



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0299

SENATE GOVERNMENT OPERATIONS AND AUDIT  
COMMITTEE ENGROSSED NO. **HB 1041** -  
02/26/2007

Introduced by: The Committee on Commerce at the request of the Cosmetology Commission

1 FOR AN ACT ENTITLED, An Act to revise the fees for cosmetology, nail technology, and  
2 esthetics.

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

4 Section 1. That § 36-15-20 be amended to read as follows:

5 36-15-20. The fees promulgated in rules by the commission pursuant to chapter 1-26 for all  
6 examinations, licenses, permits, and renewals required by this chapter may not exceed the  
7 following maximums:

8 (1) Cosmetologist examination fee, sixty dollars;

9 ~~—(2)—Cosmetologist license fee, fifteen dollars;~~

10 ~~—(3)—Cosmetologist license renewal fee, fifteen dollars;~~

11 ~~—(4)—Cosmetologist-manager license fee, fifteen dollars;~~

12 ~~—(5)—Cosmetologist-manager license renewal fee, fifteen dollars;~~

13 ~~—(6)—Nail technician examination fee, sixty dollars;~~

14 ~~—(7)—Nail technician license fee, fifteen dollars;~~

15 ~~—(8)—Nail technician license renewal fee, fifteen dollars;~~



- 1    ~~(9) Nail technician-manager license fee, fifteen dollars;~~
- 2    ~~(10) Nail technician-manager license renewal fee, fifteen dollars;~~
- 3    ~~(11) Esthetician examination fee, eighty dollars;~~
- 4    ~~(12) Esthetician license fee, twenty-five dollars;~~
- 5    ~~(13) Esthetician license renewal fee, twenty-five dollars;~~
- 6    ~~(14) Esthetician-manager license fee, twenty-five dollars;~~
- 7    ~~(15) Esthetician-manager license renewal fee, twenty-five dollars;~~
- 8    ~~(16) Temporary cosmetologist, nail technician, or esthetician license fee, six dollars;~~
- 9    ~~(17) Junior instructor license fee, fifteen dollars;~~
- 10   ~~(18) Junior instructor license renewal fee, fifteen dollars;~~
- 11   ~~(19) Senior instructor license fee, fifteen dollars;~~
- 12   ~~(20) Senior instructor license renewal fee, fifteen dollars;~~
- 13   ~~(21) Reciprocity and waiver of examination fee, one hundred dollars;~~
- 14   ~~(22) Temporary permit based on reciprocal recognition of another state license, six~~  
15       ~~dollars;~~
- 16   ~~(23) For endorsement of a certificate issued under this chapter, for a South Dakota~~  
17       ~~licensee to obtain reciprocity in another state, or furnishing of other papers to another~~  
18       ~~state or school, twenty dollars;~~
- 19   ~~(24) Apprentice license fee, twenty-five dollars;~~
- 20   ~~(25) Apprentice salon license fee, two hundred fifty dollars;~~
- 21   ~~(26) Apprentice salon license renewal fee, two hundred fifty dollars;~~
- 22   ~~(27) School license fee, two hundred fifty dollars;~~
- 23   ~~(28) School license renewal fee, two hundred fifty dollars;~~
- 24   ~~(29) Student license fee, six dollars;~~

- 1    ~~(30) Cosmetology salon or booth license fee, sixty dollars;~~
- 2    ~~(31) Cosmetology salon or booth license renewal fee, thirty dollars;~~
- 3    ~~(32) Nail salon or booth license fee, sixty dollars;~~
- 4    ~~(33) Nail salon or booth license renewal fee, thirty dollars;~~
- 5    ~~(34) Esthetics salon or booth license fee, eighty dollars;~~
- 6    ~~(35) Esthetics salon or booth license renewal fee, thirty dollars;~~
- 7    ~~(36) License duplicate or replacement fee, five dollars~~ Examination fee which includes
- 8           the initial license, one hundred dollars;
- 9       (2) Examination retake fee, one test, sixty dollars; two tests, seventy dollars; three tests,
- 10           eighty dollars;
- 11       (3) Cosmetologist, nail technician, or esthetician license renewal fee, twenty-five dollars;
- 12       (4) Temporary cosmetologist, nail technician, or esthetician license fee, six dollars;
- 13       (5) Instructor initial license fee and license renewal fee, thirty-five dollars;
- 14       (6) Reciprocity, initial license, and waiver of examination fee, one hundred dollars;
- 15       (7) For certification of a license issued under this chapter for a South Dakota licensee to
- 16           obtain licensure in another state, or furnishing of other papers to another state or
- 17           school, twenty dollars;
- 18       (8) Apprentice license fee, twenty-five dollars;
- 19       (9) Apprentice salon initial license and renewal fee, two hundred fifty dollars;
- 20       (10) School initial license fee and renewal fee, three hundred dollars;
- 21       (11) Student license fee, six dollars;
- 22       (12) Salon or booth initial permit license fee, sixty dollars;
- 23       (13) Salon or booth license renewal fee, forty dollars;
- 24       (14) Reinspection fee for failed salon, fifty dollars for each reinspection;

1       (15) License duplicate or replacement fee, five dollars.

2       Any license, permit, or renewal fee which is collected by the commission shall be the same  
3 for each respective license, permit, or renewal regardless of the time remaining before the  
4 expiration date.

5       Section 2. That § 36-15-20.1 be amended to read as follows:

6       36-15-20.1. The commission shall promulgate reasonable rules pursuant to chapter 1-26  
7 concerning the reinstatement of lapsed licenses and lapsed renewals required by this chapter.  
8 The commission shall by rules promulgated pursuant to chapter 1-26 establish the fee, which  
9 may not be greater than ~~ten~~ twenty-five dollars for each year that ~~such~~ the license or renewal has  
10 lapsed. The commission shall also collect the fee for ~~such~~ the license and renewal as otherwise  
11 required by this chapter.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0341

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1063** - 02/26/2007

**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 Board of Regents

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund state university  
2 information technology.

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 one million three  
5 hundred thousand dollars (\$1,300,000), or so much thereof as may be necessary, to the Board  
6 of Regents to fund state university information technology.

7 Section 2. The executive director of the Board of Regents shall approve vouchers and the  
8 state auditor shall draw warrants to pay expenditures authorized by this Act.

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



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

553N0410

SENATE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1155** -  
02/26/2007

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

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

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

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

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

- 6 (1) "Authentication," to affirmatively verify before any wholesale distribution of a  
7 prescription drug occurs that each transaction listed on the pedigree has occurred;  
8 (2) "Board," the State Board of Pharmacy;  
9 (3) "Chain pharmacy warehouse," a physical location for prescription drugs that acts as  
10 a central warehouse and performs intracompany sales or transfers of such drugs to  
11 a group of chain pharmacies that have the same common ownership and control;  
12 (4) Co-licensed partner," a party that, with another party or parties, has the right to  
13 engage in the manufacturing or marketing, or both, of a co-licensed product;  
14 (5) "Co-licensed product," a prescription drug in which two or more parties have the



1 right to engage in the manufacturing or marketing, or both, of a drug consistent with  
2 the federal Food and Drug Administration's implementation of the Prescription Drug  
3 Marketing Act (21 C.F.R. Parts 203 and 205);

4 ~~(2)(6)~~ "Drug," "prescription drug," any human drug, including any biological product,  
5 except for blood and blood components intended for transfusion or biological  
6 products that are also medical devices required by federal law or federal regulation  
7 to be dispensed only by a prescription, including finished dosage forms and active  
8 ingredients bulk drug substances subject to § 503(b) of the Federal Food, Drug and  
9 Cosmetic Act as amended through January 1, 1991;

10 ~~(3)(7)~~ "Drug coupon," a form which may be redeemed at no cost or at reduced cost for a  
11 prescription drug;

12 (8) "Drug Enforcement Administration," the Drug Enforcement Administration of the  
13 United States Department of Justice;

14 ~~(4)(9)~~ "Drug sample," a unit of a prescription drug that is not intended to be sold and is  
15 intended to promote the sale of the drug;

16 (10) "Facility," a facility of a wholesale distributor where prescription drugs are stored,  
17 handled, repackaged, or offered for sale;

18 ~~(5)(11)~~ "Manufacturer," ~~anyone who is engaged in manufacturing, preparing,~~  
19 ~~propagating, compounding, processing, packaging, repackaging or labeling of~~  
20 ~~a prescription drug~~ as defined by the federal Food and Drug Administration's  
21 regulations implementing the Prescription Drug Marketing Act (21 C.F.R.  
22 Parts 203 and 205);

23 ~~(6)(12)~~ "Out-of-state wholesale drug distributor," a wholesale drug distributor with no  
24 physical facilities located in this state;

1       ~~(7)~~(13)       "Pharmacy," a place registered by the board under chapter 36-11 in which  
2                               prescription drugs are sold at retail;

3       (14)   "Pedigree," a document or electronic file containing information that records each  
4                               wholesale distribution of any given prescription drug;

5       (15)   "Repackage," repackaging or otherwise changing the container, wrapper, or labeling  
6                               to further the distribution of a prescription drug excluding that completed by the  
7                               pharmacist responsible for dispensing the drug to the patient;

8       (16)   "Repackager," a person who repackages.

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

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

17       (1)   The wholesale distributor has a written agreement currently in effect with the  
18                               manufacturer evidencing such ongoing relationship; and

19       (2)   The wholesale distributor is listed on the manufacturer's current list of authorized  
20                               distributors of record, which is updated by the manufacturer on no less than a  
21                               monthly basis.

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

24       For the purposes of this Act, drop shipment is the sale of a prescription drug to a wholesale

1 distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensed  
2 product partner, that manufacturer's third party logistics provider, or that manufacturer's  
3 exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title  
4 but not physical possession of such prescription drug and the wholesale distributor invoices the  
5 pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or  
6 administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other  
7 authorized person receives delivery of the prescription drug directly from the manufacturer, or  
8 that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

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

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

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

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

- 1       (1)    A pharmacy to a patient or other designated persons authorized by law to dispense  
2            or administer such drug to a patient;
- 3       (2)    A wholesale distributor to a pharmacy to a patient or other designated persons  
4            authorized by law to dispense or administer such drug to a patient;
- 5       (3)    A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy  
6            warehouse's intracompany pharmacy to a patient or other designated persons  
7            authorized by law to dispense or administer such drug to a patient; or
- 8       (4)    A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany  
9            pharmacy to a patient or other designated persons authorized by law to dispense or  
10           administer such drug to a patient.

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

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

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

22       For the purposes of this Act, a wholesale distributor is any person engaged in the wholesale  
23 distribution of prescription drugs, including manufacturers; repackagers; own-label distributors;  
24 private-label distributors; jobbers; brokers; warehouses, including manufacturers' and

1 distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record;  
2 drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale  
3 distributors; third party logistics providers; retail pharmacies that conduct wholesale  
4 distribution; hospital pharmacies; reverse distributors; and chain pharmacy warehouses that  
5 conduct wholesale distribution. To be considered part of the normal distribution channel such  
6 wholesale distributor must also be an authorized distributor of record.

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

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

- 11 (1) Intracompany sales of prescription drugs, meaning any transaction or transfer  
12 between any division, subsidiary, parent or affiliated or related company under  
13 common ownership and control of a corporate entity, or any transaction or transfer  
14 between co-licensees of a co-licensed product;
- 15 (2) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to  
16 sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical  
17 reasons;
- 18 (3) The distribution of prescription drug samples by manufacturers' representatives;
- 19 (4) Drug returns, when conducted by a hospital, health care entity, or charitable  
20 institution in accordance with 21 C.F.R. § 203.23;
- 21 (5) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed  
22 practitioners for office use;
- 23 (6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or  
24 the dispensing of a drug pursuant to a prescription;

- 1       (7)    The sale, transfer, merger, or consolidation of all or part of the business of a  
2            pharmacy or pharmacies from or with another pharmacy or pharmacies, whether  
3            accomplished as a purchase and sale of stock or business assets;
- 4       (8)    The sale, purchase, distribution, trade, or transfer of a prescription drug from one  
5            authorized distributor of record to one additional authorized distributor of record  
6            when the manufacturer has stated in writing to the receiving authorized distributor  
7            of record that the manufacturer is unable to supply such prescription drug and the  
8            supplying authorized distributor of record states in writing that the prescription drug  
9            being supplied had until that time been exclusively in the normal distribution  
10           channel;
- 11      (9)    The delivery of, or offer to deliver, a prescription drug by a common carrier solely  
12            in the common carrier's usual course of business of transporting prescription drugs,  
13            and such common carrier does not store, warehouse, or take legal ownership of the  
14            prescription drug;
- 15      (10)   The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired,  
16            damaged, returned, or recalled prescription drugs to the original manufacturer or to  
17            a third party returns processor.

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

20       Any wholesale distributor who engages in the wholesale distribution of prescription drugs  
21 in this state must be licensed by the board, in accordance with this Act, before engaging in  
22 wholesale distributions of wholesale prescription drugs. The board shall exempt manufacturers  
23 distributing their own FDA-approved drugs and devices from any qualifications required for  
24 licensing, to the extent not required by federal law or regulation, including the requirements in

1 subdivisions (7) and (8) of section 10 of this Act, and sections 11 to 13, inclusive, of this Act.

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

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

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

- 1 (a) The person's places of residence for the past seven years;
- 2 (b) The person's date and place of birth;
- 3 (c) The person's occupations, positions of employment, and offices held during  
4 the past seven years;
- 5 (d) The principal business and address of any business, corporation, or other  
6 organization in which each such office of the person was held or in which each  
7 such occupation or position of employment was carried on;
- 8 (e) Whether the person has been, during the past seven years, the subject of any  
9 proceeding for the revocation of any license or any criminal violation and, if  
10 so, the nature of the proceeding and the disposition of the proceeding;
- 11 (f) Whether, during the past seven years, the person has been enjoined, either  
12 temporarily or permanently, by a court of competent jurisdiction from  
13 violating any federal or state law regulating the possession, control, or  
14 distribution of prescription drugs or had any criminal violations of such laws,  
15 together with details concerning any such event;
- 16 (g) A description of any involvement by the person with any business, including  
17 any investments, other than the ownership of stock in a publicly traded  
18 company or mutual fund, during the past seven years, which manufactured,  
19 administered, prescribed, distributed, or stored pharmaceutical products and  
20 any lawsuits in which such businesses were named as a party;
- 21 (h) A description of any misdemeanor or felony criminal offense of which the  
22 person, as an adult, was found guilty, regardless of whether adjudication of  
23 guilt was withheld or whether the person pled guilty or nolo contendere. If the  
24 person indicates that a criminal conviction is under appeal and submits a copy

1 of the notice of appeal of that criminal offense, the applicant shall, within  
2 fifteen days after the disposition of the appeal, submit to the board a copy of  
3 the final written order of disposition; and

4 (i) A photograph of the person taken in the previous one hundred eighty days.

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

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

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

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

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

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

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

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

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

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

23 (f) Is serving in the capacity of a designated representative for only one applicant  
24 at a time, except where more than one licensed wholesale distributor is co-

1 located in the same facility and such wholesale distributors are members of an  
2 affiliated group, as defined in Section 1504 of the Internal Revenue Code;

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

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

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

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

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

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

1 facilities operated by the applicant in the state.

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

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

6 In accordance with each licensure renewal, the board shall send to each wholesale distributor  
7 licensed under section 9 of this Act a form setting forth the information that the wholesale  
8 distributor provided pursuant to section 10 of this Act. Within thirty days of receiving such  
9 form, the wholesale distributor shall identify and state under oath to the board any changes or  
10 corrections to the information that was provided pursuant to section 10 of this Act. Changes in,  
11 or corrections to, any information in section 10 of this Act shall be submitted to the board as  
12 required by such authority. The board may suspend or revoke the license of a wholesale  
13 distributor if such authority determines that the wholesale distributor no longer qualifies for the  
14 license issued under section 10 of this Act.

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

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

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

24 Section 16. That chapter 36-11A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A wholesale distributor shall receive prescription drug returns or exchanges from a  
3 pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement  
4 between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of  
5 expired, damaged, recalled, or otherwise nonsaleable pharmaceutical products shall be  
6 distributed by the receiving wholesale distributor only to either the original manufacturer or a  
7 third party returns processor. The returns or exchanges of prescription drugs, saleable or  
8 otherwise, including any redistribution by a receiving wholesaler, are not subject to the pedigree  
9 requirement of section 21 of this Act, so long as they are exempt from pedigree under the  
10 Federal Food and Drug Administration's currently applicable Prescription Drug Marketing Act  
11 guidance. Wholesale distributors and pharmacies shall be held accountable for administering  
12 their returns process and ensuring that the aspects of this operation are secure and do not permit  
13 the entry of adulterated and counterfeit product.

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

16 A manufacturer or wholesale distributor shall furnish prescription drugs only to a person or  
17 entity licensed by the appropriate board. Before furnishing prescription drugs to a person or  
18 entity not known to the manufacturer or wholesale distributor, the manufacturer or wholesale  
19 distributor shall affirmatively verify that the person or entity is legally authorized to receive the  
20 prescription drugs by contacting the appropriate board.

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

23 Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered  
24 only to the premises listed on the license. However, the manufacturer or wholesale distributor

1 may furnish prescription drugs to an authorized person or agent of that person at the premises  
2 of the manufacturer or wholesale distributor if:

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

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

8 Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a  
9 pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing  
10 the type and quantity of the prescription drug so received. Any discrepancy between receipt and  
11 the type and quantity of the prescription drug actually received shall be reported to the  
12 delivering manufacturer or wholesale distributor by the next business day after the delivery to  
13 the pharmacy receiving area.

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

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

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

23 Each person who is engaged in wholesale distribution of prescription drugs, including  
24 repackagers, but excluding the original manufacturer of the finished form of the prescription

1 drug that leave, or have ever left, the normal distribution channel shall, before each wholesale  
2 distribution of such drug, provide a pedigree to the person who receives such drug.

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

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

8 The board shall determine by July 1, 2009, a targeted implementation date for electronic  
9 track and trace pedigree technology. Such a determination shall be based on consultation with  
10 manufacturers, distributors, and pharmacies responsible for the sale and distribution of  
11 prescription drug products in this state. After consultation with interested stakeholders and prior  
12 to implementation of the electronic pedigree, the board shall determine that the technology is  
13 universally available across the entire prescription pharmaceutical supply chain. The  
14 implementation date for the mandated electronic track and trace pedigree technology shall be  
15 no sooner than July 1, 2010, and may be extended by the board in one year increments if it  
16 appears the technology is not universally available across the entire prescription pharmaceutical  
17 supply chain.

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

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

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

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

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

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

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

- 19 (1) Name and national drug code number of the prescription drug;
- 20 (2) Dosage form and strength of the prescription drug;
- 21 (3) Size of the container;
- 22 (4) Number of containers;
- 23 (5) Lot number of the prescription drug; and
- 24 (6) Name of the manufacturer of the finished dosage form.

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

3 Each pedigree or electronic file shall be:

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

8 Section 27. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
9 as follows:

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

- 13 (1) A wholesale distributor, other than a manufacturer, has:
  - 14 (a) Violated a provision of this Act; or
  - 15 (b) Falsified a pedigree, or sold, distributed, transferred, manufactured,  
16 repackaged, handled, or held a counterfeit prescription drug intended for  
17 human use;
- 18 (2) The prescription drug at issue as a result of a violation in subdivision (1) could cause  
19 serious, adverse health consequences or death; and
- 20 (3) Other procedures would result in unreasonable delay.

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

1 the board shall vacate the order.

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

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

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

8 (2) If the requirements of section 16 of this Act are applicable and are not met, the  
9 purchasing or otherwise receiving a prescription drug from a pharmacy;

10 (3) If a state license is required pursuant to section 17 of this Act, the sale, distribution,  
11 or transfer of a prescription drug to a person that is not authorized under the law of  
12 the jurisdiction in which the person receives the prescription drug to receive the  
13 prescription drug;

14 (4) Failure to deliver prescription drugs to specified premises, as required by section 18  
15 of this Act;

16 (5) Accepting payment or credit for the sale of prescription drugs in violation of section  
17 20 of this Act;

18 (6) Failure to maintain or provide pedigrees as required by this Act;

19 (7) Failure to obtain, pass, or authenticate a pedigree, as required by this Act;

20 (8) Providing the state or any of its representatives or any federal official with false or  
21 fraudulent records or making false or fraudulent statements regarding any matter  
22 within the provisions of this Act;

23 (9) Obtaining or attempting to obtain a prescription drug by fraud, deceit,  
24 misrepresentation or engaging in misrepresentation or fraud in the distribution of a

1 prescription drug;

2 (10) Except for the wholesale distribution by manufacturers of a prescription drug that has  
3 been delivered into commerce pursuant to an application approved under federal law  
4 by the Food and Drug Administration, the manufacture, repacking, sale, transfer,  
5 delivery, holding, or offering for sale any prescription drug that is adulterated,  
6 misbranded, counterfeit, suspected of being counterfeit, or has otherwise been  
7 rendered unfit for distribution;

8 (11) Except for the wholesale distribution by manufacturers of a prescription drug that has  
9 been delivered into commerce pursuant to an application approved under Federal law  
10 by the Food and Drug Administration, the adulteration, misbranding, or  
11 counterfeiting of any prescription drug;

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

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

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

20 Section 29. That § 36-11A-3 be repealed.

21 ~~—36-11A-3. A wholesale drug distributor is any person engaged in the wholesale distribution~~  
22 ~~of prescription drugs, including manufacturers; repackagers; own-label distributors; private-~~  
23 ~~label distributors; reverse distributors; jobbers; brokers; warehouses, including manufacturers'~~  
24 ~~and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses;~~

1 independent wholesale drug traders, and retail and hospital pharmacies that conduct wholesale  
2 distributions, including pharmacy distributors. A wholesale drug distributor does not include  
3 a common carrier or an individual hired solely to transport prescription drugs.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

696N0188

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1176** - 02/26/2007

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

Introduced by: Representatives Dykstra, Brunner, Cutler, Deadrick, Faehn, Gillespie, Hackl, Halverson, Heineman, Hunt, Krebs, Lust, Novstrup (David), Nygaard, Olson (Russell), Peters, Rave, Rhoden, Sigdestad, Tidemann, Turbiville, and Wick and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to allow for grants from the revolving economic  
2 development and initiative fund, to revise certain provisions concerning the making of  
3 grants and loans from the revolving economic development and initiative fund, and to repeal  
4 the capital investment entity program, the value-added tourism subfund and the entrepreneur  
5 support program.

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

7 Section 1. That § 1-16G-3 be amended to read as follows:

8 1-16G-3. There is established in the state treasury a special revenue fund to be known as the  
9 revolving economic development and initiative fund for the purpose of making grants and loans  
10 for economic development.

11 Section 2. That § 1-16G-5 be amended to read as follows:

12 1-16G-5. ~~Funds used from the revolving economic development and initiative fund shall be~~  
13 ~~available for matching on a one-to-one basis pursuant to rules as hereinafter provided. The~~



1 ~~Board of Economic Development may waive the matching requirement by a two-thirds vote of~~  
2 ~~the members.~~ Any repayment of loans made and any interest thereon shall be receipted into the  
3 revolving economic development and initiative fund and all money in the fund is hereby  
4 appropriated for the purposes of making grants and loans as provided in §§ 1-16G-3 to 1-16G-  
5 11, inclusive. The Board of Economic Development may promulgate rules pursuant to chapter  
6 1-26, to make grants and loans from the revolving economic development and initiative fund,  
7 and may establish criteria for the qualification, application, payment, and repayment of funds  
8 for such projects.

9 The board may also make loans from the revolving economic development and initiative  
10 fund to the South Dakota Economic Development Finance Authority ~~or the export development~~  
11 ~~authority, without the matching one-to-one requirement,~~ for the purposes of assisting in the  
12 credit enhancement requirements of bond issues, notes, loan guarantees and bond insurance.  
13 Any excess in the capital reserve fund of the economic development finance authority ~~or export~~  
14 ~~development authority,~~ on June thirtieth of each year, shall revert to the revolving economic  
15 development and initiative fund for the purposes of principal and interest reduction.

16 Section 3. That § 1-16G-8 be amended to read as follows:

17 1-16G-8. The Board of Economic Development shall promulgate rules concerning, ~~but not~~  
18 ~~limited to,~~ the following:

- 19 (1) The existing barriers to economic growth and development in the state;
- 20 (2) Developing investment in research and development in high technology industries;
- 21 (3) The submission of business plans prior to the approval of economic development  
22 grants or loans. Business plans shall include the products or services to be offered by  
23 the applicant, job descriptions with attendant salary or wage information by job  
24 category, educational requirements by job category, methods of accounting, financing

1 other than that provided by the economic development loan, marketing, sales,  
2 merchandising and other disciplines proposed to be used for business growth and  
3 expansion;

4 (4) The cooperation between agencies of state government and applicant businesses for  
5 nonfinancial services including, ~~but not limited to,~~ loan packaging, marketing  
6 assistance, research assistance, and to assist those businesses to find solutions for  
7 complying with environmental, energy, health, safety, and other federal, state, and  
8 local laws and regulation; and

9 (5) Regular performance monitoring and reporting systems for participating businesses  
10 to assure compliance with their business plans and terms of repayment;

11 (6) Establish eligibility criteria for grants and loans;

12 (7) Establish application procedures for grants and loans;

13 (8) Establish criteria to determine which applicants will receive grants or loans;

14 (9) Govern the use of proceeds of grants and loans;

15 (10) Establish criteria for the terms and conditions upon which loans shall be made,  
16 including matching requirements, interest rates, repayment terms, and the terms of  
17 security given to secure such loans; and

18 (11) Establish criteria for the terms and conditions upon which grants shall be made,  
19 including permitted uses, performance criteria, and matching requirements.

20 Section 4. That § 1-16G-8.1 be repealed.

21 ~~—1-16G-8.1. For the purposes of §§ 1-16G-8.1 to 1-16G-8.3, inclusive, the term, capital~~  
22 ~~investment entity, means a for-profit or non-profit investment entity or vehicle that intends to~~  
23 ~~invest as an owner in businesses for the purpose of achieving return on investment through~~  
24 ~~royalties, profit, growth, or otherwise.~~

1 Section 5. That § 1-16G-8.2 be repealed.

2 ~~1-16G-8.2. In addition to the loans authorized in §§ 1-16G-5 and 1-16G-8, the Board of~~  
3 ~~Economic Development may make loans from the revolving economic development and~~  
4 ~~initiative fund to capital investment entities. The loans shall be for the purpose of facilitating~~  
5 ~~investment by capital investment entities in new businesses in this state and to facilitate the~~  
6 ~~expansion or relocation of businesses in this state in order to promote economic development~~  
7 ~~in this state. The total amount of such loans may not exceed twelve million dollars.~~

8 Section 6. That § 1-16G-8.3 be repealed.

9 ~~1-16G-8.3. The Board of Economic Development may promulgate, pursuant to chapter 1-26,~~  
10 ~~rules to:~~

- 11 ~~(1) Establish eligibility criteria;~~
- 12 ~~(2) Set the application procedures for loans to capital investment entities;~~
- 13 ~~(3) Establish criteria to determine which applicants will receive such loans;~~
- 14 ~~(4) Govern the use of proceeds of such loans;~~
- 15 ~~(5) Establish criteria for the terms and conditions upon which such loans shall be made,~~  
16 ~~including matching requirements, if any, interest rates, repayment terms, and the~~  
17 ~~terms of security given, if any, to secure such loans; and~~
- 18 ~~(6) Establish reporting requirements for capital investment entities.~~

19 Section 7. That § 1-16G-9 be repealed.

20 ~~1-16G-9. The Board of Economic Development may designate "enterprise zones" and may,~~  
21 ~~by rule, authorize loan participation of up to seventy-five percent in those enterprise zones. The~~  
22 ~~term "enterprise zones" means any area of a first or second class municipality or county which~~  
23 ~~has a continuous boundary, is an area of pervasive poverty, unemployment and economic~~  
24 ~~distress; is an area in which the average rate of unemployment for the most recent~~

1 ~~eighteen-month period for the area, for which data are available, was at least one and one-half~~  
2 ~~times the average national rate of unemployment for such eighteen-month period; is an area in~~  
3 ~~which at least seventy percent of the residents living in the area have incomes below seventy~~  
4 ~~percent of the median income of the income of the state; is an area in which the population of~~  
5 ~~all census tracts in the county decreased by twenty percent or more between the two most recent~~  
6 ~~decennial United States' census; and, the first or second class municipality or county in which~~  
7 ~~the proposed zone is located establishes that either chronic abandonment or demolition of~~  
8 ~~commercial or residential structures exist in the area or that substantial delinquencies relating~~  
9 ~~to ad valorem real property taxes of commercial or residential structures exists in the area.~~

10 Section 8. That § 1-16G-10 be amended to read as follows:

11 1-16G-10. The Board of Economic Development shall prepare an annual report by the first  
12 day of ~~October~~ November of each year detailing the activities of the board and the terms and  
13 conditions of any grants and loans made, including the current status of outstanding loans.

14 Section 9. That § 1-16G-11 be amended to read as follows:

15 1-16G-11. Any documentary material or data made or received by the Board of Economic  
16 Development or Governor's Office of Economic Development for the purpose of furnishing  
17 assistance to a business, to the extent that such material or data consists of trade secrets or  
18 commercial or financial information regarding the operation of such business, ~~may not be~~  
19 ~~considered public records~~ is not a public record, and is exempt from disclosure pursuant to the  
20 provisions of §§ 1-16G-3 to 1-16G-11, inclusive. Any discussion, consideration of, or action  
21 upon such trade secrets or commercial or financial information by the Board of Economic  
22 Development ~~may~~ shall be done in executive session closed to the public, notwithstanding the  
23 provisions of the open meeting laws of this state.

24 Section 10. That § 1-16G-24 be amended to read as follows:

1       1-16G-24. Earnings on the revolving economic development and initiative fund, ~~the South~~  
2 ~~Dakota entrepreneur program, the value added tourism subfund,~~ and the value added agriculture  
3 subfund may be used for the administrative costs of the Division of Finance of the Governor's  
4 Office of Economic Development. Such earnings shall be expended in accordance with the  
5 provisions of Title 4 on warrants drawn by the state auditor on vouchers approved by the  
6 secretary of tourism and state development. Eligible expenses may not exceed total interest  
7 earnings during the previous fiscal year prior to the deduction of loan losses for the same fiscal  
8 year.

9       Section 11. That § 1-16G-29 be repealed.

10 ~~—1-16G-29. There is created within the revolving economic development and initiative fund,~~  
11 ~~created in § 1-16G-3, the value added tourism subfund. The purpose of the subfund is to make~~  
12 ~~grants or loans for tourism development, feasibility studies, or marketing.~~

13       Section 12. That § 1-16G-30 be repealed.

14 ~~—1-16G-30. For purposes of §§ 1-16G-24 and 1-16G-29 to 1-16G-33, inclusive, the term,~~  
15 ~~value added tourism, means the development of new or underused tourism-related activities,~~  
16 ~~sites, or destinations that use historical, cultural, scenic, wildlife, or other resources so that new~~  
17 ~~tourists or visitors are drawn to South Dakota or so that current classes and types of tourists or~~  
18 ~~visitors lengthen their stay in South Dakota or pursue additional activities or destinations during~~  
19 ~~their stay.~~

20       Section 13. That § 1-16G-31 be repealed.

21 ~~—1-16G-31. The Board of Economic Development shall designate three million dollars of the~~  
22 ~~money in the revolving economic development and initiative fund for the purposes of the value~~  
23 ~~added tourism subfund.~~

24       Section 14. That § 1-16G-32 be repealed.

1 ~~— 1-16G-32. The Board of Economic Development shall administer the value added tourism~~  
2 ~~subfund and make grants or loans from the value added tourism subfund. The value added~~  
3 ~~tourism subfund shall be used to develop and promote value added tourism in South Dakota.~~

4 Section 15. That § 1-16G-33 be repealed.

5 ~~— 1-16G-33. In connection with the administration of the value added tourism subfund, the~~  
6 ~~Board of Economic Development may, pursuant to chapter 1-26, promulgate rules to:~~

7 ~~— (1) — Set the application procedures for those who apply for loans or grants from the value~~  
8 ~~added tourism subfund;~~

9 ~~— (2) — Establish criteria to determine which applicants will receive such loans or grants;~~

10 ~~— (3) — Govern the use of proceeds of such loans or grants;~~

11 ~~— (4) — Establish criteria for the terms and conditions upon which such loans or grants shall~~  
12 ~~be made, including the terms of security given, if any, to secure such loans; and~~

13 ~~— (5) — Govern the use of proceeds by lenders of funds advanced to the lenders by the board~~  
14 ~~including the terms and conditions upon which the proceeds shall be loaned to~~  
15 ~~borrowers for the purposes described in §§ 1-16G-24 and 1-16G-29 to 1-16G-33,~~  
16 ~~inclusive.~~

17 Section 16. That § 1-16G-34 be repealed.

18 ~~— 1-16G-34. There is hereby created within the revolving economic development and initiative~~  
19 ~~fund, created in § 1-16G-3, the South Dakota entrepreneur support program. The purpose of the~~  
20 ~~program is to make loans to South Dakota entrepreneurs and South Dakota start-up businesses~~  
21 ~~to develop and promote new business activity and to create employment in the state.~~

22 Section 17. That § 1-16G-35 be repealed.

23 ~~— 1-16G-35. For purposes of §§ 1-16G-34 to 1-16G-39, inclusive, the term, start-up business,~~  
24 ~~means any new business venture in the technology, communications, service, or manufacturing~~

1 sector:

2 Section 18. That § 1-16G-36 be repealed.

3 ~~—1-16G-36. The Board of Economic Development shall designate up to three million dollars~~  
4 ~~of the money in the revolving economic development and initiative fund for the purposes of the~~  
5 ~~South Dakota entrepreneur support program.~~

6 Section 19. That § 1-16G-37 be repealed.

7 ~~—1-16G-37. The Board of Economic Development shall administer the South Dakota~~  
8 ~~entrepreneur support program and make loans under the following terms:~~

9 ~~—(1)— No loan may be for less than thirty thousand dollars or for more than fifty thousand~~  
10 ~~dollars;~~

11 ~~—(2)— Each loan applicant shall provide for a matching amount of funds available from~~  
12 ~~non-state sources equal to the amount of the loan. No in-kind amounts or services~~  
13 ~~may be included in the matching funds; and~~

14 ~~—(3)— Each loan may be made on an unsecured basis unless security is available. The loan~~  
15 ~~shall be set up for repayment of the principal plus accrued interest beginning on the~~  
16 ~~third anniversary date of the loan approval date with a balloon payment after the~~  
17 ~~seventh anniversary of the loan anniversary date. However, the board may grant a~~  
18 ~~further two-year extension before repayment begins.~~

19 Section 20. That § 1-16G-38 be repealed.

20 ~~—1-16G-38. An applicant for a loan pursuant to §§ 1-16G-34 to 1-16G-39, inclusive, shall~~  
21 ~~meet the following criteria:~~

22 ~~—(1)— An innovative business concept with a reasonable probability of creating a new~~  
23 ~~market or filling an existing market need;~~

24 ~~—(2)— A three-year strategic plan for developing the business, creating jobs, and sourcing~~

1           ~~qualified employees to execute the plan with sufficient justification to support the~~  
2           ~~amount of the request; and~~

3     ~~—(3)—Demonstrable support from economic development and academic professionals or~~  
4           ~~business consultants who can provide advice and guidance to the applicant.~~

5           Section 21. That § 1-16G-39 be repealed.

6     ~~—1-16G-39. In connection with the administration of the South Dakota entrepreneur support~~  
7     ~~program, the Board of Economic Development may, pursuant to chapter 1-26, promulgate rules~~  
8     ~~to:~~

9     ~~—(1)—Set the application procedures for those who apply for loans from the fund;~~

10    ~~—(2)—Establish criteria to determine how loan funds shall be awarded and distributed to~~  
11           ~~applicants;~~

12    ~~—(3)—Govern the use of proceeds of the loans; and~~

13    ~~—(4)—Establish criteria for the terms and conditions upon which the loans shall be made.~~

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

858N0647

## SENATE ENGROSSED NO. **HB 1249** - 02/28/2007

Introduced by: Representatives Turbiville, Dreyer, Faehn, Gilson, Hills, Krebs, Olson (Ryan), Pitts, Street, and Van Etten and Senators Bartling, Hoerth, Maher, and McCracken

1 FOR AN ACT ENTITLED, An Act to establish the teen court grant program, to require the  
2 submission of a report, to provide for its purpose and funding, and to declare an emergency.

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

4 Section 1. The teen court grant program is hereby established in the Office of the State  
5 Treasurer. The purpose of the grant program is to support the development, growth, quality, and  
6 continuation of teen court programs in South Dakota through grants awarded by the South  
7 Dakota Teen Court Association.

8 Section 2. There is hereby established in the state treasury the teen court grant program fund  
9 to be administered by the Office of the State Treasurer. Money shall enter the fund through  
10 contributions, grants, transfers, settlement funds, interest received on moneys in the fund, and  
11 any other moneys collected for the purposes of this Act. The state treasurer shall distribute the  
12 fund balance quarterly to the South Dakota Teen Court Association for the purpose of  
13 administering and funding the grant program.

14 Section 3. The South Dakota Teen Court Association shall award grants to entities within  
15 the State of South Dakota that are recognized by the National Youth Court Association. The



1 awards shall be to support the development, growth, quality, and continuation of teen court  
2 programs in South Dakota.

3 Section 4. The association shall award grants as provided in this Act and publicize the  
4 availability of and procedures for obtaining such grants.

5 Section 5. The Teen Court Association shall submit an annual report to the state treasurer  
6 not later than October first of each year. The annual report shall detail the name and location of  
7 organizations receiving grant awards. The report shall also contain the amount and duration of  
8 such awards, their purpose, and the administrative costs associated with such awards.

9 Section 6. On June 26, 2007, the state treasurer shall transfer one hundred thousand dollars  
10 (\$100,000) from the energy development impact fund created in § 10-39A-8.1 to the teen court  
11 grant program fund created in section 2 of this Act. The fund may only be used to award grants  
12 to teen court programs established after June 30, 2007.

13 Section 7. The state treasurer shall approve vouchers and the state auditor shall draw  
14 warrants to pay expenditures authorized in this Act.

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

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0266

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**SB 43** - 02/28/2007

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

1 FOR AN ACT ENTITLED, An Act to provide for the registration of tobacco retailers.

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

3 Section 1. That § 10-50-9 be amended to read as follows:

4 10-50-9. Each person, except a retailer, engaging in the business of selling cigarettes or  
5 tobacco products in this state, including any distributor or wholesaler, shall secure a license  
6 therefore from the secretary of revenue and regulation. A separate application and license is  
7 required for each wholesale outlet ~~when~~ if a person owns or controls more than one place of  
8 business dealing in cigarettes or tobacco products. Each person selling cigarettes or tobacco  
9 products at retail shall register with the Department of Revenue and Regulation. A separate  
10 registration is required for each retail outlet operated within the state. No fee may be charged  
11 for this registration.

12 Any person, except a retailer, who sells, offers for sale, or possesses with intent to sell, any  
13 cigarettes or tobacco products, without a license or registration commits a petty offense.

14 Section 2. That § 10-50-13 be amended to read as follows:

15 10-50-13. Any license granted under this chapter may be transferred to a new location or to



1 another person. ~~Where~~ If the transfer is to another person, the licensee ~~must~~ shall show in  
2 writing, under oath, that ~~he~~ the licensee has made a bulk sale of the business operated under  
3 ~~such the~~ license, ~~and the~~. The transferee ~~must~~ shall make an application exactly as if an original  
4 applicant, setting forth therein that ~~he~~ the transferee is the bulk sale purchaser of the business  
5 operated under ~~such the~~ license and requesting that ~~such the~~ license be transferred to him or her.  
6 If the transfer is to a new location, the licensee ~~must~~ shall make application showing all the  
7 relevant facts as to ~~such the~~ new location, ~~which~~. The application shall take the same course and  
8 be acted upon as if an original application. ~~In case of any transfer of any license affected by this~~  
9 ~~chapter, a fee of two dollars and fifty cents shall be required to continue the unexpired portion~~  
10 ~~of such license.~~

11 Section 3. That § 10-50-15 be amended to read as follows:

12 10-50-15. The secretary of revenue and regulation may revoke the license of any distributor  
13 or wholesaler or the registration of a dealer for failure to comply with any of the provisions of  
14 this chapter. Any person aggrieved by ~~such the~~ revocation may apply to the secretary for a  
15 hearing as provided in § 10-50-46 and may further appeal to the court as provided in § 10-50-49.

16 Section 4. That § 10-50-32 be amended to read as follows:

17 10-50-32. No person, other than a ~~person licensed pursuant to § 10-50-9~~ licensed distributor,  
18 may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or  
19 cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do  
20 not bear stamps or an imprint impressed by a suitable metering machine approved by the  
21 secretary as provided by this chapter, evidencing the payment of the tax imposed by this chapter.

22 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class  
23 6 felony.

24 Section 5. That § 10-50-41 be amended to read as follows:

1        10-50-41. The secretary of revenue and regulation may examine the books, papers, and  
2 records of any distributor, wholesaler, or dealer in this state, for the purpose of determining  
3 whether the tax imposed by this chapter has been fully paid, and may investigate and examine  
4 the stock of cigarettes or tobacco products in or upon any premises where ~~such~~ the cigarettes or  
5 tobacco products are possessed, stored, or sold, for the purpose of determining whether the  
6 provisions of this chapter are being obeyed. The secretary may make ~~such~~ the inspections and  
7 examinations at any time during ordinary business hours, and may inspect at ~~such~~ the times the  
8 premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon ~~such~~  
9 the premises for the purpose of ascertaining whether cigarettes or tobacco products are held or  
10 possessed in violation of this chapter. Each dealer shall keep documents establishing that the  
11 cigarettes and tobacco products in the dealer's inventory were purchased from a distributor or  
12 wholesaler licensed by the State of South Dakota. The documents shall be kept for at least three  
13 months. If the documents are not stored at the dealer's registered location, the documents shall  
14 be made available in physical or electronic form to the secretary within five business days of the  
15 receipt of the request from the secretary.

16        Section 6. That § 10-50-62 be amended to read as follows:

17        10-50-62. Tobacco products may be sold by licensed distributors and licensed wholesalers  
18 only to dealers. ~~Dealers who buy or receive tobacco products from persons other than licensed~~  
19 ~~distributors or licensed wholesalers must pay the tax imposed in § 10-50-61. However, the~~  
20 ~~dealer may elect to report and remit the tax on the cost price of the tobacco products to the~~  
21 ~~dealer rather than on the wholesale purchase price. Tobacco dealers may purchase tobacco~~  
22 products only from wholesalers and distributors licensed by the State of South Dakota. A  
23 violation of this section is a Class 2 misdemeanor.

24        Section 7. That § 10-50-93 be amended to read as follows:

1        10-50-93. No person may make a delivery sale of cigarettes to any ~~individual~~ person who  
2 is under the legal minimum purchase age in the state.

3        Any person accepting a purchase order for a delivery sale shall comply with:

- 4        (1)    The age verification requirements provided in § 10-50-94;  
5        (2)    The disclosure requirements provided in § 10-50-95;  
6        (3)    The shipping requirements provided in § 10-50-96;  
7        (4)    The registration and reporting requirements provided in § 10-50-97; ~~and~~  
8        (5)    All other statutes of the state generally applicable to sales of cigarettes that occur  
9            entirely within the state, and any law imposing an excise tax, sales tax, license,  
10           revenue-stamping requirement, and escrow payment obligation as provided in chapter  
11           10-50B; and  
12        (6)    The registration requirements in § 10-50-9.

13        Section 8. That § 10-50-16 be amended to read as follows:

14        10-50-16. Any person who sells any cigarettes or tobacco products after such person's  
15        license or registration has been revoked commits a petty offense, and all cigarettes or tobacco  
16        products in such person's possession shall be seized and forfeited to the state pursuant to chapter  
17        23A-37.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

376N0517

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 127 - 02/28/2007**

Introduced by: Senators Hanson (Gary), Heidepriem, Lintz, McNenny, Nesselhuf, and Peterson (Jim) and Representatives Halverson, Hargens, Lucas, Moore, Pitts, Rhoden, Sigdestad, Street, and Vehle

1 FOR AN ACT ENTITLED, An Act to require the disclosure of known contamination of  
2 waterways on property condition disclosure statements.

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

4 Section 1. That § 43-4-44 be amended to read as follows:

5 43-4-44. The following form shall be used for the property condition disclosure statement:

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

7 (This disclosure shall be completed by the seller. This is a disclosure required by law. If you do  
8 not understand this form, seek legal advice.)

9 Seller \_\_\_\_\_

10 Property Address \_\_\_\_\_

11 \_\_\_\_\_

12 This Disclosure Statement concerns the real property identified above situated in the City of

13 \_\_\_\_\_ County of \_\_\_\_\_, State of South Dakota.

14 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE



1 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY  
 2 OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN  
 3 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR  
 4 WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent  
 5 representing any party in this transaction to provide a copy of this statement to any person or  
 6 entity in connection with any actual or anticipated sale of the property.

7 IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS  
 8 PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A  
 9 WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

10 I. LOT OR TITLE INFORMATION

11 1. When did you purchase or build the home? \_\_\_\_\_

12 If the answer is yes to any of the following, please explain under additional comments or on an  
 13 attached separate sheet.

14 2. Were there any title problems when you purchased the property?

15 Yes \_\_\_\_ No \_\_\_\_

16 3. Are there any recorded liens or financial instruments against the property, other than a first  
 17 mortgage?

18 Yes \_\_\_\_ No \_\_\_\_

19 4. Are there any unrecorded liens or financial instruments against the property, other than a  
 20 first mortgage?

21 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

22 5. Are there any easements which have been granted in connection with the property (other  
 23 than normal utility easements for public water and sewer, gas and electric service, telephone  
 24 service, cable television service, drainage, and sidewalks)?

1 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

2 6. Are there any problems related to establishing the lot lines/boundaries?

3 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

4 7. Do you have a location survey in your possession or a copy of the recorded plat? If yes,  
5 attach a copy.

6 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

7 8. Are you aware of any encroachments or shared features, from or on adjoining property (i.e.  
8 fences, driveway, sheds, outbuildings, or other improvements)?

9 Yes \_\_\_\_ No \_\_\_\_

10 9. Are you aware of any covenants or restrictions affecting the use of the property in  
11 accordance with local law? If yes, attach a copy of the covenants and restrictions.

12 Yes \_\_\_\_ No \_\_\_\_

13 10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or  
14 restrictive covenant violation notices, mechanic's liens, judgments, special assessments,  
15 zoning changes, or changes that could affect your property?

16 Yes \_\_\_\_ No \_\_\_\_

17 11. Is the property currently occupied by the owner?

18 Yes \_\_\_\_ No \_\_\_\_

19 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-  
20 3-1?

21 Yes \_\_\_\_ No \_\_\_\_

22 13. Is the property currently part of a property tax freeze for any reason?

23 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

24 14. Is the property leased?

1 Yes \_\_\_\_ No \_\_\_\_

2 15. If leased, does the property use comply with local zoning laws?

3 Yes \_\_\_\_ No \_\_\_\_

4 16. Does this property or any portion of this property receive rent? If yes, how much \$ \_\_\_\_ and

5 how often \_\_\_\_?

6 Yes \_\_\_\_ No \_\_\_\_

7 17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium

8 association?

9 Yes \_\_\_\_ No \_\_\_\_

10 If yes, what are the fees or assessments? \$ \_\_\_\_ per \_\_\_\_ (i.e. annually, semi-annually, monthly)

11 Payable to whom: \_\_\_\_\_

12 For what purpose? \_\_\_\_\_

13 18. Are you aware if the property has ever had standing water in either the front, rear, or side

14 yard more than forty-eight hours after heavy rain?

15 Yes \_\_\_\_ No \_\_\_\_

16 19. Is the property located in or near a flood plain?

17 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

18 20. Are wetlands located upon any part of the property?

19 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

20 II. STRUCTURAL INFORMATION

21 If the answer is yes to any of the following, please explain under additional comments or on an  
22 attached separate sheet.

23 1. Are you aware of any water penetration problems in the walls, windows, doors, basement,  
24 or crawl space?

1 Yes \_\_\_\_ No \_\_\_\_

2 2. What water damage related repairs, if any, have been made?

3 If any, when? \_\_\_\_\_

4 3. Are you aware if drain tile is installed on the property?

5 Yes \_\_\_\_ No \_\_\_\_

6 4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior  
7 driveways, sidewalks, patios, or other hard surface areas?

8 Yes \_\_\_\_ No \_\_\_\_

9 What related repairs, if any, have been made?

10 \_\_\_\_\_

11 5. Are you aware of any roof leakage, past or present?

12 Yes \_\_\_\_ No \_\_\_\_

13 Type of roof covering: \_\_\_\_\_

14 Age: \_\_\_\_\_

15 What roof repairs, if any, have been made, when and by whom? \_\_\_\_\_

16 Describe any existing unrepaired damage to the roof: \_\_\_\_\_

17 6. Are you aware of insulation in:

18 the ceiling/attic? Yes \_\_\_\_ No \_\_\_\_

19 the walls? Yes \_\_\_\_ No \_\_\_\_

20 the floors? Yes \_\_\_\_ No \_\_\_\_

21 7. Are you aware of any pest infestation or damage, either past or present?

22 Yes \_\_\_\_ No \_\_\_\_

23 8. Are you aware of the property having been treated for any pest infestation or damage?

24 Yes \_\_\_\_ No \_\_\_\_

1 If yes, who treated it and when? \_\_\_\_\_

2 9. Are you aware of any work upon the property which required a building, plumbing,  
3 electrical, or any other permit?

4 Yes \_\_\_\_ No \_\_\_\_

5 If yes, describe the work: \_\_\_\_\_

6 Was a permit obtained? Yes \_\_\_\_\_

7 Was the work approved by an inspector? Yes \_\_\_\_ No \_\_\_\_

8 10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods,  
9 hail, or snow)?

10 Yes \_\_\_\_ No \_\_\_\_

11 If yes, describe \_\_\_\_\_

12 Have any insurance claims been made?

13 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

14 Was an insurance payment received?

15 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

16 Has the damage been repaired?

17 Yes \_\_\_\_ No \_\_\_\_

18 If yes, describe in detail: \_\_\_\_\_

19 \_\_\_\_\_

20 11. Are you aware of any problems with sewer blockage or backup, past or present?

21 Yes \_\_\_\_ No \_\_\_\_

22 12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank,  
23 or drain on the property into any adjoining lake, stream, or waterway?

24 Yes \_\_\_\_ No \_\_\_\_

1 If yes, describe in detail: \_\_\_\_\_  
 2 \_\_\_\_\_

3 III. SYSTEMS/UTILITIES INFORMATION

4		NONE/NOT		NOT
5		INCLUDED	WORKING	WORKING
6	1. 220 Volt Service	_____	_____	_____
7	2. Air Exchanger	_____	_____	_____
8	3. Air Purifier	_____	_____	_____
9	4. Attic Fan	_____	_____	_____
10	5. Burglar Alarm and Security System	_____	_____	_____
11	6. Ceiling Fan	_____	_____	_____
12	7. Central Air - Electric	_____	_____	_____
13	8. Central Air - Water Cooled	_____	_____	_____
14	9. Cistern	_____	_____	_____
15	10. Dishwasher	_____	_____	_____
16	11. Disposal	_____	_____	_____
17	12. Doorbell	_____	_____	_____
18	13. Fireplace	_____	_____	_____
19	14. Fireplace Insert	_____	_____	_____
20	15. Garage Door/Opener Control(s)	_____	_____	_____
21	16. Garage Wiring	_____	_____	_____
22	17. Heating System	_____	_____	_____
23	18. Hot Tub, Whirlpool, and Controls	_____	_____	_____
24	19. Humidifier	_____	_____	_____
25	20. Intercom	_____	_____	_____
26	21. Light Fixtures	_____	_____	_____
27	22. Microwave/Hood	_____	_____	_____
28	23. Plumbing and Fixtures	_____	_____	_____

1	24. Pool and Equipment	_____	_____	_____
2	25. Propane Tank	_____	_____	_____
3	26. Radon System	_____	_____	_____
4	27. Sauna	_____	_____	_____
5	28. Septic/Leaching Field	_____	_____	_____
6	29. Sewer Systems/Drains	_____	_____	_____
7	30. Smoke/Fire Alarm	_____	_____	_____
8	31. Solar House - Heating	_____	_____	_____
9	32. Sump Pump(s)	_____	_____	_____
10	33. Switches and Outlets	_____	_____	_____
11	34. Underground Sprinkler and Heads	_____	_____	_____
12	35. Vent Fan	_____	_____	_____
13	36. Water Heater - Electric or Gas	_____	_____	_____
14	37. Water Purifier	_____	_____	_____
15	38. Water Softener - Leased or Owned	_____	_____	_____
16	39. Well and Pump	_____	_____	_____
17	40. Wood Burning Stove	_____	_____	_____

IV. HAZARDOUS CONDITIONS

19 Are you aware of any existing hazardous conditions of the property and are you aware of any  
20 tests having been performed?

21		EXISTING CONDITIONS		TESTS PERFORMED	
22		YES	NO	YES	NO
23	1. Methane Gas	_____	_____	_____	_____
24	2. Lead Paint	_____	_____	_____	_____
25	3. Radon Gas (House)	_____	_____	_____	_____
26	4. Radon Gas (Well)	_____	_____	_____	_____
27	5. Radioactive Materials	_____	_____	_____	_____
28	6. Landfill, Mineshaft	_____	_____	_____	_____



1 \_\_\_\_\_

2 Yes \_\_\_\_\_ No \_\_\_\_\_

3 5. Is the water source public or private (select one) ?

4 6. If private, what is the date and result of the last water test?

5 \_\_\_\_\_

6 7. Is the sewer system public \_\_\_\_\_ or private \_\_\_\_\_ (select one)?

7 8. If private, what is the date of the last time the septic tank was pumped? \_\_\_\_\_

8 9. Are there broken window panes or seals?

9 Yes \_\_\_\_\_ No \_\_\_\_\_

10 If yes, specify: \_\_\_\_\_

11 10. Are there any items attached to the property that will not be left, such as: towel bars,  
12 mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines,  
13 swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

14 Yes \_\_\_\_\_ No \_\_\_\_\_

15 If yes, please list \_\_\_\_\_

16 11. Are you aware of any other material facts or problems that have not been disclosed on this  
17 form?

18 Yes \_\_\_\_\_ No \_\_\_\_\_

19 If yes, explain: \_\_\_\_\_

20 VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

21 \_\_\_\_\_

22 \_\_\_\_\_

23 CLOSING SECTION

24 The Seller hereby certifies that the information contained herein is true and correct to the best

1 of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.  
2 If any of these conditions change before conveyance of title to this property, the change will be  
3 disclosed in a written amendment to this disclosure statement.

4 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

5 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

6 THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE  
7 AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE  
8 CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS  
9 IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE  
10 BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

11 I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our  
12 signature(s) below. Any agent representing any party to this transaction makes no  
13 representations and is not responsible for any conditions existing in the property.

14 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

15 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

767N0585

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 157** - 02/28/2007

Introduced by: Senators Knudson, Abdallah, Albers, Bartling, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Heidepriem, Hunhoff, Jerstad, Koetzle, McCracken, Nesselhuf, Olson (Ed), and Peterson (Jim) and Representatives McLaughlin, Ahlers, Cutler, Gassman, Gillespie, Glenski, Halverson, Hargens, Jerke, Kirkeby, Krebs, Miles, Moore, Olson (Russell), Peters, Pitts, Steele, Tidemann, Vehle, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the funding for K-12 education and to create a  
2 teacher compensation assistance program.

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

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) ~~"Average daily membership," the average number of resident and nonresident~~  
7 ~~kindergarten through twelfth grade pupils enrolled in all schools operated by the~~  
8 ~~school district during the previous regular school year, minus average number of~~  
9 ~~pupils for whom the district receives tuition, except pupils described in subdivision~~  
10 ~~(1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the~~  
11 ~~average number of pupils for whom the district pays tuition;~~

12 ~~— (1A) Nonresident students who are in the care and custody of the Department of Social~~  
13 ~~Services, the Unified Judicial System, the Department of Corrections, or other state~~



1 agencies and are attending a public school may be included in the average daily  
2 membership of the receiving district when enrolled in the receiving district. When  
3 counting a student who meets these criteria in its general enrollment average daily  
4 membership, the receiving district may begin the enrollment on the first day of  
5 attendance. The district of residence prior to the custodial transfer may not include  
6 students who meet these criteria in its general enrollment average daily membership  
7 after the student ceases to attend school in the resident district;

8 ~~(2)~~ "Adjusted average daily membership," calculated as follows:

9 ~~(a)~~ For districts with an average daily membership of two hundred or less,  
10 multiply 1.2 times the average daily membership;

11 ~~(b)~~ For districts with an average daily membership of less than six hundred, but  
12 greater than two hundred, raise the average daily membership to the 0.8293  
13 power and multiply the result times 2.98;

14 ~~(c)~~ For districts with an average daily membership of six hundred or more,  
15 multiply 1.0 times their average daily membership "Fall enrollment," the  
16 number of kindergarten through twelfth grade students enrolled in all schools  
17 operated by the school district on the last Friday of September of the previous  
18 school year minus the number of students for whom the district receives  
19 tuition, except nonresident students who are in the care and custody of a state  
20 agency and are attending a public school and students for whom tuition is  
21 being paid pursuant to § 13-28-42.1, plus the number of students for whom the  
22 district pays tuition. No student who is partially enrolled in a school may be  
23 counted in the fall enrollment for that school unless the partial enrollment  
24 exceeds fifty percent. When computing state aid to education for a school

1 district under the foundation program pursuant to § 13-13-73, the secretary of  
2 the Department of Education shall use either the school district's fall  
3 enrollment or the average of the school district's fall enrollment and the school  
4 district's fall enrollment from the prior year, whichever is higher;

5 (1A) "Current fall enrollment," the number of kindergarten through twelfth grade students  
6 enrolled in all schools operated by the school district on the last Friday of September  
7 of the current school year minus the number of students for whom the district  
8 receives tuition except nonresident students who are in the care and custody of a state  
9 agency and are attending a public school and students for whom tuition is being paid  
10 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
11 tuition. No student who is partially enrolled in a school may be counted in the current  
12 fall enrollment for that school unless the partial enrollment exceeds fifty percent;

13 (2) "Small school adjustment," calculated as follows:

14 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
15 the fall enrollment and multiply the product times \$4,237.72;

16 (b) For districts with a fall enrollment of greater than two hundred, but less than  
17 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
18 result; and multiply the sum obtained times \$4,237.72;

19 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
20 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
21 the United States Department of Labor for the year before the year immediately  
22 preceding the year of adjustment or three percent, whichever is less;

23 (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal  
24 year thereafter, the per student allocation is the previous fiscal year's per student

- 1 allocation increased by the index factor;
- 2 (5) "Local need," ~~the~~ is the sum of:
- 3 (a) The per student allocation multiplied by the ~~adjusted average daily~~
- 4 membership fall enrollment; and
- 5 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;
- 6 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
- 7 applying the levies established pursuant to § 10-12-42;
- 8 (7) "General fund balance," the unreserved fund balance of the general fund, less general
- 9 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
- 10 out of the general fund for the previous school fiscal year;
- 11 (8) "General fund balance percentage," is a school district's general fund balance divided
- 12 by the school district's total general fund expenditures for the previous school fiscal
- 13 year, the quotient expressed as a percent;
- 14 (9) "General fund base percentage," is the lesser of:
- 15 (a) The general fund balance percentage as of June 30, 2000; or
- 16 (b) The maximum allowable percentage for that particular fiscal year as stated in
- 17 this subsection.
- 18 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for
- 19 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year
- 20 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five
- 21 percent. However, the general fund base percentage can never increase and can never
- 22 be less than ~~twenty~~ twenty-five percent;
- 23 (10) "Allowable general fund balance," the general fund base percentage multiplied by the
- 24 district's general fund expenditures in the previous school fiscal year;

1       (11) ~~"Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5~~  
2             ~~percentage points;~~

3       ~~—(12)—~~"General fund exclusions," revenue a school district has received from the imposition  
4             of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
5             from gifts, contributions, grants, or donations; revenue a school district has received  
6             under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received  
7             as compensation for being a sparse school district under the terms of §§ 13-13-78 and  
8             13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable  
9             judgment.

10       Section 2. There is hereby created the teacher compensation assistance program within the  
11       Department of Education to provide funds to school districts for the purpose of assisting them  
12       with teacher compensation. The department shall provide four-fifths of the funds for the teacher  
13       compensation assistance program to each participating school district.

14       Section 3. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create  
15       an oversight board appointed by the secretary of education for approval of applications as well  
16       as guidelines for district applications based on district instructional goals or market  
17       compensation. Participation in the program is discretionary. District applications shall be  
18       approved by the local board of education. The applications shall be reviewed by the oversight  
19       board and shall be recommended to the Board of Education for final approval.

20       Section 4. The Teacher Compensation Assistance Program Oversight Board shall annually  
21       monitor the progress of participating school districts with their teacher compensation assistance  
22       plans, and submit its findings to the Board of Education.

23       Section 5. That § 13-6-92 be amended to read as follows:

24       13-6-92. If two or more school districts consolidate ~~after July 1, 2001~~, the new school

1 district is entitled to an additional ~~three~~ six hundred dollars per ~~average daily membership as~~  
2 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
3 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
4 from a partial school district as it existed prior to consolidation for the first year after  
5 consolidation. If two or more school districts consolidate ~~after July 1, 2001~~, the new school  
6 district is entitled to an additional ~~two~~ four hundred dollars per ~~average daily membership as~~  
7 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
8 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
9 from a partial school district as it existed prior to consolidation for the second year after  
10 consolidation. If two or more school districts consolidate ~~after July 1, 2001~~, the new school  
11 district is entitled to an additional ~~one~~ two hundred dollars per ~~average daily membership as~~  
12 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
13 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
14 from a partial school district as it existed prior to consolidation for the third year after  
15 consolidation.

16 Section 6. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 The consolidation incentives provided for in §§ 13-13-1.4 to 13-13-1.7, inclusive, apply only  
19 to those school districts whose consolidations are completed prior to July 1, 2007.

20 Section 7. That § 13-13-1.4 be amended to read as follows:

21 13-13-1.4. If two or more school districts consolidate, for a period of four years after  
22 consolidation, the ~~adjusted average daily membership~~ local need for the newly formed district  
23 shall be based upon the ~~average daily membership as defined in § 13-13-10.1~~ fall enrollment  
24 as defined in this Act of those school districts that have not previously benefited from this

1 section as they existed prior to consolidation. In years two to four, inclusive, after the  
2 consolidation, the relationship between the ~~adjusted average daily membership~~ local need and  
3 ~~average daily membership~~ fall enrollment shall be proportional to the relationship that existed  
4 for the first year.

5 Section 8. That § 13-13-1.5 be amended to read as follows:

6 13-13-1.5. In years five to eight, inclusive, after the consolidation of two or more school  
7 districts, the ~~adjusted average daily membership~~ local need for the newly formed district shall  
8 be calculated as follows:

- 9 (1) Calculate ~~adjusted average daily membership~~ local need pursuant to ~~§ 13-13-10.1~~  
10 § 13-13-73;
- 11 (2) Notwithstanding the four-year time limit, calculate ~~adjusted average daily~~  
12 membership local need pursuant to § 13-13-1.4;
- 13 (3) Subtract the results of subdivision (1) from the results of subdivision (2);
- 14 (4) Multiply the results of subdivision (3) by eighty percent in the fifth year, sixty  
15 percent in the sixth year, forty percent in the seventh year, and twenty percent in the  
16 eighth year;
- 17 (5) Add the results of subdivision (1) and the results of subdivision (4).

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

20 If a school district's current fall enrollment, as defined in this Act, increases by at least five  
21 percent or by a minimum of twenty-five students over the fall enrollment, that school district  
22 shall receive a one-time payment equal to fifty percent of the per student allocation times the  
23 number of students by which the current fall enrollment exceeds the fall enrollment. The  
24 payment shall be made to the district prior to the first of December in the current school year.

1 Section 10. That § 13-13-73 be amended to read as follows:

2 13-13-73. The secretary of the Department of Education shall compute state aid to education  
3 for each school district under the foundation program according to the following calculations:

4 (1) Determine each school district's ~~average daily membership~~ fall enrollment;

5 (2) To arrive at the local need per district:

6 (a) Multiply the per student allocation by the ~~adjusted average daily membership~~  
7 ~~to arrive at the local need per district~~ fall enrollment;

8 (b) Multiply the small school adjustment, if applicable, by the fall enrollment; and

9 (c) Add the product of subsection (a) to the product of subsection (b);

10 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a  
11 negative number;

12 (4) If the state aid appropriation for the general support of education is in excess of the  
13 entitlement provided for in this section, the excess shall be used to fund any shortfall  
14 of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary  
15 shall report to the Governor by January seventh of each year, the amount of state aid  
16 necessary to fully fund the general aid formula in the current year. If a shortfall in the  
17 state aid appropriation for general education exists that cannot be covered by § 13-  
18 37-45, the Governor shall inform the Legislature and provide a proposal to eliminate  
19 the shortfall.

20 Section 11. That § 13-13-73.2 be amended to read as follows:

21 13-13-73.2. A school district's state aid for general education as calculated pursuant to § 13-  
22 13-73 shall be reduced by the ~~following calculation~~:

23 (1) ~~Subtract the allowable general fund balance from the general fund balance. If the~~  
24 ~~result is less than zero, (1) equals zero;~~

- 1 ~~(2) Determine the lower of the general fund base percentage or the general fund balance~~
- 2 ~~percentage;~~
- 3 ~~(3) Subtract twenty percent (0.2) from the result of (2). If the result is less than zero, (3)~~
- 4 ~~equals zero;~~
- 5 ~~(4) Multiply the result of (3) by the district's general fund expenditures in the previous~~
- 6 ~~school fiscal year;~~
- 7 ~~(5) Multiply the result of (4) by the imputed interest rate;~~
- 8 ~~(6) Add the result of (1) and the result of (5) amount calculated by subtracting the~~
- 9 ~~allowable general fund balance from the general fund balance. If the result is less~~
- 10 ~~than zero, the result equals zero.~~

11 Section 12. That § 13-13-73.3 be amended to read as follows:

12 13-13-73.3. The secretary of education shall determine the reduction in state aid to education  
13 pursuant to § 13-13-73.2. The secretary of education shall distribute the amount of money so  
14 determined to school districts that received state aid pursuant to chapter 13-13 on a pro rata  
15 basis according to the district's ~~average daily membership~~ fall enrollment compared to the total  
16 ~~average daily membership~~ fall enrollment of all districts eligible for this distribution.

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

18 13-13-78. Terms used in § 13-13-79 mean:

- 19 (1) "Sparse school district," a school district that meets each of the following criteria:
- 20 (a) Has ~~an average daily membership~~ a fall enrollment per square mile of 0.50 or
- 21 less;
- 22 (b) Has ~~an average daily membership~~ a fall enrollment of five hundred or less;
- 23 (c) Has an area of four hundred square miles or more;
- 24 (d) Has at least fifteen miles between its secondary attendance center or centers

- 1 and that of an adjoining district;
- 2 (e) Operates a secondary attendance center;
- 3 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
- 4 or more; and
- 5 (g) Has a general fund balance percentage of thirty percent or less excluding
- 6 revenue received from opting out of property tax limitations pursuant to
- 7 chapter 10-12;
- 8 (2) "~~Sparsity average daily membership~~ fall enrollment," for sparse school districts with
- 9 a fall enrollment as defined in this Act of less than eighty-three or greater than two
- 10 hundred thirty-two, is calculated as follows:
- 11 (a) ~~For sparse school districts with an adjusted average daily membership as~~
- 12 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~
- 13 ~~two hundred seventy-five, divide the average daily membership as defined in~~
- 14 ~~subdivision 13-13-10.1(1)~~ Divide the fall enrollment as defined in this Act by
- 15 the area of the school district in square miles;
- 16 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;
- 17 (c) Add 0.0625 to the product obtained in subsection (b); and
- 18 (d) Multiply the sum obtained in subsection (c) times the ~~average daily~~
- 19 ~~membership~~ fall enrollment;
- 20 (3) "~~Sparsity adjusted average daily membership~~ fall enrollment," ~~calculated as follows:~~
- 21 ~~For any sparse school district with an adjusted average daily membership as defined~~
- 22 ~~in subdivision 13-13-10.1(2) of no less than one hundred, but no more than two~~
- 23 ~~hundred seventy-five, the sparsity adjusted average daily membership is two hundred~~
- 24 ~~seventy-five~~ for sparse school districts with a fall enrollment as defined in this Act

1           of at least eighty-three, but no more than two hundred thirty-two, subtract the fall  
2           enrollment from two hundred thirty-two.

3           Section 14. That § 13-13-79 be amended to read as follows:

4           13-13-79. At the same time that foundation program state aid is distributed to school  
5           districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of  
6           Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~  
7           ~~average daily membership calculation or the sparsity adjusted average daily membership~~  
8           ~~calculation in § 13-13-78~~ the result of the calculation in either subdivision 13-13-78(2) or  
9           subdivision 13-13-78(3) by the per student allocation as defined in § 13-13-10.1. However, no  
10          sparse school district may receive a sparsity benefit in any year that exceeds ~~two hundred fifty~~  
11          one hundred sixty-five thousand dollars.

12          Section 15. That § 13-13-1.2 be amended to read as follows:

13          13-13-1.2. Any records related to the reporting of ~~average daily membership~~ fall enrollment  
14          of a public school district shall be subject to examination by the Department of Education at all  
15          times.

16          Section 16. That § 13-13-1.3 be amended to read as follows:

17          13-13-1.3. If, in the department's examination of ~~average daily membership~~ fall enrollment,  
18          it is determined that the data was overreported, the department shall recover the amount of state  
19          aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the department  
20          shall deposit the overpayment into the state general fund. If the overreporting occurred with the  
21          intent to increase the amount of state aid received by overreporting, the ~~individual~~ person  
22          responsible for the overreporting may be charged with a Class 1 misdemeanor as provided in  
23          § 13-8-44, with the maximum penalty as defined in § 22-6-2.

24          Section 17. That § 13-13-1.8 be amended to read as follows:

1        13-13-1.8. ~~Students~~ No student attending the Black Hills Forest High School in Lawrence  
2 County may ~~not~~ be included by any school district in its ~~average daily membership~~ fall  
3 enrollment for purposes of state aid to education.

4        Section 18. That § 13-15-28 be amended to read as follows:

5        13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11  
6 and sends over fifty percent of its resident students enrolled in grades for which it contracts to  
7 an adjoining school district or districts located in South Dakota shall reorganize the school  
8 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes  
9 of this section, the number of students attending adjoining districts shall be based on ~~average~~  
10 ~~daily membership pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this Act.

11 This section does not apply to a school district located wholly within the boundaries of an Indian  
12 reservation.

13        Section 19. That § 13-28-40 be amended to read as follows:

14        13-28-40. An enrollment options program is established to enable any South Dakota  
15 kindergarten through twelfth grade student to attend any public school that serves the student's  
16 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-  
17 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions  
18 of §§ 13-28-40 to 13-28-47, inclusive, ~~average daily membership as defined in § 13-13-10.1~~  
19 fall enrollment as defined in this Act is used to compute foundation aid and special education  
20 average daily membership as defined in § 13-37-35 is used to determine funding for special  
21 education.

22        Section 20. That § 13-28-49 be amended to read as follows:

23        13-28-49. Notwithstanding the provisions of § 13-28-40, any student who enrolls in another  
24 school district pursuant to the provisions contained in §§ 13-28-40 to 13-28-47, inclusive, from

1 a district that does not receive state aid pursuant to chapter 13-13 in the succeeding fiscal year  
2 remains the financial obligation of the resident district. For each student, the resident district  
3 shall pay tuition to the nonresident district in the succeeding fiscal year per the following  
4 calculation:

5 (1) ~~Multiply~~ Determine the nonresident district's ~~adjusted average daily membership~~  
6 ~~calculated pursuant to subdivision 13-13-10.1(2) by the per student allocation as~~  
7 ~~defined in subdivision 13-13-10.1(4)~~ local need pursuant to subdivision 13-13-73(2);

8 (2) Divide the result of (1) by the nonresident district's ~~average daily membership~~  
9 ~~calculated pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this  
10 Act;

11 (3) Multiply the result of (2) by the number of days the student was enrolled in the  
12 nonresident district;

13 (4) Divide the result of (3) by the number of days the nonresident district was in session.

14 Section 21. That § 13-28A-7 be amended to read as follows:

15 13-28A-7. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
16 any student sent to South Dakota from North Dakota is included in the receiving school district's  
17 ~~average daily membership~~ fall enrollment.

18 Section 22. That § 13-28A-8 be amended to read as follows:

19 13-28A-8. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
20 any student sent to North Dakota from South Dakota may not be included in the resident school  
21 district's ~~average daily membership~~ fall enrollment.

22 Section 23. That § 12-25-6.1 be amended to read as follows:

23 12-25-6.1. The provisions of this chapter, except §§ 12-25-27 to 12-25-31, inclusive, do not  
24 apply to any candidate or candidate election for judicial, municipal, or other governmental

1 subdivision offices. However, the governing body of any municipality or other governmental  
2 subdivision may adopt an ordinance or resolution to make the provisions of chapter 12-25, with  
3 or without amendments, applicable to municipal or other governmental subdivision elections.  
4 The provisions of this chapter do apply to any candidate or candidate election for any county  
5 office or school board seat in a district with ~~an average daily membership~~ a fall enrollment in  
6 excess of two thousand students during the previous academic year.

7 Section 24. That § 42-7B-48.1 be amended to read as follows:

8 42-7B-48.1. Disbursements from the Gaming Commission fund shall be as set forth in § 42-  
9 7B-48 until such time as the net municipal proceeds paid to the City of Deadwood equals six  
10 million eight hundred thousand dollars for each year, and after payment of commission expenses  
11 pursuant to subdivision 42-7B-48(2), and after payment of one hundred thousand dollars to the  
12 State Historical Preservation Grant and Loan fund pursuant to subdivision 42-7B-48(4).  
13 Thereafter, all remaining funds shall be distributed as follows:

- 14 (1) Seventy percent to the state general fund;
- 15 (2) Ten percent to be distributed to municipalities in Lawrence County, except the City  
16 of Deadwood, pro rata according to their population;
- 17 (3) Ten percent to be distributed to school districts, pro rata based upon the previous  
18 year's ~~average daily membership~~ fall enrollment, located in whole or in part, in  
19 Lawrence County. For any school district located only partly in Lawrence County,  
20 only that portion of the district's ~~average daily attendance~~ fall enrollment which  
21 represents students residing in Lawrence County shall be considered in calculating  
22 the proration required by this subdivision; and
- 23 (4) Ten percent to the City of Deadwood for deposit in the historic restoration and  
24 preservation fund.

1 Section 25. That § 13-16-26 be amended to read as follows:

2 13-16-26. All or any part of a surplus of any school district fund, except the capital outlay  
3 fund provided by §§ 13-16-6 to 13-16-9, inclusive, and the special education fund provided by  
4 § 13-37-16 may be transferred to any other school district fund. ~~However, any~~ Only a school  
5 district with a plan for reorganization that has been approved by the voters pursuant to § 13-6-47  
6 may transfer all or any part of a surplus in the capital outlay fund to the general fund. Any  
7 unused portion of money that has been transferred into the special education fund may be  
8 transferred from the special education fund within the current fiscal year to the fund from which  
9 it originated. All or any part of any school district fund may be loaned to any other school  
10 district fund for a term not to exceed twenty-four months.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

555N0581

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**SB 173** - 03/01/2007

Introduced by: Senators Knudson, Abdallah, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Lintz, McCracken, McNenny, Olson (Ed), and Smidt (Orville) and Representatives Rhoden, Brunner, DeVries, Dykstra, Halverson, Hargens, Jerke, Lucas, Noem, Pederson (Gordon), Pitts, Rave, Tidemann, Turbiville, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the assessment of  
2 real property, to revise certain tax levy limitations for schools, to revise certain provisions  
3 regarding property tax levies for school districts, and to repeal the nonagricultural acreage  
4 classification.

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

6 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Notwithstanding § 10-6-74, for the taxes payable in 2009, 2010, 2011, 2012, and 2013, the  
9 sales of property on or after November 1, 2006, where the property sells for more than one  
10 hundred fifty percent of its assessed value shall be used to value other real property. However,  
11 for the taxes payable in 2009, 2010, 2011, 2012, and 2013, no property's valuation may increase  
12 more than five percent per year because of these sales. Any such sales shall be used in a sales  
13 ratio study only as allowed in this section.



1 Section 2. Section 1 of this Act and § 10-6-74 are repealed on July 1, 2013.

2 Section 3. That § 10-6-33.24 be amended to read as follows:

3 10-6-33.24. Notwithstanding the provisions of chapter 10-6, agricultural land ~~may~~ shall be  
4 assessed based on its agricultural income value ~~if there are less than fifteen arms-length~~  
5 ~~transactions of agricultural land during the three preceding assessment years.~~ The agricultural  
6 income value of agricultural land shall be determined on the basis of the ~~capitalized~~ annual cash  
7 rent of the agricultural land. The ~~capitalized~~ annual cash rent shall be based on data collected  
8 and analyzed pursuant to § 10-6-33.25. ~~For the purposes of this section, arms-length transactions~~  
9 ~~do not include any agricultural land sales subject to the provisions of § 10-6-33.14, 10-6-33.20,~~  
10 ~~or 10-6-74.~~

11 Section 4. That § 10-6-33.25 be amended to read as follows:

12 10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be  
13 determined using ~~capitalized~~ annual cash rent. The annual cash rent is the annual cash rent,  
14 excluding the average per acre tax on agricultural land, ~~determined through an analysis of arms-~~  
15 ~~length rental agreements collected within the county in the three years prior to the year for which~~  
16 ~~the agricultural income value is being determined using cash rent information collected pursuant~~  
17 ~~to § 10-6-33.16.~~ The agricultural income value of cropland shall be based on average rents over  
18 a three-year period for cropland under natural conditions. The agricultural income value of  
19 noncropland shall be based on average rents over a three-year period for noncropland under  
20 natural conditions. ~~However, no arms-length rental agreements for irrigated land may be used~~  
21 ~~to determine the annual cash rent pursuant to this section.~~ The annual cash rent shall be  
22 ~~capitalized at seven and three-fourths~~ divided by the adjustment factor of six and sixteen  
23 hundredths percent.

24 ~~—The secretary of revenue and regulation may enter into a contract for the collection of cash~~

1 ~~rent information by county. Cash rent information shall be adjusted by soil survey statistics, if~~  
2 ~~available, and pursuant to § 10-6-33.26.~~

3 However, for the taxes payable in 2009, 2010, and 2011, the total value of agricultural land  
4 within any county may not increase more than fifteen percent in any year.

5 Section 5. That § 10-6-33.16 be amended to read as follows:

6 10-6-33.16. The secretary of revenue and regulation shall specify the cash rent used to  
7 determine the agricultural income value of agricultural land. The secretary of revenue and  
8 regulation may enter into a contract for the collection of cash rent information by county. Cash  
9 rent information shall be adjusted by soil survey statistics if available.

10 Section 6. That § 10-6-33.26 be amended to read as follows:

11 10-6-33.26. The director of equalization shall annually determine the assessed value of  
12 agricultural land as defined by § 10-6-31.3. ~~Any~~ The assessed valued of agricultural land  
13 ~~assessed based on its agricultural income value pursuant to § 10-6-33.24 and 10-6-33.25 may~~  
14 ~~be value~~ adjusted by the following factors:

- 15 (1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2;
- 16 and
- 17 (2) The location, size, soil survey statistics, terrain, and topographical condition of the
- 18 land including the climate, accessibility, and surface obstructions which can be
- 19 documented.

20 Section 7. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Buildings and structures, other than normally occupied dwellings on agricultural land and  
23 automobile garages or portions of buildings used as automobile garages, which are used  
24 exclusively for agricultural purposes and situated on agricultural land, are hereby specifically

1 classified for tax purposes as agricultural property and shall be assessed as similar  
2 nonagricultural property.

3 Section 8. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The agricultural income value for agricultural land as determined § 10-6-33.24 represents  
6 one hundred percent of the market value and that value shall be adjusted to where the median  
7 level of assessment represents eighty-five percent of the market value pursuant to §§ 10-3-41,  
8 10-12-42, and 10-13-37.

9 Section 9. That § 10-6-33.13 be amended to read as follows:

10 10-6-33.13. The secretary of revenue and regulation may promulgate rules pursuant to  
11 chapter 1-26 concerning the:

- 12 (1) Collection and tabulation of information required to determine median appraisal or  
13 sales assessment ratio, and coefficient of dispersion;
- 14 (2) Criteria to be included in a compliance audit of assessment practices; ~~and~~
- 15 (3) Conditions under which a certificate of compliance may be issued to a county;
- 16 (4) Procedures for determining the valuation of agricultural buildings and structures;
- 17 (5) Procedures for determining the valuation of dwellings on agricultural land and  
18 automobile garages or portions of buildings used as automobile garages;
- 19 (6) Application of cropland and noncropland income values;
- 20 (7) Soil classification standards; and
- 21 (8) Procedures for making adjustments to the value of agricultural land pursuant to  
22 §§ 10-6-33.26 and 10-6-33.27.

23 Section 10. That § 13-16-7 be amended to read as follows:

24 13-16-7. The school board of any school district of this state may at its discretion authorize

1 an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation on  
2 the taxable valuation of the district for the capital outlay fund for assets as defined by § 13-16-6  
3 or for its obligations under a resolution, lease-purchase agreement, capital outlay certificate, or  
4 other arrangement with the Health and Educational Facilities Authority. Taxes collected  
5 pursuant to such levy may be irrevocably pledged by the school board to the payment of  
6 principal of and interest on installment purchase contracts or capital outlay certificates entered  
7 into or issued pursuant to § 13-16-6 or 13-16-6.2 or lease-purchase agreements or other  
8 arrangement with the Health and Educational Facilities Authority and, so long as any capital  
9 outlay certificates are outstanding, installment agreement payments, lease-purchase agreements,  
10 or other arrangements are unpaid, the school board of any district may be compelled by  
11 mandamus or other appropriate remedy to levy an annual tax sufficient to pay principal and  
12 interest thereon, but not to exceed the three dollars per thousand dollars of taxable valuation in  
13 any year authorized to be levied hereby.

14 For taxes payable in 2009, the total amount of revenue payable from the levy provided in  
15 this section may not increase more than the lesser of three percent or the index factor, as defined  
16 in § 10-13-38, over the maximum amount of revenue that could have been generated for the  
17 taxes payable in 2008. After applying the index factor, a school district may increase the revenue  
18 payable from taxes on real property above the limitations provided by this section by the  
19 percentage increase of value resulting from any improvements or change in use of real property,  
20 annexation, minor boundary changes, and any adjustments in taxation of real property separately  
21 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,  
22 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value. A school  
23 district may increase the revenue it receives from taxes on real property above the limit provided  
24 by this section for taxes levied to pay the principal, interest, and redemption charges on any

1 bonds issued after January 1, 2007, which are subject to referendum, scheduled payment  
2 increases on bonds and for a levy directed by the order of a court for the purpose of paying a  
3 judgment against such school district. Any school district created or reorganized after January 1,  
4 2007, is exempt from the limitation provided by this section for a period of two years  
5 immediately following its creation.

6 For taxes payable in 2010, 2011, 2012, and 2013, the total amount of revenue payable from  
7 the levy provided in this section may not increase more than the lesser of three percent or the  
8 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have  
9 been generated for the taxes payable in 2008 plus any unused index factor from the previous  
10 years. After applying the index factor, a school district may increase the revenue payable from  
11 taxes on real property above the limitations provided by this section by the percentage increase  
12 of value resulting from any improvements or change in use of real property, annexation, minor  
13 boundary changes, and any adjustments in taxation of real property separately classified and  
14 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,  
15 except § 10-6-31.4, only if assessed the same as property of equal value. A school district may  
16 increase the revenue it receives from taxes on real property above the limit provided by this  
17 section for taxes levied to pay the principal, interest, and redemption charges on any bonds  
18 issued after January 1, 2007, which are subject to referendum, scheduled payment increases on  
19 bonds and for a levy directed by the order of a court for the purpose of paying a judgment  
20 against such school district. Any school district created or reorganized after January 1, 2007, is  
21 exempt from the limitation provided by this section for a period of two years immediately  
22 following its creation.

23 For taxes payable in 2009, 2010, 2011, 2012, and 2013, the levy limitation of three dollars  
24 per thousand dollars of taxable valuation does not apply to any school district.

1 Section 11. That § 10-12-31.1 be amended to read as follows:

2 10-12-31.1. Notwithstanding other provision of law, when applying the levies for school  
3 purposes, the county director of equalization of each county shall adjust the level of assessment  
4 in that district so that the level of assessment as indicated by the most recent assessment to sales  
5 ratio as provided for in § 10-11-55 and the most recent ~~assessment to full agricultural land value~~  
6 ~~ratio~~ agricultural income value as provided for in ~~§ 10-11-57~~ §10-6-33.24 in that district are  
7 equal to eighty-five percent of market value or agricultural income value. The Department of  
8 Revenue and Regulation shall provide the director of equalization of each county all of the  
9 factors of adjustment necessary for the computations required in this section.

10 Section 12. That § 10-6-31.3 be amended to read as follows:

11 10-6-31.3. For tax purposes, land is agricultural land if it meets two of the following three  
12 criteria:

13 (1) At least thirty-three and one-third percent of the total family gross income of the  
14 owner is derived from the pursuit of agriculture as defined in subdivision (2) of this  
15 section or it is a state-owned public shooting area or a state-owned game production  
16 area as identified in § 41-4-8 and it is owned and managed by the Department of  
17 Game, Fish and Parks;

18 (2) Its principal use is devoted to the raising and harvesting of crops or timber or fruit  
19 trees, the rearing, feeding, and management of farm livestock, poultry, fish, or  
20 nursery stock, the production of bees and apiary products, or horticulture, all for  
21 intended profit pursuant to subdivision (1) of this section. Agricultural real estate also  
22 includes woodland, wasteland, and pasture land, but only if the land is held and  
23 operated in conjunction with agricultural real estate as defined and it is under the  
24 same ownership;

1 (3) It consists of not less than twenty acres of unplatted land or is a part of a contiguous  
2 ownership of not less than eighty acres of unplatted land. The same acreage  
3 specifications apply to platted land, excluding land platted as a subdivision, which  
4 is in an unincorporated area. However, the board of county commissioners may  
5 increase the minimum acre requirement up to one hundred sixty acres.

6 ~~However, for tax purposes, land is not agricultural land if the land is classified pursuant to~~  
7 ~~§ 10-6-33.14 as a nonagricultural acreage.~~

8 Section 13. That § 10-6-33.3 be amended to read as follows:

9 10-6-33.3. Land or improvement on land within an operating unit which is not used incident  
10 to an agricultural pursuit shall be separately listed and assessed ~~and the income therefrom shall~~  
11 ~~not be used in determining the values for the purposes of §§ 10-6-33.1 and 10-6-33.2.~~

12 Section 14. That § 10-6-33.5 be amended to read as follows:

13 10-6-33.5. The assessment, valuation, equalization, and taxation of school and endowment  
14 lands shall be at the same level and on the same basis as lands assessed, valued, and equalized  
15 according to §§ ~~10-6-33.1 to 10-6-33.4~~ §§ 10-6-33.24 to 10-6-33.27, inclusive.

16 Section 15. That § 10-6-33.7 be amended to read as follows:

17 10-6-33.7. Agricultural land in each county shall be divided into the eight classes defined  
18 by the United States Department of Agriculture's soil conservation service as published in its  
19 soil survey for each county. The county director of equalization shall, based on the agricultural  
20 lands soil survey classification, determine a value for each soil type. ~~The value for each soil type~~  
21 ~~shall be determined from sales of similar land based upon its soil survey classification, and as~~  
22 ~~adjusted for the factors contained in subdivision 10-6-33.1(2). The sales used shall be sales of~~  
23 ~~agricultural land that are sold for agricultural purposes.~~

24 Section 16. That §§ 10-6-33.1, 10-6-33.4, 10-6-33.6, 10-6-33.14, 10-6-33.15, 10-6-33.17,

1 10-6-33.18, 10-6-33.19, 10-6-33.20, and 10-6-33.23 be repealed.

2 Section 17. That § 13-13-72.1 be amended to read as follows:

3 13-13-72.1. Any adjustments in the levies specified in ~~subdivision 13-13-10.1(6)~~ § 10-12-42  
4 made pursuant to §§ 13-13-71 and 13-13-72 shall be based on maintaining the relationship  
5 between statewide local effort as a percentage of statewide local need in the fiscal year  
6 succeeding the fiscal year in which the adjustment is made. In addition to the adjustments in the  
7 levies provided by this section, the levies for nonagricultural property and owner-occupied  
8 single-family dwellings shall also be adjusted as necessary to account for the additional increase  
9 in the total assessed value for nonagricultural property and owner-occupied single-family  
10 dwellings pursuant to section 1 of this Act.

11 Section 18. That § 13-37-16 be amended to read as follows:

12 13-37-16. For taxes payable in 1997, and each year thereafter, the school board shall levy  
13 no more than one dollar and forty cents per thousand dollars of taxable valuation, as a special  
14 levy in addition to all other levies authorized by law for the amount so determined to be  
15 necessary, and such levy shall be spread against all of the taxable property of the district. The  
16 proceeds derived from such levy shall constitute a school district special education fund of the  
17 district for the payment of costs for the special education of all children in need of special  
18 education or special education and related services who reside within the district pursuant to the  
19 provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this section shall be based on  
20 valuations such that the median level of assessment represents 85% of market value as  
21 determined by the Department of Revenue and Regulation. The total amount of taxes that would  
22 be generated at the levy pursuant to this section shall be considered local effort. Money in the  
23 special education fund may be expended for the purchase or lease of any assistive technology  
24 that is directly related to special education and specified in a student's individualized education

1 plan. This section does not apply to real property improvements.

2 For taxes payable in 2009, the total amount of revenue payable from the levy provided in  
3 this section may not increase more than the lesser of three percent or the index factor, as defined  
4 in § 10-13-38, over the maximum amount of revenue that could have been generated for the  
5 taxes payable in 2008. After applying the index factor, a school district may increase the revenue  
6 payable from taxes on real property above the limitations provided by this section by the  
7 percentage increase of value resulting from any improvements or change in use of real property,  
8 annexation, minor boundary changes, and any adjustments in taxation of real property separately  
9 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,  
10 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

11 Any school district created or reorganized after January 1, 2007, is exempt from the  
12 limitation provided by this section for a period of two years immediately following its creation.

13 For taxes payable in 2010, 2011, 2012, and 2013, the total amount of revenue payable from  
14 the levy provided in this section may not increase more than the lesser of three percent or the  
15 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have  
16 been generated for the taxes payable in 2008 plus any unused index factor from the previous  
17 years. After applying the index factor, a school district may increase the revenue payable from  
18 taxes on real property above the limitations provided by this section by the percentage increase  
19 of value resulting from any improvements or change in use of real property, annexation, minor  
20 boundary changes, and any adjustments in taxation of real property separately classified and  
21 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,  
22 except § 10-6-31.4, only if assessed the same as property of equal value.

23 For taxes payable in 2009, 2010, 2011, 2012, and 2013, the levy limitation of one dollar and  
24 forty cents per thousand dollars of taxable valuation does not apply to any school district.

1 Section 19. That § 13-37-35.1 be amended to read as follows:

2 13-37-35.1. Terms used in chapter 13-37 mean:

3 (1) "Level one disability," a mild disability;

4 (2) "Level two disability," a mental retardation or emotional disorder;

5 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-  
6 blindness, orthopedic impairment, or traumatic brain injury;

7 (4) "Level four disability," autism;

8 (5) "Level five disability," multiple disabilities;

9 (5A) "Level six disability," prolonged assistance;

10 (6) "Index factor," is the annual percentage change in the consumer price index for urban  
11 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
12 the United States Department of Labor for the year before the year immediately  
13 preceding the year of adjustment or three percent, whichever is less;

14 (7) "Local effort," shall be calculated for taxes payable in 2006 and thereafter using a  
15 ~~special education levy of one dollar and twenty cents per one thousand dollars of~~  
16 valuation 2009 shall be the amount of revenue that could have been generated for the  
17 taxes payable in 2008 using a special education levy of one dollar and twenty cents  
18 per one thousand dollars of valuation increased by the lesser of three percent or the  
19 index factor, as defined in § 10-13-38, plus a percentage increase of value resulting  
20 from any improvements or change in use of real property, annexation, minor  
21 boundary changes, and any adjustments in taxation of real property separately  
22 classified and subject to statutory adjustments and reductions under chapters 10-4,  
23 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property  
24 of equal value.

1           For taxes payable in 2010, 2011, 2012, and 2013, the total amount of local effort  
2           shall be increased by the lesser of three percent or the index factor, established  
3           pursuant to § 10-13-38 plus a percentage increase of value resulting from any  
4           improvements or change in use of real property, annexation, minor boundary  
5           changes, and any adjustments in taxation of real property separately classified and  
6           subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and  
7           10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.;

8           (8) "Allocation for a student with a level one disability," for the school fiscal year  
9           beginning July 1, 2004, is \$ 3,533.13. For each school year thereafter, the allocation  
10           for a student with a level one disability shall be the previous fiscal year's allocation  
11           for such child increased by the lesser of the index factor or three percent;

12           (9) "Allocation for a student with a level two disability," for the school fiscal year  
13           beginning July 1, 2004, is \$ 8,277.21. For each school year thereafter, the allocation  
14           for a student with a level two disability shall be the previous fiscal year's allocation  
15           for such child increased by the lesser of the index factor or three percent;

16           (10) "Allocation for a student with a level three disability," for the school fiscal year  
17           beginning July 1, 2004, is \$ 12, 580.73. For each school year thereafter, the allocation  
18           for a student with a level three disability shall be the previous fiscal year's allocation  
19           for such child increased by the lesser of the index factor or three percent;

20           (11) "Allocation for a student with a level four disability," for the school fiscal year  
21           beginning July 1, 2004, is \$ 12, 001.80. For each school year thereafter, the allocation  
22           for a student with a level four disability shall be the previous fiscal year's allocation  
23           for such child increased by the lesser of the index factor or three percent;

24           (12) "Allocation for a student with a level five disability," for the school fiscal year

1 beginning July 1, 2004, is \$ 15, 882.21. For each school year thereafter, the allocation  
2 for a student with a level five disability shall be the previous fiscal year's allocation  
3 for such child increased by the lesser of the index factor or three percent;

4 (12A) "Allocation for a student with a level six disability," for the school fiscal year  
5 beginning July 2004, is \$8,122.23. For each school year thereafter, the allocation for  
6 a student with a level six disability shall be the previous fiscal year's allocation for  
7 such child increased by the lesser of the index factor or three percent;

8 (13) "Child count," is the number of students in need of special education or special  
9 education and related services according to criteria set forth in rules promulgated  
10 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in  
11 accordance with rules promulgated pursuant to § 13-37-1.1;

12 (14) "Average daily membership," the average number of kindergarten through twelfth  
13 grade pupils enrolled in all schools operated by the school district during the previous  
14 regular school year plus the average number of pupils for whom the district pays  
15 tuition;

16 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the  
17 secretary of education for the purpose of instructing children of compulsory school  
18 age. This definition excludes any school that receives a majority of its revenues from  
19 public funds;

20 (16) "Nonpublic average daily membership," the average number of children under age  
21 sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the  
22 previous school year plus:

23 (a) For nonpublic schools located within the boundaries of a public school district  
24 with an average daily membership of six hundred or more during the previous

1 school year, the average number of kindergarten through twelfth grade pupils  
2 enrolled during the previous regular school year in all nonpublic schools  
3 located within the boundaries of the public school district;

4 (b) For nonpublic schools located within the boundaries of a public school district  
5 with an average daily membership of less than six hundred during the previous  
6 school year, the average number of resident kindergarten through twelfth grade  
7 pupils enrolled during the previous school year in all nonpublic schools  
8 located within the State of South Dakota;

9 (17) "Special education average daily membership," average daily membership plus  
10 nonpublic average daily membership;

11 (18) "Local need," an amount to be determined as follows:

12 (a) Multiply the special education average daily membership by 0.1013 and  
13 multiply the result by the allocation for a student with a level one disability;

14 (b) Multiply the number of students having a level two disability as reported on  
15 the child count for the previous school fiscal year by the allocation for a  
16 student with a level two disability;

17 (c) Multiply the number of students having a level three disability as reported on  
18 the child count for the previous school fiscal year by the allocation for a  
19 student with a level three disability;

20 (d) Multiply the number of students having a level four disability as reported on  
21 the child count for the previous school fiscal year by the allocation for a  
22 student with a level four disability;

23 (e) Multiply the number of students having a level five disability as reported on  
24 the child count for the previous school fiscal year by the allocation for a

1 student with a level five disability;

2 (f) Multiply the number of students having a level six disability as reported on the  
3 child count for the previous school fiscal year by the allocation for a student  
4 with a level six disability;

5 (g) Sum the results of (a) through (f);

6 (19) "Effort factor," ~~the school district's special education tax levy in dollars per thousand~~  
7 divided by \$1.20 for taxes payable 2009, 2010, 2011, 2012, and 2013 shall be the  
8 amount of taxes payable for the year divided by the amount of local effort as  
9 calculated in subdivision (7). The maximum effort factor is 1.0.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

553N0589

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 180** - 02/28/2007

Introduced by: Senators Nesselhuf, Albers, Duenwald, Garnos, Hanson (Gary), Heidepriem, McCracken, Napoli, Olson (Ed), Peterson (Jim), and Turbak and Representatives Hackl, Boomgarden, Cutler, Elliott, Faehn, Gilson, Halverson, Krebs, Nygaard, Peters, and Pitts

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of birth certificates for certain  
2 inter-country adoptions.

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

4 Section 1. That § 34-25-16.1 be amended to read as follows:

5 34-25-16.1. If the birth occurred in South Dakota, the ~~State~~ Department of Health shall issue  
6 a new certificate of birth in the new name of the child and with the name of the adopting person,  
7 except that a new certificate of birth may not be prepared if so requested by the court decreeing  
8 the adoption, the adoptive parents, or the adopted person.

9 If the birth occurred in a foreign nation, and the adoption decree is entered in a court of this  
10 state, the ~~State~~ Department of Health shall issue a new certificate of birth in the new name of  
11 the child and with the name of the adopting person. The birth certificate shall be prepared in  
12 accord with the facts as found and entered by the court. If the birth occurred in a foreign nation  
13 and the adoption was finalized in a foreign nation, any circuit court of this state may issue an  
14 order, ex parte and without hearing, directing that a new certificate of birth be issued upon filing



1 the following documentation:

- 2 (1) The adoption order from the foreign nation;
- 3 (2) A certified translation of the adoption order if necessary;
- 4 (3) Proof of the date and place of the child's birth;
- 5 (4) Proof of IR-3 immigration status; and
- 6 (5) Proof that each adopting person is a resident of this state.

7 The Department of Health shall issue a new certificate of birth in the new name of the child and  
8 the name of each adopting person upon receipt from the clerk of courts such information  
9 necessary to establish a new certificate of birth on a form prepared by the department.

10 The issuance of certificates pursuant to this section is conditioned upon the receipt of a fee  
11 based upon administrative cost as established by the department pursuant to chapter 1-26.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0668

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 207** - 02/28/2007

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

1 FOR AN ACT ENTITLED, An Act to increase the minimum wage.

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

3 Section 1. That § 60-11-3 be amended to read as follows:

4 60-11-3. Every employer shall pay to each employee wages at a rate of not less than five  
5 dollars and ~~fifteen~~ eighty-five cents an hour. Violation of this section is a Class 2 misdemeanor.

6 The provisions of this section do not apply to certain employees being paid an opportunity  
7 wage pursuant to § 60-11-4.1, babysitters, or outside salesmen.

8 Section 2. That § 60-11-3 be amended to read as follows:

9 60-11-3. Every employer shall pay to each employee wages at a rate of not less than ~~five~~ six  
10 dollars and ~~fifteen~~ fifty-five cents an hour. Violation of this section is a Class 2 misdemeanor.

11 The provisions of this section do not apply to certain employees being paid an opportunity  
12 wage pursuant to § 60-11-4.1, babysitters, or outside salesmen.

13 Section 3. That § 60-11-3 be amended to read as follows:

14 60-11-3. Every employer shall pay to each employee wages at a rate of not less than ~~five~~  
15 seven dollars and ~~fifteen~~ twenty-five cents an hour. Violation of this section is a Class 2



1 misdemeanor.

2       The provisions of this section do not apply to certain employees being paid an opportunity  
3 wage pursuant to § 60-11-4.1, babysitters, or outside salesmen.

4       Section 4. The provisions of section 1 of this Act are effective on the date identified in a  
5 certification by the secretary of labor filed with the secretary of state and the Legislative  
6 Research Council as the effective date of the increase in the federal minimum wage under the  
7 federal Fair Labor Standards Act of 1938 or July 1, 2007, whichever is later.

8       Section 5. The provisions of section 2 of this Act are effective twelve months after the  
9 effective date of section 1 of this Act.

10       Section 6. The provisions of section 3 of this Act are effective twenty-four months after the  
11 effective date of section 1 of this Act.