, may sell, offer for

1 sale, display for sale, or possess with intent to sell, advertise for sale, ship or cause to be
2 shipped, or possess with intent to deliver to another person, any cigarettes which do not bear
3 stamps ~~or an imprint impressed by a suitable metering machine approved by the secretary as~~
4 ~~provided by this chapter~~, evidencing the payment of the tax imposed by this chapter.

5 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class
6 felony.

7 Section 12. That § 10-50-35 be amended to read as follows:

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

16 Section 13. That § 10-50-80 be amended to read as follows:

17 10-50-80. No later than twenty days after the end of each calendar quarter, and more
18 frequently if so directed by the secretary, each distributor and wholesaler shall submit
19 information concerning each nonparticipating manufacturer as the secretary requires to facilitate
20 compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the
21 total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which
22 the distributor or wholesaler affixed cigarette tax stamps ~~or imprints~~ to a cigarette package, or
23 otherwise paid the cigarette tax due during the previous calendar quarter. The distributor or
24 wholesaler shall maintain and make available to the secretary all invoices and documentation

1 of sales of all nonparticipating manufacturer cigarettes and any other information relied upon
2 in reporting to the secretary for a period of six years. The secretary may, in addition to any other
3 provision of law, impose and collect a monetary penalty in an amount not to exceed five
4 hundred dollars per day, for the failure of a distributor or wholesaler to timely or accurately
5 comply with this section. Any monetary penalty collected pursuant to this section shall be
6 deposited in the state general fund.

7 Section 14. That § 10-50-82 be amended to read as follows:

8 10-50-82. No distributor or wholesaler or other person may:

- 9 (1) Affix a South Dakota cigarette tax stamp ~~or imprint~~ to a package or other container
10 of cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product
11 manufacturer or brand family not included in the directory; or
12 (2) Sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be
13 imported, cigarettes of a tobacco product manufacturer or brand family not included
14 in the directory that the distributor, wholesaler, or other person knows or should
15 know are intended for distribution or sale in this state.

16 The secretary may, in addition to any other provision of law, impose and collect a monetary
17 penalty in an amount not to exceed the greater of five hundred percent of the retail value of the
18 cigarettes or five thousand dollars for each violation of this section by a distributor or
19 wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the
20 state general fund.

21 Section 15. That § 10-50B-6 be amended to read as follows:

22 10-50B-6. For the purposes of §§ 10-50B-1 to 10-50B-10, inclusive, the term, units sold,
23 means the number of individual cigarettes sold in the state by the applicable tobacco product
24 manufacturer, whether directly or through a distributor, retailer, or similar intermediary or

1 intermediaries, during the year in question, as measured by excise taxes collected by the state
2 on packs bearing the excise tax stamp ~~or imprint~~ of the state, or on roll-your-own tobacco. The
3 secretary of revenue and regulation shall promulgate, pursuant to chapter 1-26, such rules as are
4 necessary to obtain information from any licensee, licensed under the authority of the
5 Department of Revenue and Regulation, to ascertain the amount of state excise tax paid on the
6 cigarettes of such tobacco product manufacturer for each year. The Department of Revenue and
7 Regulation may provide information obtained pursuant to this section as is necessary for a
8 tobacco product manufacturer to compute its escrow payment under § 10-50B-7.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0344 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 53 - 02/23/2007

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 new
2 engineering class/lab building for South Dakota State University and to make an
3 appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
8 roofing and structures, and such other services and improvements as may be required to erect,
9 a new engineering class/lab building to support research, extension, education, and public
10 service activities on the campus of South Dakota University in Brookings, in Brookings County,
11 at an estimated cost of five million dollars.

12 Section 2. There is hereby appropriated from private donations and grants received by South
13 Dakota State University, the sum of six million five hundred thousand dollars (\$6,500,000), or
14 so much thereof as may be necessary, to the Board of Regents 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.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0368 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 59 - 02/23/2007

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

1 FOR AN ACT ENTITLED, An Act to revise the General Appropriations Act for fiscal year
2 2007 regarding appropriations to the Department of Health, the Board of Regents, the
3 Department of Corrections, the Department of Human Services, and the Office of the
4 Attorney General, and to declare an emergency.

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

6 Section 1. That section 8 of chapter 26 of the 2006 Session Laws be amended to read as
7 follows:

8 DEPARTMENT OF HEALTH

9 Tobacco Prevention

10 Operating Expenses, Other Funds, delete "\$0" and insert "\$5,000,000"

11 Adjust all totals accordingly.

12 Section 2. That section 14 of chapter 26 of the 2006 Session Laws be amended to read as
13 follows:

14 BOARD OF REGENTS

15 Regents System Office



- 1 Personal Services, General Funds, delete "\$3,545,622" and insert "\$3,549,806"
- 2 Operating Expenses, General Funds, delete "\$4,904,322" and insert "\$4,917,298"
- 3 Personal Services, Federal Funds, delete "\$72,162" and insert "\$72,246"
- 4 Operating Expenses, Federal Funds, delete "\$959,532" and insert "\$1,059,532"
- 5 Personal Services, Other Funds, delete "\$1,300,984" and insert "\$1,302,541"
- 6 Operating Expenses, Other Funds, delete "\$20,675,344" and insert "\$22,061,274"

7 Adjust all totals accordingly.

8 University of South Dakota Proper

- 9 Personal Services, General Funds, delete "\$29,131,888" and insert "\$29,167,000"
- 10 Operating Expenses, General Funds, delete "\$1,438,861" and insert "\$1,510,092"
- 11 Personal Services, Federal Funds, delete "\$5,563,059" and insert "\$5,569,909"
- 12 Personal Services, Other Funds, delete "\$28,627,762" and insert "\$28,662,783"
- 13 Operating Expenses, Other Funds, delete "\$21,930,408" and insert "\$25,439,186"

14 Adjust all totals accordingly.

15 University of South Dakota School of Medicine

- 16 Personal Services, General Funds, delete "\$16,371,847" and insert "\$16,391,901"
- 17 Operating Expenses, General Funds, delete "\$681,132" and insert "\$716,517"
- 18 Personal Services, Federal Funds, delete "\$6,693,515" and insert "\$6,701,577"
- 19 Personal Services, Other Funds, delete "\$7,850,816" and insert "\$7,860,466"
- 20 Operating Expenses, Other Funds, delete "\$3,364,795" and insert "\$4,723,075"
- 21 F.T.E., delete "384.1" and insert "404.1"

22 Adjust all totals accordingly.

23 South Dakota State University Proper

- 24 Personal Services, General Funds, delete "\$39,244,041" and insert "\$39,291,238"

- 1 Operating Expenses, General Funds, delete "\$2,976,139" and insert "\$3,073,859"
- 2 Personal Services, Federal Funds, delete "\$5,961,905" and insert "\$6,169,229"
- 3 Operating Expenses, Federal Funds, delete "\$12,721,290" and insert "\$13,492,290"
- 4 Personal Services, Other Funds, delete "\$44,518,427" and insert "\$44,572,920"
- 5 Operating Expenses, Other Funds, delete "\$46,052,402" and insert "\$47,177,402"

6 Adjust all totals accordingly.

7 Cooperative Extension Service

- 8 Personal Services, General Funds, delete "\$7,439,145" and insert "\$7,448,153"
- 9 Operating Expenses, General Funds, delete "\$428,372" and insert "\$439,134"
- 10 Personal Services, Federal Funds, delete "\$4,802,738" and insert "\$4,808,437"
- 11 Personal Services, Other Funds, delete "\$577,497" and insert "\$578,188"

12 Adjust all totals accordingly.

13 Agricultural Experiment Station

- 14 Personal Services, General Funds, delete "\$9,403,701" and insert "\$9,415,097"
- 15 Operating Expenses, General Funds, delete "\$544,064" and insert "\$562,440"
- 16 Personal Services, Federal Funds, delete "\$4,950,285" and insert "\$4,956,326"
- 17 Personal Services, Other Funds, delete "\$3,264,791" and insert "\$3,268,787"

18 Adjust all totals accordingly.

19 South Dakota School of Mines and Technology

- 20 Personal Services, General Funds, delete "\$11,987,312" and insert "\$12,001,777"
- 21 Operating Expenses, General Funds, delete "\$1,169,481" and insert "\$1,198,307"
- 22 Personal Services, Federal Funds, delete "\$5,096,162" and insert "\$5,102,447"
- 23 Personal Services, Other Funds, delete "\$9,285,270" and insert "\$9,296,686"

24 Adjust all totals accordingly.

1 Northern State University

2 Personal Services, General Funds, delete "\$9,926,142" and insert "\$9,937,845"

3 Operating Expenses, General Funds, delete "\$1,254,723" and insert "\$1,278,050"

4 Personal Services, Federal Funds, delete "\$1,311,081" and insert "\$1,312,737"

5 Personal Services, Other Funds, delete "\$8,016,320" and insert "\$8,025,883"

6 Adjust all totals accordingly.

7 Black Hills State University

8 Personal Services, General Funds, delete "\$7,226,343" and insert "\$7,234,804"

9 Operating Expenses, General Funds, delete "\$696,927" and insert "\$721,337"

10 Personal Services, Federal Funds, delete "\$4,800,854" and insert "\$4,806,623"

11 Personal Services, Other Funds, delete "\$13,400,143" and insert "\$13,416,103"

12 Adjust all totals accordingly.

13 Dakota State University

14 Personal Services, General Funds, delete "\$7,101,947" and insert "\$7,110,376"

15 Operating Expenses, General Funds, delete "\$527,632" and insert "\$534,789"

16 Personal Services, Federal Funds, delete "\$742,362" and insert "\$868,317"

17 Operating Expenses, Federal Funds, delete "\$1,722,181" and insert "\$1,887,181"

18 Personal Services, Other Funds, delete "\$7,872,030" and insert "\$8,207,516"

19 Operating Expenses, Other Funds, delete "\$6,987,586" and insert "\$7,401,586"

20 Adjust all totals accordingly.

21 South Dakota School for the Deaf

22 Personal Services, General Funds, delete "\$2,975,223" and insert "\$2,979,088"

23 Operating Expenses, General Funds, delete "\$470,856" and insert "\$476,374"

24 Personal Services, Federal Funds, delete "\$51,543" and insert "\$51,610"

1 Personal Services, Other Funds, delete "\$49,072" and insert "\$49,136"

2 Adjust all totals accordingly.

3 South Dakota School for the Blind and Visually Impaired

4 Personal Services, General Funds, delete "\$2,314,367" and insert "\$2,316,989"

5 Operating Expenses, General Funds, delete "\$147,681" and insert "\$152,310"

6 Personal Services, Federal Funds, delete "\$252,284" and insert "\$252,580"

7 Operating Expenses, Federal Funds, delete "\$45,683" and insert "\$75,683"

8 Operating Expenses, Other Funds, delete "\$237,124" and insert "\$265,672"

9 Adjust all totals accordingly.

10 Section 3. That section 16 of chapter 26 of the 2006 Session Laws be amended to read as
11 follows:

12 DEPARTMENT OF CORRECTIONS

13 Administration

14 Operating Expenses, Federal Funds, delete "\$1,820,000" and insert "\$2,193,000"

15 Adjust all totals accordingly.

16 State Treatment and Rehabilitation Academy

17 Operating Expenses, Other Funds, delete "\$148,000" and insert "\$576,428"

18 Adjust all totals accordingly.

19 Section 4. That section 17 of chapter 26 of the 2006 Session Laws be amended to read as
20 follows:

21 DEPARTMENT OF HUMAN SERVICES

22 SDDC - Redfield

23 Operating Expenses, Other Funds, delete "\$127,902" and insert "\$853,792"

24 Adjust all totals accordingly.

1 Human Services Center

2 Operating Expenses, Other Funds, delete "\$254,816" and insert "\$715,332"

3 Adjust all totals accordingly.

4 Section 5. That section 21 of chapter 26 of the 2006 Session Laws be amended to read as

5 follows:

6 ATTORNEY GENERAL

7 Legal Services Program

8 Personal Services, Other Funds, delete "\$395,149" and insert "\$466,261"

9 F.T.E., delete "73.0" and insert "73.6"

10 Adjust all totals accordingly.

11 Criminal Investigation

12 Personal Services, Federal Funds, delete "\$763,103" and insert "\$822,473"

13 Operating Expenses, Federal Funds, delete "\$1,621,636" and insert "\$1,766,636"

14 Operating Expenses, Other Funds, delete "\$555,817" and insert "\$604,192"

15 F.T.E., delete "63.0" and insert "64.2"

16 Adjust all totals accordingly.

17 Section 6. Whereas, this Act is necessary for the support of the state government and its

18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in

19 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

409N0183

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 75 - 02/23/2007

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 living wills.

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

3 Section 1. That § 34-12D-1 be amended to read as follows:

4 34-12D-1. Terms used in this chapter mean:

5 (1) "Attending physician," the physician who has primary responsibility for the treatment
6 and care of the patient;

7 (2) "Declaration," a writing executed in accordance with the requirements of § 34-12D-2;

8 (3) "~~Health-care~~ Health care provider," any ~~person who is licensed, certified, or~~
9 ~~otherwise authorized by law to administer health care in the ordinary course of~~
10 ~~business or practice of a profession, including any person employed by or acting for~~
11 ~~any such authorized person~~ licensed health care facility or any person, corporation,
12 or organization licensed, certified, or otherwise authorized or permitted by law to
13 administer health care;

14 (4) "Life-sustaining treatment," any medical procedure or intervention that, when
15 administered to a ~~qualified~~ patient, will serve only to postpone the moment of death



1 or to maintain the patient in a condition of permanent unconsciousness. The term
 2 does not include the provision of appropriate care to maintain comfort, hygiene and
 3 human dignity, the oral administration of food and water, or the administration of any
 4 medication or other medical procedure deemed necessary to alleviate pain;

5 (5) "Person," an individual, corporation, business trust, estate, trust, limited liability
 6 company, partnership, association, joint venture, government, governmental
 7 subdivision, or agency, or any other legal or commercial entity;

8 (6) "Physician," an individual licensed to practice medicine in this state;

9 (7) ~~"Qualified patient," an adult individual who has executed a declaration and who has
 10 been determined by the attending physician and one other physician to be in a
 11 terminal condition;~~

12 ~~—(8)—~~ "Terminal condition," an incurable and irreversible condition such that, in accordance
 13 with accepted medical standards, ~~will cause death within a relatively short time~~ death
 14 is imminent if life-sustaining treatment is not administered, or a coma or other
 15 condition of permanent unconsciousness that, in accordance with accepted medical
 16 standards, will last indefinitely without significant improvement and in which the
 17 individual is unable to communicate verbally or nonverbally, demonstrates no
 18 purposeful movement or motor ability, and is unable to interact purposefully with
 19 environmental stimulation.

20 Section 2. That § 34-12D-3 be amended to read as follows:

21 34-12D-3. A declaration may, but need not, be in the following form:

22 LIVING WILL DECLARATION

23 This is an important legal document. ~~This document~~ A living will directs the medical
 24 treatment you are to receive in the event you are in a terminal condition and are unable to

1 participate in your own medical decisions ~~and you are in a terminal condition~~. This document
2 living will may state what kind of treatment you want or do not want to receive.

3 ~~This document can control whether you live or die~~. Prepare this document living will
4 carefully. If you use this form, read it completely. You may want to seek professional help to
5 make sure the form does what you intend and is completed without mistakes.

6 This ~~document will remain~~ living will remains valid and in effect until and unless you
7 revoke it. Review this ~~document~~ living will periodically to make sure it continues to reflect your
8 wishes. You may amend or revoke this ~~document~~ living will at any time by notifying your
9 physician and other ~~health-care~~ health care providers. You should give copies of this ~~document~~
10 living will to your ~~physician and your family, your physician, and your health care facility~~. This
11 form is entirely optional. If you choose to use this form, please note that the form provides
12 signature lines for you, the two witnesses whom you have selected, and a notary public.

13 TO MY FAMILY, PHYSICIANS HEALTH CARE PROVIDER, AND ALL THOSE
14 CONCERNED WITH MY CARE:

15 I, _____ ~~willfully and voluntarily make this declaration as a directive to be followed if I am~~
16 ~~in a terminal condition and become unable to participate in decisions regarding my medical care~~
17 direct you to follow my wishes for care if I am in a terminal condition, my death is imminent,
18 and I am unable to communicate my decisions about my medical care.

19 With respect to any life-sustaining treatment, I direct the following:

20 (Initial only one of the following ~~optional directives if you agree~~ options. If you do not agree
21 with ~~any~~ either of the following ~~directives~~ options, space is provided below for you to write your
22 own ~~directives~~ instructions.):

23 ~~_____ NO LIFE-SUSTAINING TREATMENT. I direct that no life-sustaining treatment be~~
24 ~~provided. If life-sustaining treatment is begun, terminate it.~~

1 ~~___ TREATMENT FOR RESTORATION. Provide life-sustaining treatment only if and for~~
2 ~~so long as you believe treatment offers a reasonable possibility of restoring to me the ability to~~
3 ~~think and act for myself.~~

4 ~~___ TREAT UNLESS PERMANENTLY UNCONSCIOUS. If you believe that I am~~
5 ~~permanently unconscious and are satisfied that this condition is irreversible, then do not provide~~
6 ~~me with life-sustaining treatment, and if life-sustaining treatment is being provided to me,~~
7 ~~terminate it. If and so long as you believe that treatment has a reasonable possibility of restoring~~
8 ~~consciousness to me, then provide life-sustaining treatment.~~

9 ~~___ MAXIMUM TREATMENT. Preserve my life as long as possible, but do not provide~~
10 ~~treatment that is not in accordance with accepted medical standards as then in effect.~~

11 ~~___ (Artificial nutrition and hydration is food and water provided by means of a nasogastric tube~~
12 ~~or tubes inserted into the stomach, intestines, or veins. If you do not wish to receive this form~~
13 ~~of treatment, you must initial the statement below which reads: "I intend to include this~~
14 ~~treatment, among the 'life-sustaining treatment' that may be withheld or withdrawn.")~~

15 ___ If my death is imminent or I am permanently unconscious, I choose not to prolong my life.
16 If life sustaining treatment has been started, stop it, but keep me comfortable and control my
17 pain.

18 ___ Even if my death is imminent or I am permanently unconscious, I choose to prolong my
19 life.

20 ___ I choose neither of the above options, and here are my instructions should I become
21 terminally ill and my death is imminent or I am permanently unconscious:

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Artificial Nutrition and Hydration: food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I ~~wish to make clear that~~ direct the following:

(Initial only one)

~~___ I intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~___ I do not intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~(If you do not agree with any of the printed directives and want to write your own, or if you want to write directives in addition to the printed provisions, or if you want to express some of your other thoughts, you can do so here).~~

___ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.

___ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

Date: _____

1 (your signature)

2 _____

3 (your address)

(type or print your signature)

4

5 The declarant voluntarily signed this document in my presence.

6 Witness _____

7 Address _____

8 Witness _____

9 Address _____

10 On this the _____ day of _____, _____, the declarant, _____, and
11 witnesses _____, and _____ personally appeared before the undersigned officer
12 and signed the foregoing instrument in my presence. Dated this _____ day of _____,
13 _____.

14 _____ Notary Public

15 My commission expires: _____.

16 Section 3. That § 34-12D-5 be amended to read as follows:

17 34-12D-5. A living will declaration becomes operative when the declarant is determined by
18 the attending physician ~~and one other physician~~ to be in a terminal condition ~~and~~ death is
19 imminent, and the declarant is no longer able to ~~make decisions regarding administration of~~
20 ~~life-sustaining treatment. If the declaration becomes operative, the attending physician and other~~
21 ~~health-care providers shall act in accordance with the declaration or comply with the transfer~~
22 ~~requirements of § 34-12D-11~~ communicate decisions about medical care.

23 Section 4. That § 34-12D-8 be amended to read as follows:

24 34-12D-8. A declarant may revoke a declaration at any time and in any manner without

1 regard to the declarant's mental or physical condition. A revocation is effective upon
2 communication to the ~~attending physician or other health-care~~ health care provider. The
3 ~~attending physician or health-care~~ health care provider shall make the revocation a part of the
4 declarant's medical record.

5 Section 5. That § 34-12D-9 be amended to read as follows:

6 34-12D-9. This chapter does not affect the responsibility of ~~the attending physician or other~~
7 ~~health-care~~ any health care provider to provide treatment, ~~including orally or artificially~~
8 ~~administered nutrition and hydration~~, when necessary to alleviate pain or to provide for the
9 patient's comfort, hygiene, or human dignity.

10 Section 6. That § 34-12D-11 be amended to read as follows:

11 34-12D-11. A ~~physician or other health-care~~ health care provider need not participate in the
12 withdrawal or withholding of life-sustaining treatment. However, a ~~physician or other~~
13 ~~health-care~~ health care provider electing for any reason not to participate in the withholding or
14 withdrawal of life-sustaining treatment shall make a reasonable effort to locate and to transfer
15 the declarant to a physician or ~~health-care~~ health care provider willing to honor the declaration.

16 Section 7. That § 34-12D-12 be amended to read as follows:

17 34-12D-12. If an individual's declaration contains a directive to provide treatment or
18 artificial nutrition and hydration under any circumstances, any ~~physician or health-care~~ health
19 care provider who has responsibility for the treatment and care of the individual must provide
20 the directed treatment or artificial nutrition and hydration in those circumstances so long as it
21 is technically feasible. A ~~physician or health-care~~ health care provider who objects to providing
22 such treatment may instead transfer the individual to a ~~physician or health-care~~ health care
23 provider willing to honor the declaration, but must continue to provide the treatment or care
24 until the transfer is effectuated.

1 Section 8. That § 34-12D-13 be amended to read as follows:

2 34-12D-13. A ~~physician or other health-care~~ health care provider is not subject to civil or
3 criminal liability or to ~~discipline for unprofessional conduct~~ professional disciplinary action for
4 giving effect to a declaration, absent actual knowledge of its revocation, for determining that
5 a terminal condition does or does not exist or for declining to give effect to a declaration under
6 § 34-12D-11.

7 Section 9. That § 34-12D-14 be amended to read as follows:

8 34-12D-14. Death resulting from the withdrawal or withholding of life-sustaining treatment
9 in accordance with this chapter does not constitute, for any purpose, a suicide on the part of the
10 declarant or a homicide on the part of the attending physician or other ~~health-care~~ health care
11 providers.

12 Section 10. That § 34-12D-19 be amended to read as follows:

13 34-12D-19. This chapter does not require a physician or other ~~health-care~~ health care
14 provider to take action contrary to ~~reasonable~~ accepted medical standards.

15 Section 11. That § 34-12D-21 be amended to read as follows:

16 34-12D-21. In the absence of actual knowledge to the contrary, a ~~physician or other~~
17 ~~health-care~~ health care provider may assume that a declaration complies with this chapter and
18 is valid.

19 Section 12. That § 34-12D-29 be amended to read as follows:

20 34-12D-29. For the purposes of §§ 34-12D-23 to 34-12D-28, inclusive, the term, licensed
21 health care professional, means any physician, surgeon, podiatrist, osteopath, physician
22 assistant, nurse, certified nurse practitioner, certified nurse midwife, clinical nurse specialist,
23 certified registered nurse anesthetist, dentist, or pharmacist licensed pursuant to Title 36.

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

880N0087

SENATE ENGROSSED NO. **SB 95** - 02/05/2007

Introduced by: Senators Knudson, Abdallah, Dempster, Gray, Hanson (Gary), Heidepriem, Jerstad, Katus, Koetzle, Lintz, McCracken, Napoli, Nesselhuf, and Peterson (Jim) and Representatives Haverly, Burg, Cutler, Dennert, Dykstra, Gillespie, Hargens, Hunt, Juhnke, Kirkeby, Krebs, Lucas, McLaughlin, Miles, Peters, Thompson, Turbiville, Weems, and Willadsen

1 FOR AN ACT ENTITLED, An Act to establish a State Board of Technical Institutes, to provide
2 for its powers, duties, and responsibilities, and to provide for the transfer of authority over
3 public postsecondary technical education from the Department of Education to the State
4 Board of Technical Institutes.

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

6 Section 1. The control of the public technical institutes of the state is vested in a board of
7 nine members, designated as the State Board of Technical Institutes. The state board shall
8 consist of two at-large members appointed by the Governor; one member of the Board of
9 Regents appointed by the Governor; one regional board member from Lake Area Technical
10 Institute; one regional board member from Mitchell Technical Institute; one regional board
11 member from Southeast Technical Institute; one regional board member from Western Dakota
12 Technical Institute; the secretary of the Department of Labor; and the secretary of the
13 Department of Tourism and State Development. If a regional board for a particular institute has
14 not yet been established, the sponsoring school district may appoint a member to the State Board



1 of Technical Institutes until such time as a regional board for that institute has been established.

2 Section 2. All appointed members shall serve three-year terms. No appointed member may
3 serve more than three consecutive terms. The regional representatives to the state board shall
4 be selected and appointed by the regional boards. The four regional board members shall be
5 appointed by the appropriate regional board, and each regional appointed member shall be a
6 current member of that institute's regional board of directors at the time of the member's initial
7 appointment to the state board. No member of this board may be a member of the South Dakota
8 Board of Education.

9 Section 3. If a vacancy occurs as provided in § 3-4-1, the original appointing authority shall
10 fill such vacancy, subject to the same conditions as set forth in the original appointment. The
11 appointee shall serve for the balance of the unexpired term.

12 Section 4. Meetings may be held on the call of the president or by the joint request of a
13 majority of the members. In either case, due and reasonable notice shall be given.

14 The affirmative vote of a majority of the members of the state board is required to take
15 official action. The state board shall record their minutes which shall be open to the public. All
16 such meetings of the state board shall be open to the public except when personnel matters and
17 privileged matters between the board and its attorney are being discussed. If such meetings are
18 held, the board shall limit the topics discussed or acted upon to such matters only.

19 Section 5. At the annual meeting, the state board shall elect a president from among the
20 members, whose term of office shall be for one year.

21 Section 6. The members of the state board shall be paid per diem compensation and
22 allowable expenses for their services on the board pursuant to § 4-7-10.4. However, the
23 secretary of the Department of Labor and the secretary of the Department of Tourism and State
24 Development are prohibited from receiving per diem compensation and allowable expenses

1 pursuant to § 3-8-3 and any state employee serving on the board is prohibited from receiving
2 per diem compensation pursuant to § 3-8-4.1.

3 Section 7. The state board may promulgate and enforce rules pursuant to chapter 1-26,
4 pertaining to the operation, control, and supervision of technical institutes. The state board shall
5 establish a uniform tuition rate, which does not include student fees, for all technical institutes.

6 Section 8. The state board shall provide overall policies, goals, and objectives for the
7 management of public postsecondary technical education to ensure that the needs of the public,
8 business, and industry are met to the highest possible degree and in the most cost-effective and
9 efficient manner.

10 Section 9. The state board shall select and employ an executive director and set the
11 executive director's annual compensation, duties, and responsibilities. The state board shall
12 provide overall policy guidance to the executive director, who is responsible for day-to-day
13 operations of the state board.

14 Section 10. The state board shall approve changes in organizational structure or functional
15 assignments for the executive director.

16 Section 11. The state board shall delegate to the executive director the authority to hire and
17 fire state board employees and to establish salaries in conformance with state laws and
18 regulations.

19 Section 12. The state board shall review and approve recommendations for annual funding
20 requests for all public technical institutes and make recommendations to the Governor and the
21 Legislature.

22 Section 13. The state board shall consider and act upon the following:

- 23 (1) Recommendations regarding legislation proposed for postsecondary technical
24 education;

- 1 (2) All actions required by law to be taken by the state board;
- 2 (3) Establishment of committees related to statewide mission of public technical
- 3 institutes; and
- 4 (4) Approve all new diploma or degree granting or awarding programs at any technical
- 5 institute.

6 Section 14. The state board shall represent the state with other agencies in South Dakota,

7 in other states, and at the national level.

8 Section 15. The state board shall make recommendations for enhancing the mission of

9 public technical institutes for the benefit of the state.

10 Section 16. The state board shall establish an annual report and guidelines for reporting for

11 the technical institutes.

12 Section 17. The state board shall facilitate institutional and program accreditation,

13 compliance with the North Central Association Higher Learning Commission, and other

14 approved industry accreditations.

15 Section 18. The state board shall approve technical institute requests for purchase,

16 construction, or alteration of facilities that involve the expenditure of state funds.

17 Section 19. Upon passage of an authorizing resolution by the school board of any school

18 district owning and operating a postsecondary technical institute, the technical institute shall be

19 established as an independent public education entity which shall be attached to the Department

20 of Tourism and State Development for administrative and reporting purposes. The authorizing

21 resolution adopted by the school district owning and operating the postsecondary technical

22 institute shall specify the assets and liabilities being transferred to the new independent technical

23 institute agency. The authorizing resolution shall transfer to the new independent technical

24 institute agency substantially all of the school district's assets, including real estate, which are

1 primarily used in the ordinary course of business in the existing operation of the school district's
2 existing postsecondary technical institute including, without limitation, all rights, title, and
3 interest of the school district in and to any sublease of facilities between the Board of Education
4 and the school district entered into in connection with a program of the Health and Educational
5 Facilities Authority under § 1-16A-74. In no event is the technical institute obligated to assume
6 any liabilities not related to assets received by the technical institute or related to the ordinary
7 operations of the technical institute. School districts are expressly authorized to transfer primary
8 responsibility for repayment of all debt related to buildings and real estate transferred to the new
9 independent technical institute agency including obligations incurred in connection with the
10 program of the Health and Educational Facilities Authority under § 1-16A-74. The authorizing
11 resolution adopted by the school district shall establish for the independent technical institute
12 agency a seven to nine member regional board of directors which shall have the duties and
13 powers set forth in this Act. The regional board membership shall include representatives of
14 business and industry leaders from the service area of the technical institute, one or more
15 members of the local school board in which the institute is located, and persons experienced in
16 economic and work force development in its region. The terms on the regional board of
17 directors for members of the local school board shall expire at the same time as their local
18 school board term expires.

19 The initial regional board members shall be appointed for initial one, two, and three year
20 terms staggered so that the terms of approximately one-third of the members of the board expire
21 at any one time. Thereafter, the terms of the board members shall be for three years. The local
22 school district currently owning and operating the technical institute shall appoint the initial
23 members of the regional board in it authorizing resolution and specify the original term of such
24 board member. Thereafter, the regional boards shall elect successors for those directors whose

1 terms are expiring by vote of the members of the board whose terms are not expiring. However,
2 no elected member may take office as a regional board member until the member's election has
3 been confirmed and approved by the local school board in which the institute is located. If the
4 local school board fails to approve or reject a successor member selected by a regional board
5 within sixty days of the date when the local school board receives notice of such selection by
6 the regional board, the proposed regional board member is deemed approved. The Mitchell,
7 Rapid City, Sioux Falls, and Watertown school board shall adopt an authorizing resolution as
8 provided in this section no later than October 31, 2011. The authorizing resolution adopted by
9 a school board pursuant to this section is subject to review and approval by the secretary of the
10 Department of Tourism and State Development. The secretary shall act on an authorizing
11 resolution within thirty days of receipt of the authorizing resolution from the adopting school
12 district. If the secretary does not approve the authorizing resolution, the secretary shall notify
13 in writing the adopting school district of his or her objections. The secretary may fail to approve
14 an authorizing resolution only due to the failure of the authorizing resolution to meet the
15 standards set forth in this section related to the content of the authorizing resolution. Upon
16 receipt of a letter from the secretary detailing his or her objections to the initial authorizing
17 resolution, a school district shall adopt a modified authorizing resolution complying with the
18 secretary's objections. All authorizing resolutions shall become fully implemented no later than
19 July 1, 2012.

20 Section 20. The regional boards of directors shall implement state board policies and goals
21 to provide management and direction to ensure that the regional needs of the public, business,
22 and industry are met to the highest possible degree and in the most cost-effective and efficient
23 manner. Each regional board shall oversee the management of its institute, which shall be in
24 accordance with the established objectives and the policies of the state board.

1 Section 21. The policies of each regional board may be amended or adopted by the regional
2 board acting collectively at any regular meeting of the regional board subject to the regional
3 board's policies. All meetings of the regional boards are subject to the South Dakota open
4 meetings law.

5 Section 22. The Lake Area Technical Institute region is hereby established. The Lake Area
6 Technical Institute region includes all of Campbell, McPherson, Brown, Marshall, Roberts,
7 Walworth, Edmunds, Day, Potter, Faulk, Spink, Clark, Codington, Grant, Hamlin, Deuel,
8 Kingsbury, and Brookings Counties.

9 Section 23. The Mitchell Technical Institute region is hereby established. The Mitchell
10 Technical Institute region includes all of Sully, Hyde, Hand, Beadle, Hughes, Lake, Lyman,
11 Buffalo, Jerauld, Sanborn, Miner, Brule, Aurora, Davison, Hanson, Tripp, Gregory, Charles
12 Mix, Douglas, Hutchinson, Bon Homme, and Yankton Counties.

13 Section 24. The Southeast Technical Institute region is hereby established. The Southeast
14 Technical Institute region includes all of Moody, McCook, Minnehaha, Turner, Lincoln, Clay,
15 and Union Counties.

16 Section 25. The Western Dakota Technical Institute region is hereby established. The
17 Western Dakota Technical Institute region includes all of Harding, Perkins, Corson, Butte,
18 Meade, Ziebach, Dewey, Lawrence, Haakon, Stanley, Pennington, Jones, Custer Fall River,
19 Shannon, Jackson, Mellette, Bennett, and Todd Counties.

20 Section 26. Each regional board, acting on behalf of its own technical institute, shall:

- 21 (1) After a public hearing, adopt an annual budget of revenues and expenditures. The
22 regional board shall establish student fees at its technical institute and shall charge
23 the uniform tuition rate as established by the state board. Each regional technical
24 institute shall retain in its accounts and appropriate in its budget all revenues

- 1 generated at that technical institute by student tuition and fees;
- 2 (2) Review all new education programs for its technical institute and the deletion or
3 modification of existing programs;
- 4 (3) Maintain awareness of, and communicate to the president of its technical institute,
5 local industry, and community needs for programs and services to be provided by the
6 technical institute;
- 7 (4) Review and approve the local plan for evaluating its technical institute and the
8 processes and outcomes of its student services and instructional programs;
- 9 (5) Review, approve, and submit to the state board, for information and comment, an
10 annual report regarding the performance of its technical institute relative to its goals
11 and objectives, including meeting the ongoing and short-term training needs of
12 business, industry, and the regional community at large, in an effective and efficient
13 manner;
- 14 (6) Confer the awarding of all certificates, diplomas, and degrees to students completing
15 approved programs in the regular instructional program of the technical institute,
16 having assured that all standards, competencies, and other requirements of the state
17 board and the technical institute have been satisfied;
- 18 (7) Review, approve, and assure implementation of its technical institute's plan to
19 identify, on a periodic and timely basis, the current and future training needs of
20 business, industry, and the community at large;
- 21 (8) Review and approve the strategic plan, goals, and objectives for its technical
22 institute;
- 23 (9) Review on a quarterly basis its technical institute's fiscal report of receipts,
24 expenditures, and fund balances;

- 1 (10) Assure that the technical institute operates at all times in accordance with the policies
- 2 of the state board;
- 3 (11) Make any other recommendations as deemed appropriate to the president or the state
- 4 board regarding the improvement of its technical institute's operations or
- 5 postsecondary technical education in general;
- 6 (12) Employ, dismiss, and establish the salary of the technical institute president;
- 7 (13) Approve salaries and employment contracts for all staff;
- 8 (14) Establish policies for approval of contracts for services for its technical institute;
- 9 (15) Require an annual audit of all finances and procedures and submit the audit report to
- 10 the appropriate agencies; and
- 11 (16) Approve the operational policies for the technical institute.

12 Section 27. The State Board of Technical Institutes shall be attached to the Department of

13 Tourism and State Development for administrative and reporting purposes.

14 Section 28. The technical institutes created pursuant to section 19 of this Act are political

15 subdivisions of the State of South Dakota.

16 Section 29. Technical institutes may not construct student union buildings and recreational

17 facilities for technical institute students. This restriction includes the use of student fees to pay

18 for student union buildings and recreational or multi-use facilities. The provisions of this section

19 may not be construed as a restriction of construction or operation of regular cafeteria or multi-

20 use facilities for students at technical institutes. The provisions of this section do not apply to

21 any multi-use facility constructed and placed in operation prior to January 1, 2007.

22 Section 30. The continuing contract provisions set forth in §§ 13-43-9.1 to 13-43-11,

23 inclusive, do not apply to any person employed in a public technical institute. At least sixty days

24 prior to the termination of an employee in a technical institute, the governing board shall notify

1 in writing the employee of such termination.

2 Section 31. A technical institute may award an associate in applied sciences degree. The
3 state board may promulgate rules pursuant to chapter 1-26 providing for approval of programs
4 in technical institutes leading to an associate in applied science degree. In approving any degree
5 granting program, the state board shall consider curriculum, required hours, quality of
6 instruction, minimum standards for entry into the program, and standards for program
7 completion.

8 Section 32. That § 13-39-1.2 be amended to read as follows:

9 13-39-1.2. Terms used in this chapter, mean:

- 10 (1) "Adult vocational education," the training provided to upgrade or update the
11 occupational skills of persons who are preparing to, or have already, entered an
12 occupation;
- 13 (2) "Center board," the governing body of a multi-district center;
- 14 (3) "Division," the Division of Education Services and Resources of the Department of
15 Education;
- 16 (4) "Facilities," buildings, rooms, property, and permanent equipment, including
17 vehicles, used to provide vocational education;
- 18 (5) "LEA," a local education agency limited to public school districts and the legal
19 entities that a school district is authorized to establish;
- 20 (6) "Multi-district center," a multi-district secondary occupational vocational education
21 center;
- 22 (7) "Multi-use facility," a structure or part of a structure for student or faculty use as a
23 lounge area, cafeteria, classroom, or large group area not operated as a student union
24 building in which student fees are charged and utilized to pay for construction and

1 maintenance of a facility under the direct or indirect control of the students;

2 (8) "Participating district," a school district which has voting representation on a
3 multi-district center board;

4 (9) ~~"Postsecondary technical institute," a public nonprofit school legally authorized to~~
5 ~~provide public postsecondary technical education which does not culminate in a~~
6 ~~baccalaureate degree at that school;~~

7 (10) "Secretary," the state secretary of education;

8 (11) "State board," the South Dakota Board of Education;

9 (12) "Vocational education," organized programs at the secondary, ~~postsecondary~~, or adult
10 levels directly related to the preparation of individuals for paid or unpaid
11 employment, or for the additional preparation for a career requiring other than a
12 baccalaureate or advanced degree.

13 Section 33. That § 13-39-9 be amended to read as follows:

14 13-39-9. The director has general control and supervision over all vocational education in
15 all public secondary schools, ~~public postsecondary institutions not under the control of the~~
16 ~~Board of Regents~~ and all other vocational education functions assigned to him or her by the
17 secretary of education.

18 Section 34. That § 13-39-18 be repealed.

19 ~~13-39-18. The director shall submit all requests for new programs from the postsecondary~~
20 ~~technical institutes in the state to the state board for action.~~

21 Section 35. That § 13-39-19 be amended to read as follows:

22 13-39-19. The secretary of education may distribute funds appropriated ~~to him~~ by the
23 Legislature or granted by any federal agency to the state in accordance with chapter 4-8B, for
24 vocational education ~~in public secondary and postsecondary technical institutes~~ in the state in

1 accordance with a state plan or plans adopted by the South Dakota Board of Education. The aid
2 disbursed to the different schools of the state and all expenses incurred in the administration of
3 the provisions of any federal acts relating to vocational education shall be paid out of the funds
4 of the secretary appropriated for that purpose and from the federal funds allotted to the State of
5 South Dakota for similar purposes. The state treasurer is the custodian of all money paid to the
6 state from federal appropriations for the purpose of vocational education, and shall disburse the
7 funds on warrants issued by the state auditor upon vouchers approved by the director. The
8 secretary of education shall authorize the director to submit vouchers to the state auditor for the
9 amount payable as state and federal aid to each school approved under the provisions of this
10 chapter. Upon receipt of the vouchers, the state auditor shall draw warrants on the state treasury
11 in favor of the treasurer of the public secondary ~~and postsecondary technical~~ institute for the
12 sum approved by the secretary.

13 Section 36. That § 13-39-26 be amended to read as follows:

14 13-39-26. The provisions of this chapter do not apply to private business schools,
15 postsecondary technical institutes, or private vocational institutions except that the secretary of
16 education and LEAs may enter into contracts with these schools and institutions to provide
17 vocational education.

18 Section 37. That § 13-39-34 be repealed.

19 ~~13-39-34. Any LEA proposing to operate a postsecondary technical institute or establish an~~
20 ~~existing postsecondary technical institute as a separate legal entity may petition the state board~~
21 ~~pursuant to §§ 13-39-35 to 13-39-36, inclusive. The state board may conduct hearings,~~
22 ~~investigate school records, and secure other data relating to the proposed postsecondary~~
23 ~~technical institute, its geographical location, the demography and economy of the area, and any~~
24 ~~other facts relating to the proposed postsecondary technical institute which the state board may~~

1 consider appropriate:

2 Section 38. That § 13-39-35 be repealed.

3 ~~—13-39-35. If the South Dakota Board of Education finds that the classification petitioned for~~
4 ~~would further the educational interests of the state, more nearly equalize the educational~~
5 ~~opportunities in certain phases of technical education to persons in this state who are of the age~~
6 ~~and maturity to pursue study in preparation for entering the labor market, be of potential benefit~~
7 ~~to persons in all communities of the state, and is otherwise in accordance with the plans of the~~
8 ~~state board, it may recommend the petition be approved by the Legislature.~~

9 Section 39. That § 13-39-35.1 be repealed.

10 ~~—13-39-35.1. If the Legislature approves the petition by passing a joint resolution, an LEA~~
11 ~~may operate a postsecondary technical institute. If an LEA begins to operate a postsecondary~~
12 ~~technical institute without the approval required by this section, that school is ineligible for state~~
13 ~~vocational education money. Adult vocational education programs are exempt from the~~
14 ~~provisions of this section.~~

15 Section 40. That § 13-39-35.2 be repealed.

16 ~~—13-39-35.2. The joint resolution passed pursuant to § 13-39-35.1 shall specify the duties and~~
17 ~~powers of a postsecondary technical institute. The resolution may also specify the procedure for~~
18 ~~selecting members of the governing board, which may include local elections for such members.~~
19 ~~A school established pursuant to § 13-39-35.1 may be a distinct legal entity separate and apart~~
20 ~~from the school district or districts which established it.~~

21 Section 41. That § 13-39-36 be repealed.

22 ~~—13-39-36. If the petition is approved by the Legislature, the LEA may establish the proposed~~
23 ~~school and the state board shall classify the school as a postsecondary technical institute. The~~
24 ~~state board shall conduct general supervision as provided in § 13-39-37 and in the rules adopted~~

1 pursuant to chapter 1-26 by the state board.

2 Section 42. That § 13-39-37 be repealed.

3 ~~—13-39-37. The South Dakota Board of Education may adopt rules pursuant to chapter 1-26,~~
4 ~~to be administered by the director, governing the operation and maintenance of postsecondary~~
5 ~~technical institutes which will afford the people of the state, insofar as practicable, an equal~~
6 ~~opportunity to acquire a public technical education. The rules may provide for the following:~~

7 ~~—(1)—Curriculum and standards of instruction and scholarship;~~

8 ~~—(2)—Attendance requirements, age limits of trainees, eligibility for attendance, and tuition~~
9 ~~payments and other charges;~~

10 ~~—(3)—Apportionment and distribution of funds made available to the board for carrying out~~
11 ~~the purposes of §§ 13-39-34 to 13-39-39, inclusive;~~

12 ~~—(4)—Transportation requirements and payments;~~

13 ~~—(5)—General administrative matters;~~

14 ~~—(6)—The submission of the annual budget of the postsecondary technical institute which~~
15 ~~shall include, but is not limited to, a description of programs, a list of staff positions,~~
16 ~~and the amount for supplies and operating expenses associated with the programs~~
17 ~~offered. The rules shall require the budget to include all operating costs of programs,~~
18 ~~including those costs ineligible for reimbursement from federal and state funds, shall~~
19 ~~state the procedure for amending and filing it with the division of education services~~
20 ~~and resources and shall provide that failure to comply with the rules may result in~~
21 ~~withholding of payments from federal and state funds;~~

22 ~~—(7)—The submission of plans of LEAs for new construction or major renovation of~~
23 ~~facilities eligible for reimbursement. The rules regarding these plans shall provide a~~
24 ~~requirement that the LEA, by a written resolution, declare the LEA committed to~~

1 begin construction if the budget of the state board provides the matching funds;

2 ~~—(8)—The promotion and coordination of vocational education; and~~

3 ~~—(9)—The duplication of programs.~~

4 Section 43. That § 13-39-37.1 be repealed.

5 ~~—13-39-37.1. Notwithstanding the provisions of §§ 13-16-6, 13-16-7, and 13-19-7, school~~
6 ~~districts may not construct student union buildings and recreational facilities for postsecondary~~
7 ~~technical institute students. This restriction includes the use of student fees to pay for student~~
8 ~~union buildings and recreational or multi-use facilities. The provisions of this section may not~~
9 ~~be construed as a restriction of construction or operation of regular cafeteria or multi-use~~
10 ~~facilities for students at postsecondary technical institutes.~~

11 Section 44. That § 13-39-38 be repealed.

12 ~~—13-39-38. The secretary of education shall apportion and distribute funds made available for~~
13 ~~postsecondary technical institutes through a formula approved by the South Dakota Board of~~
14 ~~Education to the LEAs having jurisdiction over postsecondary technical institutes to assist in~~
15 ~~maintaining and operating those schools. The use of the funds are subject to rules adopted by~~
16 ~~the state board pursuant to subdivision § 13-39-37(3) and in accordance with the approved state~~
17 ~~plan for vocational education.~~

18 Section 45. That § 13-39-39 be repealed.

19 ~~—13-39-39. The division shall distribute funds to the postsecondary technical institutes under~~
20 ~~the provisions of § 13-39-38 from money appropriated to the division for that purpose, and from~~
21 ~~federal funds allotted to the State of South Dakota for that purpose.~~

22 Section 46. That § 13-39-39.1 be repealed.

23 ~~—13-39-39.1. LEAs operating postsecondary technical institutes shall keep separate the~~
24 ~~accounting and funds for the operation of the postsecondary technical programs. The LEA shall~~

1 ~~deposit receipts, student fees and income from state and federal sources, as well as any other~~
2 ~~receipts incidental to the operation of the postsecondary technical institute, in the fund or funds~~
3 ~~created pursuant to this chapter.~~

4 Section 47. That § 13-39-65 be repealed.

5 ~~—13-39-65. The continuing contract provisions set forth in §§ 13-43-9.1 to 13-43-11,~~
6 ~~inclusive, do not apply to any person employed in a public postsecondary technical institute. At~~
7 ~~least sixty days prior to the termination of an employee in a postsecondary technical institute,~~
8 ~~the governing board shall notify in writing the employee of such termination.~~

9 Section 48. That § 13-39-72 be repealed.

10 ~~—13-39-72. An LEA operating an approved postsecondary vocational school may award an~~
11 ~~associate in applied sciences degree. The state board may promulgate rules pursuant to chapter~~
12 ~~1-26 providing for approval of programs in postsecondary vocational education schools leading~~
13 ~~to an associate in applied science degree. In approving any program, the state board shall~~
14 ~~consider curriculum, required hours, quality of instruction, minimum standards for entry into~~
15 ~~the programs, and standards for program completion.~~

16 Section 49. The provisions of sections 29 to 46, inclusive, of this Act are effective on the
17 date of the first annual meeting of the State Board of Technical Institutes, pursuant to section
18 5 of this Act.

19 Section 50. No technical institute created pursuant to this Act may be deemed to be an
20 educational institution under the control of the Board of Regents pursuant to S.D. Const., Art.
21 XIV, § 3. No technical institute may use the term, college, or the term, community college, as
22 a part of its name, because the mission of the technical institutes is job training and work force
23 development.

24 Section 51. The state board is the lawful successor to the Board of Education with respect

1 to (a) the lease purchase agreement dated as of August 1, 1988, between the Health and
2 Educational Facilities Authority and the Board of Education, as heretofore amended or
3 supplemented, (b) the first supplement to general pledge and escrow agreement between the
4 treasurer, the Board of Education, the Health and Educational Facilities Authority, and the First
5 National Bank in Sioux Falls, dated as of August 1, 1988, as amended and supplemented, (c)
6 the fourth supplement to facility fee tuition collection and deposit agreement dated June 1, 1999,
7 among the treasurer, the Board of Education, the First National Bank in Sioux Falls, and the
8 school districts specified in section 19 of this Act, or their successors, as such agreement has
9 been heretofore amended or supplemented from time to time, and (d) all other agreements
10 related to the foregoing and with respect to vocational education program revenue bonds issued
11 from time to time by the Health and Educational Facilities Authority to finance property used
12 by the technical institutes.

13 Section 52. The state board has all necessary power and authority to enter into the
14 agreements described in section 51 of this Act and succeeds to and assumes all of the
15 obligations of the Board of Education with respect thereto and is bound by all of the covenants
16 of the Board of Education in connection therewith, which obligations and covenants are hereby
17 ratified and confirmed. All bonds, notes, or other evidences of indebtedness outstanding on the
18 effective date of this Act are unaffected by the transfer of functions from the Board of Education
19 to the state board. No contract with respect to such bonds may be deemed to have been impaired
20 by this Act.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

190N0473 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 100 - 02/23/2007

Introduced by: Senators Bartling, Apa, Duenwald, Gant, Garnos, Greenfield, Hansen (Tom), Hanson (Gary), Kloucek, Koetzle, Lintz, Maher, McNenny, Peterson (Jim), Smidt, and Sutton and Representatives Tidemann, Brunner, Burg, Davis, Dennert, DeVries, Elliott, Gillespie, Glenski, Halverson, Hunt, Jerke, Juhnke, Krebs, Lucas, Moore, Nelson, Noem, Pederson (Gordon), Peters, Pitts, Rausch, Sigdestad, Thompson, Turbiville, and Vanneman

1 FOR AN ACT ENTITLED, An Act to appropriate money for the Northern Crops Institute.

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

3 Section 1. There is hereby appropriated from the general fund the sum of seventy-five
4 thousand dollars (\$75,000), or so much thereof that may be necessary, to the Department of
5 Agriculture for a grant to the Northern Crops Institute.

6 Section 2. The secretary of the Department of Agriculture shall approve vouchers and the
7 state auditor shall draw warrants to pay expenditures authorized by this Act.

8 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
9 June 30, 2008, shall revert in accordance with § 4-8-21.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

490N0413

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 165 - 02/23/2007

Introduced by: Senators Gant, Abdallah, Dempster, Gray, Hauge, Koetzle, and McCracken
and Representatives Krebs, Ahlers, Boomgarden, Olson (Russell), Rave,
Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to repeal and reestablish provisions to regulate mortgage
2 lenders and brokers.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Director," the director of the Division of Banking of the Department of Revenue and
6 Regulation;

7 (2) "Division," the Division of Banking of the Department of Revenue and Regulation;

8 (3) "Licensee," the person holding a license provided by this Act;

9 (4) "Mortgage lender," any person who, for valuable consideration, originates, sells, or
10 services mortgages, or holds himself, herself, or itself out as a person who, for
11 valuable consideration, originates, sells, or services mortgages, other than those
12 exempt pursuant to section 10 of this Act;

13 (5) "Mortgage broker," any person who, for compensation or gain, acts as an
14 intermediary between borrower and lender to assist a person in obtaining or applying



1 to obtain a mortgage loan or holds himself, herself, or itself out as being able to assist
2 a person in obtaining or applying to obtain a mortgage loan;

3 (6) "Mortgage brokering activities," for compensation, either directly or indirectly,
4 assisting or offering to assist in the preparation of an application for a mortgage loan
5 on behalf of a borrower, or negotiating or offering to negotiate the terms or
6 conditions of a mortgage loan with any person making mortgage loans;

7 (7) "Mortgage loan originator," any person acting under the supervision of a licensee and
8 who, for compensation or gain, takes or receives a mortgage application, assembles
9 information, and prepares paperwork and documentation necessary for obtaining a
10 mortgage loan or arranges for a conditional mortgage loan commitment between a
11 borrower and a lender, or arranges for a loan commitment from a lender. The term,
12 mortgage loan originator, does not include an employee of a licensee whose job
13 responsibilities are limited to clerical tasks that do not include processing of
14 mortgage loans;

15 (8) "Mortgage lending activities," for compensation, either directly or indirectly,
16 accepting or offering to accept applications for making mortgage loans;

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

21 Section 2. No person may act as a mortgage lender, mortgage broker, or mortgage loan
22 originator in this state or use the title, mortgage broker, mortgage lender, or mortgage loan
23 originator without first obtaining a license, or in the case of originators a registration, and
24 undergoing a criminal background check from the division.

1 Section 3. Any applicant for licensure or registration shall submit to the director an
2 application on forms prescribed by the division. The forms shall include, at a minimum, all
3 addresses at which business is to be conducted, the names and titles of each director and
4 principal officer of the business, and a description of the business activities and experience of
5 the applicant.

6 Section 4. Each applicant for licensure and registration under this Act shall submit to a state
7 and federal criminal background investigation by means of fingerprint checks by the Division
8 of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the
9 Division of Banking shall submit completed fingerprint cards to the Division of Criminal
10 Investigation. Upon completion of the criminal background check, the Division of Criminal
11 Investigation shall forward to the Division of Banking all information obtained as a result of the
12 criminal background check. The Division of Banking may require a state and federal criminal
13 background check for any licensee who is the subject of a disciplinary investigation by the
14 division. Failure to submit or cooperate with the criminal background investigation is grounds
15 for denial of an application or may result in revocation of a license. The applicant shall pay for
16 any fees charged for the cost of fingerprinting or the criminal background investigation. Any
17 applicant who has previously completed a background check in another jurisdiction in
18 anticipation of receiving a license or registration in that jurisdiction may have the results of such
19 a background check forwarded to the division in satisfaction of this requirement.

20 Section 5. The applicant for an initial license shall submit a fee in the amount of not more
21 than five hundred dollars for a mortgage broker license, and not more than one thousand dollars
22 for a mortgage lender license. The applicant for initial registration shall submit a fee in the
23 amount of not more than two hundred fifty dollars for mortgage loan originator registration. The
24 director shall establish the fees by rules promulgated pursuant to chapter 1-26.

1 Section 6. No license or registration granted pursuant to this Act is assignable.

2 Section 7. Any license or registration granted under this Act expires on the following
3 December thirty-first after its issuance.

4 Section 8. Any application for renewal of a license or registration under this Act must be
5 postmarked to the director by December first and shall be accompanied by a fee to be
6 established by the director by rules promulgated pursuant to chapter 1-26. Any license granted
7 by the division prior to the implementation of this Act is valid until December 31, 2007. The
8 fee to transact business as a mortgage broker may not exceed five hundred dollars. The fee to
9 transact business as a mortgage lender may not exceed one thousand dollars. The fee to register
10 as a mortgage loan originator may not exceed two hundred fifty dollars. Any licensee or
11 registrant that files for renewal after December first and before January first of the next calendar
12 year shall pay a late fee in addition to the renewal fee. The late fee, not to exceed twenty-five
13 percent of the renewal fee, shall be established by the director by rules promulgated pursuant
14 to chapter 1-26. After January first no license may be issued unless an application is filed
15 pursuant to sections 2 to 5, inclusive, of this Act.

16 Section 9. The State of South Dakota, any political subdivision of the state, and any quasi-
17 governmental organization created by an executive order of the State of South Dakota and any
18 subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22;
19 any nonprofit United States Treasury Community Development Financial Institution, Small
20 Business Administration Certified Development Company, or Regional Revolving Loan Fund;
21 or any commercial club, chamber of commerce, or industrial development corporation formed
22 pursuant to § 9-12-11 or 9-27-37 is subject to this Act but exempt from initial license fees,
23 renewal fees, and surety bond requirements under this Act.

24 Section 10. The following entities and their employees and exclusive agents are exempt

1 from the provisions of this Act:

- 2 (1) Any state bank and its subsidiary;
- 3 (2) Any national bank and its subsidiary;
- 4 (3) Any bank holding company and its subsidiary;
- 5 (4) Any other federally insured financial institution, and its holding company and
6 subsidiary;
- 7 (5) Any South Dakota chartered trust company;
- 8 (6) Any real estate broker licensed pursuant to chapter 36-21A; and
- 9 (7) Any insurance company or any person acting as an intermediary thereto, if
10 participating in mortgage lending activities solely with its own assets and for its own
11 portfolio.

12 Section 11. Any person, including a mortgage loan originator, shall complete the equivalent
13 of two years of service under the supervision and direction of a licensed mortgage broker or
14 mortgage lender, or another jurisdiction's equivalent thereof, before that person is eligible to
15 apply for a mortgage broker's or mortgage lender's license. No mortgage broker, mortgage
16 lender, or mortgage loan originator is eligible for a license without such training and experience.
17 The director may promulgate rules pursuant to chapter 1-26 with regard to such training and
18 experience. Any person licensed as a mortgage broker or mortgage lender with the director prior
19 to July 1, 2007, is exempt from this requirement.

20 Section 12. Any mortgage broker or mortgage lender licensed to practice in the State of
21 South Dakota may use the services of a mortgage loan originator that operates under direct
22 control and supervision of the mortgage broker or mortgage lender. The mortgage loan
23 originator shall be registered by the director and while registered and employed by a mortgage
24 broker or mortgage lender may not be deemed to be operating as a mortgage broker or mortgage

1 lender.

2 Section 13. Any applicant for a license shall submit with the application a bond in the
3 amount of twenty-five thousand dollars. The bond shall be issued by a surety company qualified
4 to do business as a surety in this state. The bond shall be in favor of this state for the use of this
5 state and any person who has a cause of action under this Act against the licensee. The bond
6 shall be conditioned on:

7 (1) The licensee's faithful performance under this Act and any rules adopted pursuant to
8 this Act; and

9 (2) The payment of any amounts that are due to the state or another person during the
10 time the bond is in force.

11 The bond may be continuous, and regardless of how long the bond remains in force, the
12 aggregate liability of a surety to all persons damaged by a licensee's violation of the provisions
13 of this Act may not exceed the amount of the bond. The bond may be cancelled by the surety
14 upon thirty days notice to the licensee and the director, and the surety's liability on the bond
15 shall also terminate upon the effective date of any suspension or revocation of the license.

16 Section 14. Any person, who without first obtaining a license or registration under this Act,
17 engages in the business or occupation of, or advertises or holds the person out as, or claims to
18 be, or temporarily acts as, a mortgage broker, mortgage lender, or mortgage loan originator in
19 this state is guilty of a Class 2 misdemeanor and may be held responsible for all costs of
20 prosecution, including restitution.

21 Section 15. Any licensee or registrant is subject to examination and investigation by the
22 director. The director shall promulgate rules pursuant to chapter 1- 26 that specify the process
23 by which examinations and investigations will be performed.

24 Section 16. The director may suspend, not to exceed six months, or revoke a license or

1 registration if the director finds:

2 (1) Any fact or condition exists that, if it had existed at the time the licensee or registrant
3 applied for its license or registration, would have been grounds for denying the
4 application;

5 (2) The licensee or registrant violated any provisions of this Act or any rule or order
6 promulgated by the director;

7 (3) The licensee or registrant refuses to permit the director to make any examination
8 authorized by this Act or rule promulgated pursuant to this Act, or any federal statute,
9 rule, or regulation pertaining to mortgage lending;

10 (4) The licensee or registrant willfully fails to make any report required of this Act;

11 (5) The competence, experience, character, or general fitness of the licensee or registrant
12 indicates that it is not in the public interest to permit the licensee or registrant to
13 continue to conduct business;

14 (6) The bond of the licensee has been revoked or cancelled by the surety;

15 (7) The licensee or any partner, officer, director, manager, or employee of the licensee
16 has been convicted of a felony or a misdemeanor involving any aspect of the
17 financial services business;

18 (8) The licensee or any partner, officer, director, manager, or employee of the licensee
19 has had a license substantially equivalent to a license under this Act, and issued by
20 another state, denied, revoked or suspended under the laws of that state;

21 (9) The licensee or registrant has filed an application for a license or registration which
22 as of the date the license or registration was issued, or as of the date of an order
23 denying, suspending, or revoking a license or registration, was incomplete in any
24 material respect or contained any statement that was, in light of the circumstances

1 under which it was made, false or misleading with respect to any material fact.

2 The director may revoke a license or registration for good cause pursuant to chapter 1-26.

3 If the licensee is the holder of more than one license, the director may revoke any or all of the
4 licenses.

5 Section 17. The director may, in the director's discretion, reinstate a license or registration,
6 terminate a suspension, or grant a new license or registration to any person whose license or
7 registration has been revoked or suspended if no fact or condition then exists which would
8 justify the director in refusing to grant a license or registration.

9 Section 18. Any licensee whose license or registration is subject to suspension or revocation
10 by the director, may contest such suspension or revocation in accordance with the provisions
11 of chapter 1-26.

12 Section 19. Any licensee under this Act, in addition to the license and other fees provided
13 by this Act, shall pay the annual tax provided in chapter 10-43, upon the net income of the
14 licensee measured by the net income assignable to the licensee's business in South Dakota. The
15 State of South Dakota, any political subdivision of the state, and any quasi-governmental
16 organization created by an executive order of the State of South Dakota and any subsidiary of
17 such organization; any nonprofit United States Treasury Community Development Financial
18 Institution, Small Business Administration Certified Development Company, or Regional
19 Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial
20 development corporation formed pursuant to § 9-12-11 or 9-27-37 is exempt from the payment
21 of this tax.

22 Section 20. The director may promulgate rules pursuant to chapter 1-26 for the continuing
23 education of mortgage brokers, mortgage lenders, and mortgage loan originators, and for the
24 management and administration of licenses and registrations issued pursuant to this Act.

1 Section 21. That §§ 54-14-1 to 54-14-11, inclusive, be repealed.

2 Section 22. Fees collected pursuant to this Act shall be deposited with the state treasurer in
3 the banking special revenue fund created in § 51A-2-30. Expenditures from the fund shall be
4 appropriated through the normal budget process.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

942N0655

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 182 - 02/14/2007

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

Introduced by: Senators Peterson (Jim), Duenwald, Garnos, Hanson (Gary), and Heidepriem
and Representatives Rausch, Dykstra, Hargens, Jerke, Nelson, Pitts,
Sigdestad, and Street

1 FOR AN ACT ENTITLED, An Act to revise and establish certain provisions regarding the
2 setting of rates for public utilities.

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

4 Section 1. That § 49-34A-8 be amended to read as follows:

5 49-34A-8. The ~~Public Utilities Commission~~ commission, in the exercise of its power under
6 this chapter to determine just and reasonable rates for public utilities, shall give due
7 consideration to the public need for adequate, efficient, economical, and reasonable service and
8 to the need of the public utility for revenues sufficient to enable it to meet its total current cost
9 of furnishing such service, including taxes and interest, and including adequate provision for
10 depreciation of its utility property used and necessary in rendering service to the public, and to
11 earn a fair and reasonable return upon the value of its property.

12 Section 2. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The burden is on the public utility to establish that the underlying costs of any rates, charges,



- 1 or automatic adjustment charges filed under this chapter are prudent, efficient, and economical
- 2 and are reasonable and necessary to provide service to the public utility's customers in this state.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0549 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 185 - 02/23/2007

Introduced by: The Committee on Appropriations at the request of the Office of the
Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund tax refunds for elderly and
2 disabled persons for property tax and sales tax refunds.

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

4 Section 1. There is hereby appropriated from the general fund the sum of eight hundred
5 thousand dollars (\$800,000), or so much thereof as may be necessary, to the Department of
6 Revenue and Regulation to provide refunds for real property tax and sales tax to elderly and
7 disabled persons pursuant to chapters 10-18A and 10-45A. An amount not to exceed ten
8 thousand dollars in fiscal year 2008 may be used for the administrative costs of this Act.

9 Section 2. The secretary of revenue and regulation shall approve vouchers and the state
10 auditor shall draw warrants to pay expenditures authorized by this Act.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

752N0708

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 193** - 02/02/2007

Introduced by: Senators McCracken, Albers, Gant, Gray, Hansen (Tom), Nesselhuf, and Olson (Ed) and Representatives Cutler, Boomgarden, Faehn, Jerke, and Miles

1 FOR AN ACT ENTITLED, An Act to prohibit the abuse of certain elderly persons and to revise
2 certain provisions regarding the abuse of disabled adults.

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

4 Section 1. That § 22-46-1 be amended to read as follows:

5 22-46-1. Terms used in this chapter mean:

6 (1) "Abuse," physical harm, bodily injury, or attempt to cause physical harm or injury,
7 or the infliction of fear of imminent physical harm or bodily injury on an elder or a
8 disabled adult;

9 (2) "Disabled adult," a person eighteen years of age or older who suffers from a
10 condition of mental retardation, infirmities of aging as manifested by organic brain
11 damage, advanced age, or other physical dysfunctioning to the extent that the person
12 is unable to protect himself or herself or provide for his or her own care;

13 (3) "Elder," a person sixty-five years of age or older;

14 (4) "Exploitation," the wrongful taking or exercising of control over property of an elder
15 or a disabled adult with intent to defraud ~~that~~ the elder or disabled adult; and



1 ~~(4)~~(5) "Neglect," harm to an elder's or a disabled adult's health or welfare, without
2 reasonable medical justification, caused by the conduct of a person responsible for
3 the elder's or disabled adult's health or welfare, within the means available for the
4 elder or disabled adult, including the failure to provide adequate food, clothing,
5 shelter, or medical care.

6 Section 2. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For the purposes of this chapter, the term, neglect, does not include a decision that is made
9 to not seek medical care for an elder or disabled adult upon the expressed desire of the elder or
10 disabled adult; a decision to not seek medical care for an elder or disabled adult based upon a
11 previously executed declaration, do-not-resuscitate order, or a power of attorney for health care;
12 a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law;
13 or the failure to provide goods and services outside the means available for the elder or disabled
14 adult.

15 Section 3. That § 22-46-2 be amended to read as follows:

16 22-46-2. Any person who abuses or neglects an elder or a disabled adult in a manner which
17 does not constitute aggravated assault is guilty of a Class 6 felony.

18 Section 4. That § 22-46-3 be amended to read as follows:

19 22-46-3. Any person who, having assumed the duty by written contract, by receipt of
20 payment for care, or by order of a court to provide for the support of an elder or a disabled adult,
21 and having been entrusted with the property of that elder or disabled adult, with intent to
22 defraud, appropriates such property to a use or purpose not in the due and lawful execution of
23 that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft
24 pursuant to chapter 22-30A.

1 Section 5. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A report of abuse, neglect, or exploitation under this chapter may be made orally or in
4 writing to the state's attorney of the county in which the elder or disabled adult resides or is
5 present, to the Department of Social Services, or to the law enforcement officer. The state's
6 attorney or law enforcement officer, upon receiving a report, shall immediately notify the
7 Department of Social Services.

8 Section 6. That § 34-12-51 be amended to read as follows:

9 34-12-51. Any institution regulated pursuant to chapter 34-12 and any employee, agent, or
10 member of a medical or dental staff thereof who, in good faith, makes a report of abuse,
11 exploitation, or neglect of a any elder or disabled adult, is immune from any liability, civil or
12 criminal, that might otherwise be incurred or imposed, and has the same immunity with respect
13 to participation in any judicial proceeding resulting from ~~such~~ the report. This immunity ~~also~~
14 extends in a like manner to any public official involved in the investigation of abuse,
15 exploitation, or neglect of any elder or disabled adult, or to any person or institution ~~provided~~
16 ~~herein~~ who in good faith cooperates with ~~such~~ any public officials in an investigation. The
17 provisions of this section do not extend to any person alleged to have committed any act of
18 abuse or neglect of a any elder or disabled adult or to any person who has aided and abetted any
19 such act.

20 Section 7. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Any person who, in good faith, makes a report of abuse, neglect, or exploitation of any elder
23 or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred
24 or imposed, and has the same immunity with respect to participation in any judicial proceeding

1 resulting from the report. This immunity extends in a like manner to any public official involved
2 in the investigation of abuse, neglect, or exploitation of any elder or disabled adult, or to any
3 person or institution who in good faith cooperates with any public official in an investigation.
4 The provisions of this section do not extend to any person alleged to have committed any act
5 of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any
6 such act.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

418N0639

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 202 - 02/23/2007

Introduced by: Senator Gray and Representative Lust

1 FOR AN ACT ENTITLED, An Act to increase the exemption from process of certain
2 retirement benefits.

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

4 Section 1. That § 43-45-16 be amended to read as follows:

5 43-45-16. Any person ~~shall have~~ has the right to select and designate a total of ~~two hundred~~
6 ~~fifty thousand~~ one million dollars and the income and distributions therefrom from the
7 employee's benefit plans as exempt from execution, attachment, garnishment, seizure, or taking
8 by any legal process. This exemption is subject to the right of the State of South Dakota and its
9 political subdivisions to collect any amounts owed to them. This section permits benefits under
10 such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent
11 of a participant in such plan to the extent expressly provided for in a qualified domestic relations
12 order as defined in 29 U.S.C. § 1056(d) or in § 401(a)(13) of the Internal Revenue Code.

13 Section 2. That § 43-45-17 be amended to read as follows:

14 43-45-17. For the purposes of §§ 43-45-16 to 43-45-18, inclusive, the term, employee
15 benefit plan, means any plan or arrangement that is subject to the provisions of 29 U.S.C.



1 §§ 1001 through 1461, as amended, and in effect on January 1, ~~2000~~ 2007, or that is described
2 in § 401, 403(a), 403(b), 408, 408A, ~~or 409, 414, 457, or 501(a)~~ of the Internal Revenue Code,
3 as amended, and in effect as of January 1, ~~2000~~ 2007. The term, employee benefit plan, does not
4 include any employee benefit plan that is excluded from application pursuant to 29 U.S.C.
5 § 1003(b)(1), as amended, and in effect as of January 1, ~~2000~~ 2007.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

770N0098

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SJR 9** - 02/23/2007

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

1 A JOINT RESOLUTION, To propose a constitutional amendment to provide for forty-day
2 legislative sessions.

3 BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE
4 OF REPRESENTATIVES CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendment to
6 Article III, section 6 of the Constitution of the State of South Dakota, as set forth in section 2
7 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state
8 for approval.

9 Section 2. That Article III, section 6 of the Constitution of the State of South Dakota, be
10 amended to read as follows:

11 § 6. The terms of office of the members of the Legislature shall be two years; they shall
12 receive for their services the salary fixed by law under the provisions of § 2 of article XXI of
13 this Constitution, and five cents for every mile of necessary travel in going to and returning from
14 the place of meeting of the Legislature on the most usual route.



1 No person may serve more than four consecutive terms or a total of eight consecutive years
2 in the senate and more than four consecutive terms or a total of eight consecutive years in the
3 house of representatives. However, this restriction does not apply to partial terms to which a
4 legislator may be appointed ~~or to legislative service before January 1, 1993.~~

5 A regular session of the Legislature shall be held ~~in each odd-numbered~~ year and shall not
6 exceed forty legislative days, excluding Sundays, holidays and legislative recess, except in cases
7 of impeachment, and members of the Legislature shall receive no other pay or perquisites except
8 salary and mileage.

9 ~~A regular session of the Legislature shall be held in each even-numbered year beginning~~
10 ~~with the year 1964 and shall not exceed thirty-five legislative days, excluding Sundays, holidays~~
11 ~~and legislative recess, except in cases of impeachment, and members of the Legislature shall~~
12 ~~receive no other pay or perquisites except salary and mileage.~~