

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0265

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 42 - 01/31/2007

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

1 FOR AN ACT ENTITLED, An Act to revise the discount provided to tobacco distributors
2 purchasing tobacco stamps and to revise and repeal certain provisions regarding the cigarette
3 tax.

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

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

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

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

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



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

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

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

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 That § 10-50-22 be repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0266 SENATE COMMERCE COMMITTEE ENGROSSED NO.
SB 43 - 02/01/2007

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 licensed wholesalers and distributors. A violation of this section is a Class
23 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

400N0261 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**
SB 47 - 01/30/2007

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

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

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

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

6 Terms used in this in this Act mean:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

16 No provision of this section prohibits employees, officers, directors, or partners of a
17 commercial insured from acting in the capacity of an insurance manager or buyer in placing
18 insurance on behalf of the employer, if the person's compensation is not based on buying
19 insurance. The venue of an act committed by mail is at the point where the matter transmitted
20 by mail is delivered or issued for delivery or takes effect. Nothing in this Act applies to an
21 admitted insurer, nonadmitted insurer, or a MEWA if the arrangement is neither issued to a
22 person in this state nor solicited in this state.

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

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

2 (1) Issuing a stop loss policy covering an employer located in this state. Stop loss policy
3 coverage of an employer for claims incurred under the employer's self-funded health
4 benefit plan is insurance, not reinsurance, regardless of whether the contract is
5 described by the insurer as reinsurance;

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

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

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

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

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

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

24 (2) Licensed or otherwise authorized under the laws of this state to offer a self-funded

1 health benefit plan.

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

4 Unauthorized health insurance does not include:

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

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

13 (3) Health care benefits or coverage under an employee welfare benefit plan of the
14 employees of two or more employers but only if the employers are within the same
15 control group so the plan is deemed to be a single employer plan under 29 U.S.C.
16 § 1002(40)(B) as of January 1, 2007; or

17 (4) Health care benefits or coverage under a church plan as defined under 29 U.S.C
18 § 1002(33) as of January 1, 2007.

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

21 A licensee shall notify the division MEWA contact if the licensee knows a product is, or is
22 about to be, offered to the public in this state, and the licensee, based on the information known
23 to the licensee, reasonably should know the product is unauthorized health insurance. A licensee
24 meets the requirements of this section if that licensee reviews the division's website of admitted

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

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

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

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

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

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

1 agents who are compensated on a commission or similar basis.

2 A licensee may provide other evidence to the division to indicate that the licensee did not
3 reasonably know that a product is unauthorized. In making its determination regarding whether
4 a licensee should have known the product is unauthorized and the appropriateness of any penalty
5 for failing to notify the division of such a product, the division shall consider the prior
6 experience and the existence or lack of training of that licensee.

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

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

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

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

1 information pursuant to this Act concerning suspected, anticipated, or completed acts, if the
2 information is provided to or received from:

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

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

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

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

1 provided under 29 CFR 2510.3-40 as of January 1, 2007;

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

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

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

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

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

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

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

24 Section 12. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A third party administrator, prior to entering into any administrative contract for a health
3 benefit plan, and prior to assisting any person with administration of a health benefit plan,
4 covering employees of an employer or a person located in this state, shall carry out appropriate
5 due diligence to establish that the health benefit plan is not unauthorized health insurance,
6 including those measures reasonably appropriate to establish:

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

10 (a) The insurer issued the policy;

11 (b) The coverage is as represented;

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

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

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

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

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

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

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

- 7 (1) For any health benefit plan that is represented as established or maintained pursuant
8 to a collective bargaining agreement, the health benefit plan is established or
9 maintained under or pursuant to a collective bargaining agreement under the criteria
10 provided under 29 CFR 2510.3-40 as of January 1, 2007;
- 11 (2) The health benefit plan is not offered by an employee leasing arrangement or
12 professional employer organization to client employers; or
- 13 (3) For any health benefit plan that is represented as established by a single employer,
14 the health benefit plan is covering solely employees, and dependents of employees,
15 of the employer and the employer controls and directs the work of the employee.

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

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

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

1 contract is described by the insurer as reinsurance; or

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

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

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

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

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

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

- 20 (1) Through initial inquiry, contract provisions, and measures to monitor and enforce
21 compliance with the contract provisions, that for any insurance coverage that is
22 represented as issued relating to the health benefit plan:
 - 23 (a) The insurer issued the policy;
 - 24 (b) The coverage is as represented;

- 1 (c) The insurer is an admitted insurer in this state; and
- 2 (d) The policy has been filed with and approved by the division or is exempt from
- 3 filing requirements;
- 4 (2) For any health benefit plan that is represented as established or maintained pursuant
- 5 to a collective bargaining agreement, the health benefit plan is established or
- 6 maintained under or pursuant to a collective bargaining agreement under the criteria
- 7 provided under 29 CFR 2510.3-40 as of January 1, 2007;
- 8 (3) For any health benefit plan that is represented as established or maintained by an
- 9 employee leasing arrangement or professional employer organization, the health
- 10 benefit plan is fully insured; or
- 11 (4) For any health benefit plan that is represented as established by a single employer,
- 12 the health benefit plan is covering solely employees, and dependents of employees,
- 13 of the employer and the employer controls and directs the work of the employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 A third party administrator, preferred provider organization, or insurer shall include in its
17 application for a license a brief summary of its procedures and controls required under section
18 20 of this Act. A license or registration application may be denied if the applicant fails to
19 demonstrate that the applicant maintains the required procedures and controls.

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

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

1 future.

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

3 follows:

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

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0354 SENATE COMMERCE COMMITTEE ENGROSSED NO.
SB 48 - 02/01/2007

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

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

1 FOR AN ACT ENTITLED, An Act to adopt consumer protection standards for property
2 casualty insurance claims.

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

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

6 Terms used in this Act mean:

- 7 (1) "Agent," any person, corporation, association, partnership, or other legal entity
8 authorized to represent an insurer with respect to a claim;
- 9 (2) "Claim file," any retrievable electronic file, paper file, or combination of both related
10 to a claim arising under an insurance policy or contract;
- 11 (3) "Claimant," an insured or legal representative of an insured, including a member of
12 the insured's immediate family designated by the insured, making a claim under a
13 policy. Unless otherwise specified, claimant does not include a third party claimant;
- 14 (4) "Comparable motor vehicle," when compared to the insured motor vehicle, a motor



- 1 vehicle that is of the same manufacturer, same or newer year, similar body style,
2 similar options and mileage, in as good or better overall condition, available for
3 inspection at a licensed dealer within a reasonable distance of the insured's residence;
- 4 (5) "Days," calendar days;
- 5 (6) "Documentation," includes all pertinent communications, transactions, notes, work
6 papers, claim forms, bills, and explanation of benefits forms relative to the claim;
- 7 (7) "First party claimant," any person, corporation, association, partnership, or other legal
8 entity asserting a right to payment under an insurance policy or insurance contract
9 arising out of the occurrence of the contingency or loss covered by the policy or
10 contract;
- 11 (8) "Investigation," any activity of an insurer directly or indirectly related to the
12 determination of liabilities under coverages afforded by an insurance policy or
13 insurance contract;
- 14 (9) "Notification of claim," any notification, whether in writing or other means
15 acceptable under the terms of an insurance policy, to an insurer or its agent by a
16 claimant, which reasonably apprises the insurer of the facts pertinent to a claim;
- 17 (10) "Proof of loss," written proofs, such as claim forms, medical bills, medical
18 authorizations, or other reasonable evidence of the claim that is customarily required
19 of all insureds or beneficiaries submitting the claims;
- 20 (11) "Reasonable explanation," information sufficient to enable the insured to compare
21 the allowable benefits with policy provisions and determine whether proper payment
22 has been made;
- 23 (12) "Replacement crash part," sheet metal or plastic parts which generally constitute the
24 exterior of a motor vehicle, including inner and outer panels;

1 (13) "Written communications," includes all correspondence, regardless of source or type
2 that is materially related to the handling of the claim.

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

5 The provisions of this Act set forth minimum standards for the investigation and disposition
6 of first party property and casualty claims arising under contracts or certificates issued to
7 residents of this state and do not apply to claims involving workers' compensation, fidelity,
8 suretyship, or boiler and machinery insurance. Nothing in this Act may be construed to create
9 or imply a private cause of action for violation of this Act nor may be construed to create or
10 imply third party bad faith.

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

13 No insurer may fail to fully disclose to claimants all pertinent benefits, coverages, or other
14 provisions of a policy or contract under which a claim is presented.

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

17 No claim may be denied on the basis of failure to exhibit property unless there is
18 documentation of breach of the policy provisions in the claim file. No insurer may deny a claim
19 based upon the failure of a claimant to give written notice of loss within a specified time limit
20 unless the written notice is a written policy condition, or claimant's failure to give written notice
21 after being requested to do so is so unreasonable as to constitute a breach of the claimant's duty
22 to cooperate with the insurer.

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

1 No insurer may indicate to a claimant on a payment draft, check, or in any accompanying
2 letter that the payment is final or a release of any claim unless the policy limit has been paid or
3 there has been a compromise settlement agreed to by the claimant and the insurer as to coverage
4 and amount payable under the contract.

5 No insurer may issue any check or draft in partial settlement of a loss or claim under a
6 specific coverage that contains language purporting to release the insurer or its insured from
7 total liability.

8 Any payment of a claim to a claimant shall be made payable to the claimant only and may
9 not include other persons unless either there is written permission given by the claimant or the
10 additional payee is listed as loss payee or mortgagee on the policy. If a claimant or third party
11 claimant requests in writing the inclusion of an additional payee, the insurer shall honor that
12 request.

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

15 Every insurer, upon receiving notification of a claim, shall acknowledge the receipt of the
16 notice within a reasonable period of time. Payment of the claim may be made in lieu of an
17 acknowledgment. If an acknowledgment is made by means other than writing, an appropriate
18 notation of the acknowledgment shall be made in the claim file of the insurer and dated.
19 Notification of a claim given to an agent of an insurer is notification to the insurer.

20 A reply shall be made within a reasonable period of time on all other pertinent
21 communications from a claimant which reasonably suggest that a response is expected. The
22 reply must acknowledge receipt of the claim communication and include what steps the insurer
23 intends to take in response to the communication and what steps the claimant needs to take.

24 Every insurer, upon receiving notification of claim, shall within a reasonable period of time

1 provide necessary claim forms, instructions, and reasonable assistance to allow the claimant to
2 comply with the policy conditions and the insurer's reasonable requirements.

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

5 Upon receipt by the insurer of properly executed proofs of loss, the claimant shall, within
6 a reasonable period of time, be advised of the acceptance or denial of the claim by the insurer.
7 No insurer may deny a claim on the grounds of a specific policy provision, condition, or
8 exclusion unless reference to such provision, condition, or exclusion is included in the denial.
9 Any denial shall be given to the claimant in writing and the claim file of the insurer shall contain
10 documentation of the denial as required by § 58-3-7.4.

11 If there is a reasonable basis supported by specific information available for review by the
12 division that the claimant has fraudulently caused or contributed to the loss, the insurer is
13 relieved from the requirements of this section. After receipt by the insurer of a properly executed
14 proof of loss, the claimant shall be advised of the acceptance or denial of the claim within a
15 reasonable time for full investigation.

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

18 If the insurer needs more time to determine whether a claim should be accepted or denied,
19 the insurer shall, within a reasonable period of time, notify the claimant after receipt of the
20 proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete,
21 the insurer shall correspond with the claimant at reasonable intervals and include in that
22 correspondence the reason for needing additional time.

23 If there is a reasonable basis supported by specific information available for review by the
24 division for suspecting that the claimant has fraudulently caused or contributed to the loss, the

1 insurer is relieved from the requirements of this section. After receipt by the insurer of a
2 properly executed proof of loss, the claimant shall be advised of the acceptance or denial of the
3 claim by the insurer within a reasonable time for full investigation.

4 No insurer may fail to settle claims on the basis that responsibility for payment should be
5 assumed by others except as may be provided by policy provisions.

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

8 An insurer shall provide written notice to a claimant and a third party claimant of the statute
9 of limitations if the claimant or third party claimant is not represented by counsel and if the
10 claim remains open until sixty days prior to the expiration of the statute of limitations. The
11 notice must be provided no earlier than sixty days prior to and no later than thirty days prior to
12 the expiration of the statute of limitations. This section does not apply unless there are active
13 negotiations between the parties sixty days prior to the expiration of the statute of limitations.

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

16 The insurer shall affirm or deny liability on claims within a reasonable time and shall, within
17 a reasonable period of time, tender payment after affirmation of liability, if the amount of the
18 claim is determined and not in dispute. In claims where multiple coverages are involved,
19 payments which are not in dispute and where the payee is known shall be made within a
20 reasonable period of time.

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

23 No insurer may require any claimant to submit to a polygraph examination.

24 Section 12. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 No insurer may pay or offer to pay a claimant an amount less than what is required under
3 the terms of the policy or any applicable legal requirement. If, after an insurer denies a claim,
4 the claimant objects to the denial, the insurer shall notify the claimant in writing that the
5 claimant may have the matter reviewed by the division and provide the address and phone
6 number of the division.

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

9 Any insurer covering motor vehicles shall provide for settlement of a claim, less any
10 applicable deductible, using one of the following methods:

- 11 (1) Cost of the repairs;
- 12 (2) Actual cash value; or
- 13 (3) Replacement cost.

14 If the settlement of a claimant's motor vehicle total loss is on the basis of actual cash value
15 or replacement with a comparable motor vehicle, one of the methods provided in sections 14
16 to 18, inclusive, of this Act shall apply.

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

19 The insurer may elect to offer a replacement motor vehicle that is a comparable motor
20 vehicle. The insurer shall pay all applicable taxes, license fees, and other fees incident to
21 transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible
22 provided in the policy. The offer and any rejection by the claimant shall be documented in the
23 claim file.

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

1 follows:

2 The insurer may, as a means of determining the actual cash value of the motor vehicle, elect
3 a cash settlement based upon the actual cost, less any deductible provided in the policy, to
4 purchase a comparable motor vehicle including all applicable taxes, license fees, and other fees
5 incident to transfer of evidence of ownership of a comparable motor vehicle. Any differences
6 in the claimant's motor vehicle compared to a similar motor vehicle in the local market area that
7 are attributable to normal cleaning and similar minor appearance alterations by a dealer to make
8 the motor vehicle ready for sale may not be used to determine that the vehicle is not comparable.

9 Actual cost may be derived from:

- 10 (1) The cost of two or more comparable motor vehicles in the local market area if the
11 motor vehicles are available or were available within the last ninety days to
12 consumers in the claimant's local market area;
- 13 (2) One of two or more quotations obtained by the insurer from two or more licensed
14 dealers located within the local market area if the cost of comparable motor vehicles
15 are not available pursuant to subdivision (1); or
- 16 (3) Any source for determining statistically valid fair market values that meet all of the
17 following criteria:
 - 18 (a) The source shall give primary consideration to the values of motor vehicles in
19 the local market area and may consider data on motor vehicles outside the
20 area;
 - 21 (b) The source's database shall produce values for at least eighty-five percent of
22 all makes and models for the last fifteen model years taking into account the
23 values of all major options for such motor vehicles; and
 - 24 (c) The source shall produce fair market values based on current data available

1 from the area surrounding the location where the insured motor vehicle was
2 principally garaged, or add data as is necessary, to assure statistical validity.

3 If the cost of repair of the motor vehicle is less than the actual cash value of the motor
4 vehicle then the insurer must pay at least the cost of repair. For the purposes of this section,
5 actual cash value may not include an adjustment for salvage. If the claim is paid based upon the
6 cost of repair, the cost of the repair including labor shall be paid to the claimant regardless of
7 whether the motor vehicle is repaired.

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

10 If the insurer is notified within thirty-five days of the receipt of the claim draft that the
11 claimant cannot purchase a comparable motor vehicle for the market value, the insurer shall
12 reopen its claim file and the following procedures shall apply:

13 (1) The insurer may locate a comparable motor vehicle by the same manufacturer, same
14 year, similar body style, and similar options and price range for the claimant for the
15 market value determined by the insurer at the time of settlement. Any such motor
16 vehicle must be available through licensed dealers;

17 (2) The insurer shall either pay the claimant the difference between the market value
18 before applicable deductions and the cost of the comparable motor vehicle of like
19 kind and quality which the claimant has located, or negotiate and effect the purchase
20 of this motor vehicle for the claimant; or

21 (3) The insurer may elect to offer a replacement in accordance with the provisions set
22 forth in section 14 of this Act.

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

1 The insurer is not required to take action under section 16 of this Act if its documentation
2 to the claimant at the time of settlement included written notification of the availability and
3 location of a specific and comparable motor vehicle. The documentation shall include the motor
4 vehicle identification number.

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

7 Any deductions from actual cash value, including a deduction for salvage if the claimant
8 retains the vehicle, shall be reasonable, measurable, discernible, itemized, and specified as to
9 dollar amount. The basis for the settlement shall be fully explained to the claimant.

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

12 No insurer may require a claimant to travel an unreasonable distance either to inspect a
13 replacement motor vehicle, to obtain a repair estimate, or to have the motor vehicle repaired at
14 a specific repair shop.

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

17 Each insurer shall include the claimant's deductible, if any, in subrogation demands.
18 Subrogation recoveries shall be shared on a proportionate basis with the claimant, unless the
19 deductible amount has been otherwise recovered. No deduction for expenses may be made from
20 the deductible recovery unless an outside attorney is retained to collect the recovery. The
21 deduction may then be for only a pro rata share of the allocated loss adjustment expense.

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

24 If partial losses are settled on the basis of a written estimate prepared by or for the insurer,

1 the insurer shall supply the claimant with a copy of the estimate upon which the settlement is
2 based. The estimate prepared by or for the insurer shall be reasonable, in accordance with
3 applicable policy provisions, and in an amount which will allow for repairs to be made in a
4 workmanlike manner. If the claimant subsequently claims, based upon a written estimate which
5 the claimant obtains, that necessary repairs will exceed the written estimate prepared by or for
6 the insurer, the insurer shall pay the difference between the estimates, or, within a reasonable
7 period of time, provide the claimant with the name of at least one repair shop that will make the
8 repairs for the amount of the written estimate. If the insurer designates two or fewer such
9 repairers, the insurer shall assure that the repairs are performed in a workmanlike manner. The
10 insurer shall maintain documentation of all such communications. This section only applies to
11 personal lines property casualty claims.

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

14 If the insurer reduces a claim offer or settlement because of betterment or depreciation all
15 information for the reduction shall be documented in the claim file. Each deduction shall be
16 itemized, specified as to dollar amount, and shall be reasonable.

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

19 If the insurer recommends or offers the repair be done at a specific motor vehicle repair
20 shop, the insurer shall, within a reasonable period of time, cause the damaged motor vehicle to
21 be restored to its condition prior to the loss at no additional cost to the claimant other than as
22 stated in the policy.

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

1 The insurer shall provide reasonable notice to a claimant prior to termination of payment for
2 motor vehicle storage charges. The insurer shall allow reasonable time for the claimant to
3 remove the motor vehicle from storage prior to the termination of payment.

4 Section 25. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Unless the insurer has provided a claimant with the name of a specific towing company prior
7 to the claimant's use of another towing company, the insurer shall pay all reasonable towing
8 charges irrespective of the towing company used by the claimant.

9 Section 26. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Betterment deductions are allowed only if the betterment deductions reflect the general
12 overall condition of the motor vehicle, considering its age, for either or both of the following:

- 13 (1) The wear and tear or rust, limited to no more than a deduction of one thousand
14 dollars;
- 15 (2) Missing parts, limited to no more of a deduction than the replacement costs of the
16 part or parts.

17 Betterment is not allowed unless the repairs or replaced parts increase the market value of
18 the motor vehicle as a whole.

19 Section 27. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any deductions set forth in section 25 of this Act shall be measurable, itemized, specified
22 as to dollar amount, and documented in the claim file.

23 Section 28. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 No insurer may require the claimant to supply parts for replacement.

2 Section 29. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 All replacement crash parts shall be identified and be of the same quality as the original part.

5 No insurer may require the use of replacement crash parts in the repair of a motor vehicle
6 unless the replacement crash part is at least equal in kind and quality to the original part in terms
7 of fit, quality, and performance. Any insurer specifying the use of replacement crash parts shall
8 consider the cost of any modifications which may become necessary when making the repair.

9 Section 30. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For any motor vehicle that was purchased as new that is less than two years old on the date
12 of the loss and has less than thirty thousand miles on the odometer on the date of loss, the
13 insurer shall offer to use new original equipment manufacturer parts. For any other motor
14 vehicle, the insurer may, at its option, adjust the loss based upon original equipment
15 manufacturer parts, nonoriginal equipment manufacturer parts, or used parts. Any nonoriginal
16 equipment manufacturer parts or used parts specified by the insurer shall be of like kind and
17 quality to the original parts in terms of fit, quality, and performance. Nothing in this section may
18 be construed as limiting the right of a third party claimant to have the vehicle repaired with new,
19 original equipment manufacturer parts.

20 Section 31. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 In any property coverage for the roof of a structure, the insurer, in reimbursing the insured
23 for the repairs, shall cover the full cost of the repairs less any applicable deductible. The full cost
24 of repairs includes any removal of all old shingles, provided that those shingles must be

1 removed to complete repair or replacement of damaged shingles or other roof parts. If the roof
2 is covered on a replacement basis or actual cash value basis, the post claim existence of prior
3 damage, except damage paid for under a policy or previously known by the claimant to have
4 been damaged but not reported as a claim, may not be used to reduce the claim payment.
5 Nothing in this Act requires a loss to a roof to be paid on a replacement cost basis if the policy
6 provides for the losses to be reimbursed on an actual cash value basis. The insurer may deduct
7 from the amount owed to repair any damage that occurred prior to the inception of the policy
8 unless the covered loss could not be repaired without also repairing the prior damage.

9 For any property coverage for fire and extended coverage policies, when a loss requires
10 repair or replacement of an item or part, any consequential physical damage incurred in making
11 such repair or replacement not otherwise excluded by the policy, shall be included in the loss.
12 The claimant may not be required to pay for betterment nor any other cost except for the
13 applicable deductible.

14 Section 32. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Depreciation reductions, where not otherwise prohibited and where provided for in the
17 policy, may be used but shall be based on the life expectancy of the insured property and
18 reduced by the percentage of age of the property to the life expectancy. Generally accepted
19 industry guides may be used for the calculation of life expectancy, but the actual condition of
20 the insured property shall be taken into account.

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

23 The director may promulgate rules pursuant to chapter 1-26 to carry out the purposes of this
24 Act. In promulgating any rules, the director shall consider the impact of the rule on the cost and

1 availability of property casualty insurance in this state and the degree of protection that the rule
2 will have for the insurance buying public in this state. The rules shall be limited to the following
3 areas of property casualty claims:

- 4 (1) Definition of terms;
- 5 (2) Claim handling procedures;
- 6 (3) Timeliness;
- 7 (4) Appropriateness of repairs;
- 8 (5) Determining actual cash value;
- 9 (6) Notices and communications to claimants; and
- 10 (7) Valuation.

11 Section 34. Sections 22 to 30, inclusive, of this Act only apply to automobile insurance
12 claims.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

880N0087 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 95 - 02/01/2007

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

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

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

6 Section 1. The control of the public technical institutes of the state is vested in a board of
7 nine members, designated as the State Board of Technical Institutes. The state board shall
8 consist of two at-large members appointed by the Governor; one member of the Board of
9 Regents appointed by the Governor; one regional board member from Lake Area Technical
10 Institute; one regional board member from Mitchell Technical Institute; one regional board
11 member from Southeast Technical Institute; one regional board member from Western Dakota
12 Technical Institute; the secretary of the Department of Labor; and the secretary of the
13 Department of Tourism and State Development. If a regional board for a particular institute has



1 not yet been established, the sponsoring school district may appoint a member to the State Board
2 of Technical Institutes until such time as a regional board for that institute has been established.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) Recommendations regarding legislation proposed for postsecondary technical

1 education;

2 (2) All actions required by law to be taken by the state board;

3 (3) Establishment of committees related to statewide mission of public technical
4 institutes; and

5 (4) Approve all new diploma or degree granting or awarding programs at any technical
6 institute.

7 Section 14. The state board shall represent the state with other agencies in South Dakota,
8 in other states, and at the national level.

9 Section 15. The state board shall make recommendations for enhancing the mission of
10 public technical institutes for the benefit of the state.

11 Section 16. The state board shall establish an annual report and guidelines for reporting for
12 the technical institutes.

13 Section 17. The state board shall facilitate institutional and program accreditation,
14 compliance with the North Central Association Higher Learning Commission, and other
15 approved industry accreditations.

16 Section 18. The state board shall approve technical institute requests for purchase,
17 construction, or alteration of facilities that involve the expenditure of state funds.

18 Section 19. Upon passage of an authorizing resolution by the school board of any school
19 district owning and operating a postsecondary technical institute, the technical institute shall be
20 established as an independent public education entity which shall be attached to the Department
21 of Tourism and State Development for administrative and reporting purposes. The authorizing
22 resolution adopted by the school district owning and operating the postsecondary technical
23 institute shall specify the assets and liabilities being transferred to the new independent technical
24 institute agency. The authorizing resolution shall transfer to the new independent technical

1 institute agency substantially all of the school district's assets, including real estate, which are
2 primarily used in the ordinary course of business in the existing operation of the school district's
3 existing postsecondary technical institute. In no event is the technical institute obligated to
4 assume any liabilities not related to assets received by the technical institute or related to the
5 ordinary operations of the technical institute. School districts are expressly authorized to transfer
6 primary responsibility for repayment of all debt related to buildings and real estate transferred
7 to the new independent technical institute agency. The authorizing resolution adopted by the
8 school district shall establish for the independent technical institute agency a seven to nine
9 member regional board of directors which shall have the duties and powers set forth in this Act.
10 The regional board membership shall include representatives of business and industry leaders
11 from the service area of the technical institute, one or more members of the local school board
12 in which the institute is located, and persons experienced in economic and work force
13 development in its region. The terms on the regional board of directors for members of the local
14 school board shall expire at the same time as their local school board term expires.

15 The initial regional board members shall be appointed for initial one, two, and three year
16 terms staggered so that the terms of approximately one-third of the members of the board expire
17 at any one time. Thereafter, the terms of the board members shall be for three years. The local
18 school district currently owning and operating the technical institute shall appoint the initial
19 members of the regional board in it authorizing resolution and specify the original term of such
20 board member. Thereafter, the regional boards shall elect successors for those directors whose
21 terms are expiring by vote of the members of the board whose terms are not expiring. However,
22 no elected member may take office as a regional board member until the member's election has
23 been confirmed and approved by the local school board in which the institute is located. If the
24 local school board fails to approve or reject a successor member selected by a regional board

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

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

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

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

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

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

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

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

- 17 (1) After a public hearing, adopt an annual budget of revenues and expenditures. The
18 regional board shall establish student fees at its technical institute and shall charge
19 the uniform tuition rate as established by the state board. Each regional technical
20 institute shall retain in its accounts and appropriate in its budget all revenues
21 generated at that technical institute by student tuition and fees;
- 22 (2) Review all new education programs for its technical institute and the deletion or
23 modification of existing programs;
- 24 (3) Maintain awareness of, and communicate to the president of its technical institute,

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

1 postsecondary technical education in general;

2 (12) Employ, dismiss, and establish the salary of the technical institute president;

3 (13) Approve salaries and employment contracts for all staff;

4 (14) Establish policies for approval of contracts for services for its technical institute;

5 (15) Require an annual audit of all finances and procedures and submit the audit report to
6 the appropriate agencies; and

7 (16) Approve the operational policies for the technical institute.

8 Section 27. The State Board of Technical Institutes shall be attached to the Department of
9 Tourism and State Development for administrative and reporting purposes.

10 Section 28. The technical institutes created pursuant to section 19 of this Act are political
11 subdivisions of the State of South Dakota.

12 Section 29. Technical institutes may not construct student union buildings and recreational
13 facilities for technical institute students. This restriction includes the use of student fees to pay
14 for student union buildings and recreational or multi-use facilities. The provisions of this section
15 may not be construed as a restriction of construction or operation of regular cafeteria or multi-
16 use facilities for students at technical institutes.

17 Section 30. The continuing contract provisions set forth in §§ 13-43-9.1 to 13-43-11,
18 inclusive, do not apply to any person employed in a public technical institute. At least sixty days
19 prior to the termination of an employee in a technical institute, the governing board shall notify
20 in writing the employee of such termination.

21 Section 31. A technical institute may award an associate in applied sciences degree. The
22 state board may promulgate rules pursuant to chapter 1-26 providing for approval of programs
23 in technical institutes leading to an associate in applied science degree. In approving any degree
24 granting program, the state board shall consider curriculum, required hours, quality of

1 instruction, minimum standards for entry into the program, and standards for program
2 completion.

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

4 13-39-1.2. Terms used in this chapter, mean:

5 (1) "Adult vocational education," the training provided to upgrade or update the
6 occupational skills of persons who are preparing to, or have already, entered an
7 occupation;

8 (2) "Center board," the governing body of a multi-district center;

9 (3) "Division," the Division of Education Services and Resources of the Department of
10 Education;

11 (4) "Facilities," buildings, rooms, property, and permanent equipment, including
12 vehicles, used to provide vocational education;

13 (5) "LEA," a local education agency limited to public school districts and the legal
14 entities that a school district is authorized to establish;

15 (6) "Multi-district center," a multi-district secondary occupational vocational education
16 center;

17 (7) "Multi-use facility," a structure or part of a structure for student or faculty use as a
18 lounge area, cafeteria, classroom, or large group area not operated as a student union
19 building in which student fees are charged and utilized to pay for construction and
20 maintenance of a facility under the direct or indirect control of the students;

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

23 (9) ~~"Postsecondary technical institute," a public nonprofit school legally authorized to
24 provide public postsecondary technical education which does not culminate in a~~

1 ~~baccalaureate degree at that school;~~

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

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

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

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

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

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

14 ~~13-39-18. The director shall submit all requests for new programs from the postsecondary~~
15 ~~technical institutes in the state to the state board for action.~~

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

17 13-39-19. The secretary of education may distribute funds appropriated ~~to him~~ by the
18 Legislature or granted by any federal agency to the state in accordance with chapter 4-8B, for
19 vocational education ~~in public secondary and postsecondary technical institutes~~ in the state in
20 accordance with a state plan or plans adopted by the South Dakota Board of Education. The aid
21 disbursed to the different schools of the state and all expenses incurred in the administration of
22 the provisions of any federal acts relating to vocational education shall be paid out of the funds
23 of the secretary appropriated for that purpose and from the federal funds allotted to the State of
24 South Dakota for similar purposes. The state treasurer is the custodian of all money paid to the

1 state from federal appropriations for the purpose of vocational education, and shall disburse the
2 funds on warrants issued by the state auditor upon vouchers approved by the director. The
3 secretary of education shall authorize the director to submit vouchers to the state auditor for the
4 amount payable as state and federal aid to each school approved under the provisions of this
5 chapter. Upon receipt of the vouchers, the state auditor shall draw warrants on the state treasury
6 in favor of the treasurer of the public secondary ~~and postsecondary technical~~ institute for the
7 sum approved by the secretary.

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

9 13-39-26. The provisions of this chapter do not apply to private business schools,
10 postsecondary technical institutes, or private vocational institutions except that the secretary of
11 education and LEAs may enter into contracts with these schools and institutions to provide
12 vocational education.

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

14 ~~13-39-34. Any LEA proposing to operate a postsecondary technical institute or establish an~~
15 ~~existing postsecondary technical institute as a separate legal entity may petition the state board~~
16 ~~pursuant to §§ 13-39-35 to 13-39-36, inclusive. The state board may conduct hearings,~~
17 ~~investigate school records, and secure other data relating to the proposed postsecondary~~
18 ~~technical institute, its geographical location, the demography and economy of the area, and any~~
19 ~~other facts relating to the proposed postsecondary technical institute which the state board may~~
20 ~~consider appropriate.~~

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

22 ~~13-39-35. If the South Dakota Board of Education finds that the classification petitioned for~~
23 ~~would further the educational interests of the state, more nearly equalize the educational~~
24 ~~opportunities in certain phases of technical education to persons in this state who are of the age~~

1 and maturity to pursue study in preparation for entering the labor market, be of potential benefit
2 to persons in all communities of the state, and is otherwise in accordance with the plans of the
3 state board, it may recommend the petition be approved by the Legislature.

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

5 — 13-39-35.1. If the Legislature approves the petition by passing a joint resolution, an LEA
6 may operate a postsecondary technical institute. If an LEA begins to operate a postsecondary
7 technical institute without the approval required by this section, that school is ineligible for state
8 vocational education money. Adult vocational education programs are exempt from the
9 provisions of this section.

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

11 — 13-39-35.2. The joint resolution passed pursuant to § 13-39-35.1 shall specify the duties and
12 powers of a postsecondary technical institute. The resolution may also specify the procedure for
13 selecting members of the governing board, which may include local elections for such members.
14 A school established pursuant to § 13-39-35.1 may be a distinct legal entity separate and apart
15 from the school district or districts which established it.

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

17 — 13-39-36. If the petition is approved by the Legislature, the LEA may establish the proposed
18 school and the state board shall classify the school as a postsecondary technical institute. The
19 state board shall conduct general supervision as provided in § 13-39-37 and in the rules adopted
20 pursuant to chapter 1-26 by the state board.

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

22 — 13-39-37. The South Dakota Board of Education may adopt rules pursuant to chapter 1-26,
23 to be administered by the director, governing the operation and maintenance of postsecondary
24 technical institutes which will afford the people of the state, insofar as practicable, an equal

1 opportunity to acquire a public technical education. The rules may provide for the following:

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

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

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

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

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

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

17 ~~—(7)—The submission of plans of LEAs for new construction or major renovation of~~
18 ~~facilities eligible for reimbursement. The rules regarding these plans shall provide a~~
19 ~~requirement that the LEA, by a written resolution, declare the LEA committed to~~
20 ~~begin construction if the budget of the state board provides the matching funds;~~

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

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

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

24 ~~—13-39-37.1. Notwithstanding the provisions of §§ 13-16-6, 13-16-7, and 13-19-7, school~~

1 ~~districts may not construct student union buildings and recreational facilities for postsecondary~~
2 ~~technical institute students. This restriction includes the use of student fees to pay for student~~
3 ~~union buildings and recreational or multi-use facilities. The provisions of this section may not~~
4 ~~be construed as a restriction of construction or operation of regular cafeteria or multi-use~~
5 ~~facilities for students at postsecondary technical institutes.~~

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

7 ~~—13-39-38. The secretary of education shall apportion and distribute funds made available for~~
8 ~~postsecondary technical institutes through a formula approved by the South Dakota Board of~~
9 ~~Education to the LEAs having jurisdiction over postsecondary technical institutes to assist in~~
10 ~~maintaining and operating those schools. The use of the funds are subject to rules adopted by~~
11 ~~the state board pursuant to subdivision § 13-39-37(3) and in accordance with the approved state~~
12 ~~plan for vocational education.~~

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

14 ~~—13-39-39. The division shall distribute funds to the postsecondary technical institutes under~~
15 ~~the provisions of § 13-39-38 from money appropriated to the division for that purpose, and from~~
16 ~~federal funds allotted to the State of South Dakota for that purpose.~~

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

18 ~~—13-39-39.1. LEAs operating postsecondary technical institutes shall keep separate the~~
19 ~~accounting and funds for the operation of the postsecondary technical programs. The LEA shall~~
20 ~~deposit receipts, student fees and income from state and federal sources, as well as any other~~
21 ~~receipts incidental to the operation of the postsecondary technical institute, in the fund or funds~~
22 ~~created pursuant to this chapter.~~

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

24 ~~—13-39-65. The continuing contract provisions set forth in §§ 13-43-9.1 to 13-43-11,~~

1 ~~inclusive, do not apply to any person employed in a public postsecondary technical institute. At~~
2 ~~least sixty days prior to the termination of an employee in a postsecondary technical institute,~~
3 ~~the governing board shall notify in writing the employee of such termination.~~

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

5 ~~— 13-39-72. An LEA operating an approved postsecondary vocational school may award an~~
6 ~~associate in applied sciences degree. The state board may promulgate rules pursuant to chapter~~
7 ~~1-26 providing for approval of programs in postsecondary vocational education schools leading~~
8 ~~to an associate in applied science degree. In approving any program, the state board shall~~
9 ~~consider curriculum, required hours, quality of instruction, minimum standards for entry into~~
10 ~~the programs, and standards for program completion.~~

11 Section 49. The provisions of sections 29 to 46, inclusive, of this Act are effective on the
12 date of the first annual meeting of the State Board of Technical Institutes, pursuant to section
13 5 of this Act.

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

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

625N0530 SENATE EDUCATION COMMITTEE ENGROSSED NO.
SB 101 - 02/01/2007

Introduced by: Senators Bartling, Albers, Gant, Jerstad, McCracken, McNenny, Nesselhuf, Olson (Ed), and Peterson (Jim) and Representatives Gillespie, Cutler, Dennert, DeVries, Dykstra, Elliott, Halverson, Nelson, Rounds, and Willadsen

1 FOR AN ACT ENTITLED, An Act to establish a governance policy for school boards.

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

3 Section 1. That § 13-8-10 be amended to read as follows:

4 13-8-10. The annual meeting shall be held on the second Monday of July unless otherwise
5 designated by the board at the prior regular meeting. Regular meetings shall be on the second
6 Monday of each month unless otherwise designated by the board at the annual meeting. At the
7 annual meeting the school board shall organize by the election of a president and a vice
8 president from its membership, and such officers shall serve until the next annual meeting. The
9 board shall designate the depository or depositories as provided in § 13-16-15, and the
10 custodians of all accounts; and designate the legal newspaper to be used for publishing all
11 official notices and proceedings. A majority of the members of the school board constitutes a
12 quorum for the purpose of conducting business. Any board action may be taken if it is approved
13 by the majority of the members voting.

14 Special meetings may be held upon call of the president or in ~~his~~ the president's absence by



1 the vice-president, or a majority of the board members. Notice of such meeting shall be given
2 by the business manager to the board members either orally or in writing in sufficient time to
3 permit their presence.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

538N0644

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 106** - 01/31/2007

Introduced by: Senators Napoli and Abdallah and Representatives Van Etten and Howie

1 FOR AN ACT ENTITLED, An Act to require certain family members to report sexual abuse
2 to law enforcement authorities, to grant civil immunity for any good faith report, and to
3 provide a penalty for failure to report.

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

5 Section 1. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Whenever any person, who is a relative of a child under the age of eighteen, has reasonable
8 cause to suspect that the child is subject to sexual abuse, sexual molestation, or sexual
9 exploitation by the child's parent, guardian, custodian, or any other person responsible for the
10 child's care, as provided in subdivision 26-8A-2(8), that person shall report that information in
11 accordance with § 26-8A-8. Any person who intentionally fails to make the required report is
12 guilty of a Class 1 misdemeanor.

13 As used in this section, the term, relative, means an adult who is related to the child by
14 blood, adoption, or marriage, and who is the child's grandparent, aunt, uncle, sibling, brother-in-
15 law, sister-in-law, niece, nephew, great grandparent, stepparent, or stepsibling.



1 Section 2. That § 26-8A-14 be amended to read as follows:

2 26-8A-14. Any person or party participating in good faith in the making of a report or the
3 submitting of copies of medical examination, treatment, or hospitalization records pursuant to
4 §§ 26-8A-3 to 26-8A-8, inclusive, pursuant to section 1 of this Act, or pursuant to any other
5 provisions of this chapter, is immune from any liability, civil or criminal, that might otherwise
6 be incurred or imposed, and has the same immunity for participation in any judicial proceeding
7 resulting from the report. Immunity also extends in the same manner to persons requesting the
8 taking of photographs and X rays pursuant to § 26-8A-16, to persons taking the photographs and
9 X rays, to child protection teams established by the secretary of social services, to public
10 officials or employees involved in the investigation and treatment of child abuse or neglect or
11 making a temporary placement of the child pursuant to this chapter, or to any person who in
12 good faith cooperates with a child protection team or the Department of Social Services in
13 investigation, placement, or a treatment plan. The provisions of this section or any other section
14 granting or allowing the grant of immunity do not extend to any person alleged to have
15 committed an act or acts of child abuse or neglect.

16 Section 3. That § 26-8A-8 be amended to read as follows:

17 26-8A-8. The reports required by §§ 26-8A-3, 26-8A-6, ~~and~~ 26-8A-7, and section 1 of this
18 Act and by other sections of this chapter shall be made orally and immediately by telephone or
19 otherwise to the state's attorney of the county in which the child resides or is present, to the
20 Department of Social Services or to law enforcement officers. The state's attorney or law
21 enforcement officers, upon receiving a report, shall immediately notify the Department of Social
22 Services. Any person receiving a report of suspected child abuse or child neglect shall keep the
23 report confidential as provided in § 26-8A-13, except as otherwise provided in chapter 26-7A
24 or this chapter.

1 The person receiving a report alleging child abuse or neglect shall ask whether or not the
2 reporting party desires a response report. If requested by the reporting person, the Department
3 of Social Services or the concerned law enforcement officer shall issue within thirty days, a
4 written acknowledgment of receipt of the report and a response stating whether or not the report
5 will be investigated.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

750N0653 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 128 - 02/01/2007

Introduced by: Senators Peterson (Jim), Abdallah, Bartling, Duenwald, Garnos, Gray, Greenfield, Hanson (Gary), Heidepriem, Hoerth, Hundstad, Koetzle, Lintz, Maher, and McCracken and Representatives Davis, Deadrick, Dennert, DeVries, Dykstra, Faehn, Hackl, Halverson, Jerke, Juhnke, Koistinen, Miles, Moore, Nelson, Noem, Novstrup (David), Nygaard, Peters, Pitts, Rausch, Rave, Rhoden, Sigdestad, Street, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the Soybean Research
2 and Promotion Council.

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

4 Section 1. That § 38-29-1 be amended to read as follows:

5 38-29-1. Terms used in this chapter, unless the context plainly otherwise requires, mean:

6 (1) "Council," the South Dakota Soybean Research and Promotion Council;

7 (2) "First purchaser," any person who initially places soybeans, whether as an owner or
8 agent, into the channels of trade and commerce, or who is engaged in the processing
9 of soybeans into any form. However, a grower ~~selling his~~ who sells unharvested
10 soybeans, or ~~delivering his~~ delivers soybeans from the farm on which they are
11 produced to storage facilities, packing shed, or processing plant, within the state, is
12 not a first purchaser;

13 (3) "Grower," any person who plants, raises, and harvests soybeans from more than ten



1 acres;

2 (4) "Participating grower," a grower who has not requested a refund from the payment
3 of assessments on soybean production under this chapter for a particular year and any
4 person who owns or operates an agricultural producing or growing facility for
5 soybeans and shares in the profits and risks of loss from such operation, and who
6 produces soybeans in South Dakota during the current or preceding marketing year;

7 (5) "Secretary," the secretary of the South Dakota Department of Agriculture;

8 (6) "Soybean," all varieties of soybeans marketed or harvested within the state;

9 (7) "Net market price," the sale price received by a producer for soybeans after
10 adjustments for any premium or discount based on grading or quality factors.

11 Section 2. That § 38-29-7 be amended to read as follows:

12 38-29-7. The Soybean Research and Promotion Council may:

13 (1) Enter into contracts, including loans and grants, and cooperate with any person, any
14 local, state, or national organization, whether public or private, or with any
15 governmental department or agency for the discovery, promotion, development, and
16 expansion of domestic and export markets and industries and for research, education,
17 and transportation;

18 (2) Expend the funds collected pursuant to this chapter and appropriated for its
19 administration;

20 (3) Appoint, bond, employ, discharge, fix compensation for, and prescribe the duties of
21 such personnel as it ~~may deem~~ deems necessary;

22 (4) Accept donations of funds, property, services, or other assistance from public or
23 private sources for the purpose of furthering the objectives of the council;

24 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies

1 necessary to carry out the provisions of this chapter;

2 (6) Formulate policies and programs regarding the discovery, promotion, and
3 development of markets and industries for the use of soybeans grown within the
4 state.

5 Section 3. That § 38-29-8 be amended to read as follows:

6 38-29-8. An assessment ~~of one cent per bushel~~ at the rate of one-half of one percent of the
7 value of the net market price is imposed by the soybean research and promotion council upon
8 all soybeans grown in the state or sold to a first purchaser within the state. This assessment ~~shall~~
9 ~~be~~ is due upon any identifiable lot or quantity of soybeans. Any soybean producer operating
10 under a national organic program approved by the United States Department of Agriculture who
11 produces and markets only commodities that may be labeled, one hundred percent organic, is
12 eligible for exemption from paying the soybean assessment.

13 Section 4. That § 38-29-12 be repealed.

14 ~~— 38-29-12. Any grower subject to the assessment provided in this chapter, within sixty days~~
15 ~~following the assessment, may apply to the soybean research and promotion council for a refund~~
16 ~~of the assessment. Upon the return of the refund application, accompanied by a record of the~~
17 ~~assessment by the first purchaser, the grower, within sixty days, shall be refunded the amount~~
18 ~~of the assessment collected. However, a grower who has paid the assessment more than once~~
19 ~~on the same soybeans is entitled to a refund of the overpayment.~~

20 Section 5. That § 38-29-13 be amended to read as follows:

21 38-29-13. The Soybean Research and Promotion Council, to inform the grower, shall
22 develop and disseminate information and instructions relating to the purpose of the soybean
23 assessment ~~and manner in which refunds may be claimed~~; and to this extent shall cooperate with
24 governmental agencies, state and federal, and private businesses engaged in the purchase of

1 soybeans.

2 Section 6. The provisions of this Act may be implemented only if the National Soybean
3 Promotion, Research, and Consumer Information Act, 7 USC 6301-6311, as amended to
4 January 1, 2007, is repealed.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

490N0413 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**
SB 165 - 02/01/2007

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

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

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

4 Section 1. Terms used in this Act mean:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 from the provisions of this Act:

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

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

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

1 lender.

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

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

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

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

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

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

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

1 registration if the director finds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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