House
Daily Reader

Tuesday, January 29, 2008

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

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HOUSE COMMERCE ENGROSSED NO. HB 1009 -
1/23/2008

Introduced by: Representatives Hackl, Bradford, Olson (Ryan), Pederson (Gordon), Turbiville, and Willadsen and Senators Garnos and Albers at the request of the Department of Regulation Agency Review Committee

FOR AN ACT ENTITLED, An Act to revise provisions relating to persons engaged in the business of money transmission.

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

Section 1. Terms used in this Act mean:

(1) "Applicant," any person filing an application for a license under this Act;

(2) "Authorized delegate," any entity designated by the licensee under the provisions of this Act to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee;

(3) "Control," ownership of, or the power to vote, twenty-five percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by such person or by any spouse, parent, or child of such person;

(4) "Controlling person," any person in control of a licensee;

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

(5) "Director," the director of the Division of Banking;

(6) "Division," the Division of Banking;

(7) "Electronic instrument," any card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded, and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(8) "Executive officer," the licensee's president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions;

(9) "Key shareholder," any person, or group of persons acting in concert, who is the owner of twenty-five percent or more of any voting class of an applicant's stock;

(10) "Licensee," any person licensed pursuant to this chapter;

(11) "Material litigation," any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents;

(12) "Monetary value," any medium of exchange, whether or not redeemable in money;

(13) "Money transmission," engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any means, including wire, facsimile, or electronic transfer;

(14) "Outstanding payment instrument," any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment

instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee;

(15) "Payment instrument," any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term, payment instrument, does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services;

(16) "Remit," either the direct payment of the funds to the licensee or its representatives authorized to receive those funds, or the deposit of the funds in a bank, credit union, savings and loan association, or other similar financial institution in an account specified by the licensee;

(17) "Security device," any surety bond, irrevocable letter of credit, or similar security device;

(18) "Stored value," monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Section 2. For the purposes of this Act, the term, permissible investments, means any of the following:

(1) Cash;

(2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank,

otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System;

(4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;

(6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities, or a fund composed of one or more permissible investments as set forth in this section;

(7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) Receivables which are due to a licensee from its authorized delegates, which are not past due or doubtful of collection; or

(9) Any other investments or security device approved by the director.

Section 3. This Act does not apply to:

(1) The United States or any department, agency, or instrumentality thereof;

(2) The United States Post Office;

(3) The state or any political subdivisions thereof;

(4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States, and any subcontractor, agent, or independent

contractor that sells payment instruments issued by any such entity or sells such entity's money transmission services on behalf of such entity; and

(5) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

Section 4. No person, except those exempt pursuant to section 3 of this Act, may engage in the business of money transmission in this state without obtaining a license as provided in this Act and undergoing a criminal background investigation through the division. A person is engaged in providing money transmission if the person provides those services to residents of South Dakota, even if such person has no physical presence in South Dakota.

Section 5. If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

Any authorized delegate of a licensee, acting within the scope of authority conferred by a written contract as described in section 31 of this Act, is not required to become licensed pursuant to this Act. However, any such authorized delegate is subject to all other relevant portions of this Act.

Section 6. Each licensee under this Act shall at all times have a net worth of not less than one hundred thousand dollars, calculated in accordance with generally accepted accounting principles.

Section 7. Every corporate applicant, at the time of filing of an application for a license under this Act and at all times after a license is issued, shall be in good standing in the state of its incorporation. All noncorporate applicants shall, at the time of the filing of an application for

a license under this Act and at all times after a license is issued, be registered or qualified to do business in the state.

Section 8. Each application shall be accompanied by a security device acceptable to the director in the amount of one hundred thousand dollars. The director may increase the amount of the security device to a maximum of five hundred thousand dollars upon the basis of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria. The security device shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or the transmission of money, or both. In the case of a surety bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the security device or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

In lieu of a security device or of any portion of the principal thereof, as required by this section, the licensee may deposit with the director, or with such banks in this state as the licensee may designate and the director may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash shall be deposited as provided in this section and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends thereon, has the right, with the approval of the director, to

substitute other securities for those deposited, and shall be required so to do on written order of the director made for good cause shown.

No security device may be cancelled without thirty days' written notice to the director. Cancellation does not affect any liability incurred or accrued during the period the security device was in effect.

Section 9. The security device shall remain in place for five years after the licensee ceases money transmission operations in the state. However, the director may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the director for the security device in place at the time the licensee ceases money transmission operations in the state.

Section 10. Each licensee under this Act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the security devices posted by the licensee pursuant to section 8 of this Act.

Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Section 11. Each applicant for licensure under this Act, except publicly traded corporations and their subsidiaries, shall submit to a state and federal criminal background investigation by

means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the division shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the division all information obtained as a result of the criminal background check. This information shall be obtained prior to permanent licensure of the applicant. The division may require a state and federal criminal background investigation for any licensee who is the subject of a disciplinary investigation by the division. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

Section 12. Each application for a license under this Act shall be made in writing, and in a form prescribed by the director. Each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(2) The history of the applicant's material litigation for the five-year period prior to the date of the application;

(3) Two sets of completed fingerprint cards and a signed waiver to authorize the division to conduct a criminal background investigation of the applicant;

(4) A description of the activities conducted by the applicant and a history of operations;

(5) A description of the business activities in which the applicant seeks to be engaged in the state;

(6) A list identifying the applicant's proposed authorized delegates in the state, if any, at the time of the filing of the license application;

(7) A sample authorized delegate contract, if applicable;

(8) A sample form of payment instrument, if applicable;

(9) Each location at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the state; and

(10) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

Section 13. If the applicant is a corporation, in addition to the requirements of section 12 of this Act, the applicant shall provide:

(1) The date of the applicant's incorporation and state of incorporation;

(2) A certificate of good standing from the state in which the applicant was incorporated;

(3) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(4) The name, business and residence address, and employment history for the past five years of the applicant's executive officers and any officer or manager who will be in charge of the applicant's activities to be licensed;

(5) The name, business and residence address, and employment history for the period five years prior to the date of the application of any key shareholder of the applicant;

(6) The history of material litigation for the five-year period prior to the date of the application of every executive officer or key shareholder of the applicant;

(7) Two sets of completed fingerprint cards and a signed waiver to authorize the division to conduct a criminal background investigation of every executive officer or key shareholder of the applicant;

(8) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision; and

(9) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

Section 14. If the applicant is not a corporation, in addition to the requirements of section 12 of this Act, the applicant shall provide:

(1) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each principal of the applicant and the name, business and residence address, and employment history for the past five years of any other persons who will be in charge of the applicant's activities to be licensed;

(2) The place and date of the applicant's registration or qualification to do business in this state;

(3) The history of material litigation for the five-year period prior to the date of the application for each individual having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's activities;

(4) Two sets of completed fingerprint cards and a signed waiver to authorize the division to conduct a criminal background investigation for each person having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's activities; and

(5) Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the immediately preceding two-year period.

Section 15. The director may, for good cause shown, waive any requirement with respect to any license application or permit a license applicant to submit substituted information in its license application in lieu of the information required. The director may, if the circumstances dictate, require an applicant to provide additional information with respect to any license application.

Section 16. Each application shall be accompanied by a nonrefundable application fee not to exceed five hundred dollars and a licensee fee not to exceed one thousand dollars. The license fee shall be refunded if the application is denied. The director shall establish the application and license fees by rules promulgated pursuant to chapter 1-26.

Section 17. Upon receiving a complete application, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the director finds that the applicant's

business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this Act and has paid the required license fee, the director shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state until the license expires on the following July first. If these requirements have not been met, the director shall deny the application in a writing setting forth the reasons for the denial.

Section 18. Any applicant aggrieved by a denial issued by the director under this Act may, at any time within thirty days from the date of written notice of the denial, request a hearing pursuant to chapter 1-26. Any request for hearing shall be made in writing and postmarked within the thirty-day period if sent by way of United States postal mail or actually received by the division within the thirty-day period if sent by way of electronic mail or facsimile.

Section 19. A licensee shall pay an annual renewal fee not to exceed one thousand dollars. The director shall establish the renewal fee by rules promulgated pursuant to chapter 1-26. The renewal fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(2) The licensee shall provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding, for the calendar year or fiscal year immediately

preceding the renewal period, or as much of this information as is available at the time of filing the renewal application;

(3) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under this Act;

(4) A list of the licensee's permissible investments; and

(5) A list of the locations, if any, within this state at which business regulated by this Act is being conducted by either the licensee or its authorized delegates.

Section 20. To renew a license, the licensee shall file a renewal report by June first. A licensee that has not filed a renewal report or paid its renewal fee by June first and has not been granted an extension of time to do so by the director, shall have its license suspended immediately. The licensee in such case has thirty days after its license is suspended in which to file a renewal report and pay the renewal fee, plus one hundred dollars for each business day after suspension that the director does not receive the renewal report and the renewal fee. The director, for good cause, may grant an extension of the renewal date or reduce or suspend the late filing fee. Any license not renewed prior to July first expires.

Section 21. A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument or stored value purchased.

Section 22. Within fifteen business days of the occurrence of any one of the events listed in this section, a licensee shall file a written report with the director describing the event and its expected impact on the licensee's activities in the state. Such events include:

(1) Any material changes in information provided in a licensee's application or renewal

report;

(2) The filing for bankruptcy or reorganization by the licensee;

(3) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensees' money transmission activities;

(4) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities; and

(5) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

Section 23. A licensee shall give the director written notice of a proposed change of control within fifteen days after learning of the proposed change of control and request approval of the acquisition. After review of a request for approval, the director may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application. The director shall approve a request for change of control if, after investigation, the director determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interests of the public will not be jeopardized by the change of control.

Section 24. The following persons are exempt from the requirements of section 23 of this Act, but the licensee shall notify the director of any such change of control:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and

(4) A person that the director by rule or order exempts in the public interest.

Section 25. Section 23 of this Act does not apply to public offerings of securities.

Section 26. Before filing a request for approval to acquire control, a person may request in writing a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of section 23 of this Act.

Section 27. The director may conduct an annual on-site examination of a licensee upon reasonable notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with this Act. If the director concludes that an on-site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of any governmental agency. The director, in lieu of an on-site examination, may accept the examination report of any governmental agency, and reports so accepted are considered for all purposes as an official report of the director. The director may waive an on-site examination and only require a self-examination or a report prepared by an independent accounting firm. If a licensee conducts a self-examination, the licenses shall provide any information requested under oath and on forms provided by the division. The reasonable expenses incurred by the division,

any governmental agency, or an independent licensed or certified public accountant in making such examination or report shall be borne by the licensee.

Section 28. The director may request financial data from a licensee in addition to that required under section 19 of this Act, or conduct an on-site examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this Act. If the director examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. If the director examines a licensee's location within the state, the licensee shall pay all reasonably incurred costs of such examination.

Section 29. Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years and which shall be open to inspection by the director:

(1) A record or records of each payment instrument and stored value sold;

(2) A general ledger, which general ledger shall be posted at least monthly, containing all assets, liabilities, capital, income, and expense accounts;

(3) Bank statements and bank reconciliation records;

(4) Records of outstanding payment instruments and stored value;

(5) Records of each payment instrument and stored value paid within the three-year period;

(6) A list of the names and addresses of all of the licensee's authorized delegates; and

(7) Any other records the director reasonably requires by rule promulgated pursuant to chapter 1-26.

Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section. Records may be maintained at

a location other than within this state if they are made accessible to the director on seven business days written notice.

Section 30. All information or reports obtained by the director from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential. However, the director may disclose confidential information to officials and examiners of other state or federal regulatory authorities or to appropriate prosecuting attorneys.

This section does not prohibit the director from disclosing to the public a list of persons licensed under this Act or the aggregated financial data on those licensees.

Section 31. Any licensee desiring to conduct licensed activities through an authorized delegate shall authorize each delegate to operate pursuant to an express written contract. Any such contract entered into after July 1, 2008, shall provide the following:

(1) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and

(3) That licensees are subject to supervision and regulation by the director.

Section 32. An authorized delegate shall adhere to the following standards of conduct:

(1) No authorized delegate may make any fraudulent or false statement or misrepresentation to a licensee or to the director;

(2) All money transmission or sale or issuance of payment instrument activities conducted by an authorized delegate shall be strictly in accordance with the licensee's

1 written procedures provided to the authorized delegate;

2 (3) An authorized delegate shall remit all money owing to the licensee in accordance
3 with the terms of the contract between the licensee and the authorized delegate. The
4 failure of an authorized delegate to remit all money owing to a licensee within the
5 time presented shall result in liability of the authorized delegate to the licensee for
6 the licensee's actual damages. The director may establish, by rules promulgated
7 pursuant to chapter 1-26, the maximum remittance time;

8 (4) An authorized delegate is deemed to consent to the director's inspection, with or
9 without prior notice to the licensee or authorized delegate, of the books and records
10 of authorized delegates of the licensee if the director has a reasonable basis to believe
11 that the licensee or authorized delegate is in noncompliance with this Act; and

12 (5) An authorized delegate is under a duty to act only as authorized under the contract
13 with the licensee. An authorized delegate who exceeds the authority grant under the
14 contract is subject to cancellation of the contract and further disciplinary action by
15 the director.

16 Section 33. Any funds, less fees, received by an authorized delegate of a licensee from the
17 sale or delivery of a payment instrument issued by a licensee or received by an authorized
18 delegate for transmission shall, from the time such funds are received by such authorized
19 delegate until such time when the funds or an equivalent amount are remitted by the authorized
20 delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an
21 authorized delegate commingles any such funds with any other funds or property owned or
22 controlled by the authorized delegate, any commingled proceeds and other property shall be
23 impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds
24 due the licensee.

Section 34. An authorized delegate shall report to the licensee the theft or loss of payment instruments and stored value within twenty-four hours from the time the authorized delegate knew or should have known of such theft or loss.

Section 35. The director may suspend or revoke a licensee's license if the director finds that:

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

(2) The licensee's net worth becomes inadequate and the licensee, after ten days written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;

(3) The licensee violates any material provision of this Act or any rule or order promulgated by the director under authority of this Act;

(4) The licensee is convicted of a violation of a state or federal anti-money laundering statute or is subject to an enforcement action for a violation of a state or federal anti-money laundering statute;

(5) The licensee is conducting its business in an unsafe or unsound manner;

(6) The licensee is insolvent;

(7) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;

(9) The licensee refuses to permit the director to make any examination authorized by this Act;

(10) The licensee fails to make any report required by this Act; or

(11) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to conduct its business.

Section 36. The director may issue an order suspending or revoking the designation of an authorized delegate, if the director finds that:

(1) The authorized delegate violated this Act or a rule adopted or an order issued under this Act;

(2) The authorized delegate did not cooperate with an examination or investigation by the director;

(3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;

(4) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute or is subject to an enforcement action for a violation of a state or federal anti-money laundering statute;

(5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) The authorized delegate is engaging in an unsafe or unsound practice. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this Act, and the previous conduct of the authorized delegate.

An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate pursuant to chapter 1-26.

Section 37. If the director determines that a violation of this Act or of a rule adopted or an

order issued pursuant to this Act by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the director may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The director may issue an order against a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to section 36 of this Act. The order becomes effective upon service of it upon the licensee or authorized delegate. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26. However, a licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26.

Section 38. The director shall commence an administrative proceeding pursuant to chapter 1-26 within twenty days after issuing an order to cease and desist. The director may apply to the circuit court for an appropriate order to protect the public interest.

Section 39. The director may enter into a consent order at any time with a person to resolve a matter arising under this Act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative, and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this Act or a rule adopted or an order issued under this Act has been violated.

Section 40. The director may assess a fine against a person that violates this Act or a rule adopted or an order issued under this Act in an amount not to exceed five hundred dollars per day for each day the violation is outstanding, plus the state's costs and expenses for the

investigation and prosecution of the matter, including reasonable attorney's fees.

Section 41. Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this Act or that intentionally makes a false entry or omits a material entry in such a record is guilty of a Class 6 felony. Any person that knowingly engages in any activity for which a license is required under this Act without being licensed under this Act is guilty of a Class 6 felony.

Section 42. If the director has reason to believe that a person has violated or is violating section 4 of this Act, the director may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 4 of this Act. In an emergency, the director may petition the circuit court for the issuance of a temporary restraining order. An order to cease and desist becomes effective upon service of it upon the person. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26. A person that is served with an order to cease and desist for violating section 4 of this Act may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26. The director shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.

Section 43. Any person who engages in business activity regulated by this Act is deemed to have consented to the jurisdiction of the courts of South Dakota for all actions arising under this Act.

Section 44. A license issued under the provisions of chapter 51A-16 that is in effect on July 1, 2008, shall remain in force as a license under this Act until the license's expiration date. Thereafter, the licensee shall be treated as if it had applied for and had received a license under

this Act and shall comply with the renewal requirements set forth in this Act.

Section 45. No license granted pursuant to this Act is assignable.

Section 46. Any money coming into the custody of the division pursuant to this Act shall be deposited with the state treasurer. The state treasurer shall credit the money to the banking special revenue fund. Any expenditure of money out of the fund may only be made by appropriation by the Legislature through either the General Appropriation Act or a special appropriation bill. The director shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 47. The director may promulgate rules pursuant to chapter 1-26 to establish the process for conducting background investigations, for the conduct of examinations, the reporting of information required by this Act, and the process for the suspension or revocation of a license issued by the division.

Section 48. That §§ 51A-16-1 to 51A-16-17, inclusive, be repealed.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

884P0053

HOUSE EDUCATION ENGROSSED NO. HB 1016 - 1/25/2008

Introduced by: Representatives Haverly, Brunner, Burg, and Faehn and Senators Smidt (Orville), Napoli, Olson (Ed), and Turbak Berry at the request of the Technical Institute Funding Task Force

FOR AN ACT ENTITLED, An Act to establish a new system of funding for the postsecondary technical institutes.

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

Section 1. Definition of terms. Terms used in this chapter mean:

(1) "Academic year," the period of time beginning with the fall semester, continuing through the spring semester, and culminating with the subsequent summer sessions;

(2) "Base funding allocation," for fiscal year 2009 is the amount appropriated by the Legislature in fiscal year 2008 through the General Appropriations Act for postsecondary career and technical education including the portions thereof that were reserved for specific purposes in accordance with ARSD 24:10:42:27. For fiscal year 2010 and thereafter, it is the previous year's base funding allocation increased by the index factor. The base funding allocation may not be used for bond payments;

(3) "High cost program," a postsecondary technical institute program for which the program cost per student FTE exceeds the average program cost per student FTE for

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all postsecondary technical institute programs;

(4) "Index factor," the cost-of-living adjustment for state employees for that fiscal year as proposed by the Governor and contained in the budget report prepared pursuant to § 4-7-9;

(5) "New program," a postsecondary technical institute program that, pursuant to § 13-39-18, is approved by the South Dakota Board of Education for the first time or an existing program that is redesigned to fill a new or expanding need and is determined by the board to be a new program for the purposes of this Act;

(6) "Program cost," any cost directly allocated to a program excluding the cost of any equipment purchased with funds from the postsecondary technical institute equipment subfund established in section 5 of this Act;

(7) "Program cost per student FTE," the program cost divided by the total student FTEs enrolled in the program;

(8) "Standard cost program," a postsecondary technical institute program for which the program cost per student FTE does not exceed the average program cost per student FTE for all postsecondary technical institute programs;

(9) "Student FTE," "Student full-time equivalent," a unit of measure based upon credit hours; one student FTE is equal to thirty credit hours per academic year;

(10) "High cost program share," a percentage calculated by dividing the total cost of all high cost programs by the total cost of all programs, excluding general education costs; and

(11) "Standard cost program share," a percentage calculated by dividing the total cost of all standard cost programs by the total cost of all programs, excluding general education costs.

Section 2. The secretary of the Department of Education shall calculate, apportion and distribute state funds appropriated by the Legislature for the postsecondary technical institutes as follows:

(1) Examine the cost of each program over the previous three years and determine the three-year average cost of each program, excluding general education costs. For programs that have not existed for three years, determine the average cost over the time the program has existed;

(2) Using the three-year average cost of each program, determine the average program cost per student FTE for all the postsecondary technical institute programs;

(3) Based upon the average calculated in subsection (2), determine which postsecondary technical institute programs are high cost programs and which are standard cost programs;

(4) Apportion the high cost program share of the base funding allocation for the high cost programs and the standard cost program share of the base funding allocation for the standard cost programs;

(5) Determine the number of student FTEs at each postsecondary technical institute who were in high cost programs during the previous academic year and the number of students at each who were in standard cost programs, including those student FTEs enrolled only in general education courses, during the previous academic year;

(6) Distribute the apportionment for high cost programs as calculated in subsection (4) to the LEAs having jurisdiction over the postsecondary technical institutes in proportion to the number of student FTEs in high cost programs within each institute as calculated in subsection (5); and

(7) Distribute the apportionment for standard cost programs as calculated in subsection

(4) to the LEAs having jurisdiction over the postsecondary technical institutes in proportion to the number of student FTEs in standard cost programs within each institute as calculated in subsection (5).

Section 3. The secretary of the Department of Education shall make bond payments authorized in § 13-39-66 from general funds provided for the postsecondary technical institutes through the General Appropriations Act. The bond payments may not be deducted from the base funding allocation as defined in section 1 of this Act.

Section 4. Beginning in fiscal year 2012 and every three years thereafter, the Board of Education shall evaluate the apportionment and distribution of state funds to the state's postsecondary technical institutes and report its findings and recommendations to the Legislature and the Governor no later than the thirty-first day of August.

Section 5. There is hereby established within the state treasury the postsecondary technical institute auxiliary fund. The fund shall be a participating fund and shall be credited for all interest earned on fund balances. The Board of Education shall approve all expenditures from the postsecondary technical institute auxiliary fund. For purposes of administration, the fund shall be divided into three subfunds as follows:

(1) The postsecondary technical institute maintenance and repair subfund to fund the maintenance and repair of existing facilities;

(2) The postsecondary technical institute new program subfund to fund the one-time costs associated with starting a new program or retooling a current program to meet a new or expanding need; and

(3) The postsecondary technical institute equipment subfund to fund the replacement of old or outdated equipment being used in current programs.

Section 6. That § 13-39-18 be amended to read as follows:

13-39-18. The director shall submit all requests for new programs and requests to expand or redesign current programs, if funds are requested for the expansion or redesign, from the postsecondary technical institutes in the state to the ~~state board~~ Board of Education for action.

Section 7. That § 13-39-37 be amended to read as follows:

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

(1) Curriculum and standards of instruction and scholarship;

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

(3) Apportionment and distribution of state funds pursuant to this Act, and the apportionment and distribution of all other funds made available to the board for carrying out the purposes of §§ 13-39-34 to 13-39-39, inclusive;

(4) Transportation requirements and payments;

(5) General administrative matters;

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

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

(8) The promotion and coordination of ~~vocational~~ career and technical education; and

(9) The duplication of programs.

Section 8. That § 13-39-38 be amended to read as follows:

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

Section 9. That ARSD 24:10:42:27 be repealed.

~~24:10:42:27. The Office of Career and Technical Education shall set aside and distribute funds to postsecondary technical institutes for the following purpose before distributing funds through the formula prescribed in § 24:10:42:28:~~

~~(1) Bonding;~~

~~(2) Maintenance and repair;~~

~~(3) Day care;~~

~~(4) Business and industry training coordinators;~~

~~(5) New programs; and~~

~~(6) Other.~~

Section 10. That ARSD 24:10:42:28 be repealed.

~~24:10:42:28. The postsecondary technical institutes shall receive state funding, from the amount appropriated by the Legislature less funds reserved in § 24:10:42:27, under a formula that distributes these funds based on tuition full-time equivalents as follows:~~

~~(1) Subtract the total set-asides reserved in § 24:10:42:27 from the total amount appropriated by the Legislature within the general appropriations act;~~

~~(2) Determine the tuition collected at each institution for the preceding fiscal year;~~

~~(3) Sum the tuition collected at each institution as determined in subdivision (2) to establish the total postsecondary institute tuition;~~

~~(4) Determine the percent of the total tuition collected at each institution by dividing the result in subdivision (2) for each institution by the result obtained in subdivision (3); and~~

~~(5) The allocation for each institution in then determined by multiplying the result obtained in subdivision (4) times the result in subdivision (1).~~

Section 11. That ARSD 24:10:42:29 be repealed.

~~24:10:42:29. The Office of Career and Technical Education shall revise the funding formula each year using tuition data.~~

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0330

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1067 - 1/25/2008

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

FOR AN ACT ENTITLED, An Act to make an appropriation to defray operation costs of the 24/7 sobriety program and to declare an emergency.

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

Section 1. There is hereby appropriated from the law enforcement officers training fund the sum of four hundred thousand dollars ($400,000), or so much thereof as may be necessary, to the Office of the Attorney General's 24/7 sobriety fund, to defray costs of operating the 24/7 sobriety program.

Section 2. The attorney general shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0356

HOUSE JUDICIARY ENGROSSED NO. HB 1073 - 1/24/2008

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

FOR AN ACT ENTITLED, An Act to require abuse and neglect registry screening for certain special advocacy volunteers and guardians ad litem.

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

Section 1. That § 26-8A-12.2 be amended to read as follows:

26-8A-12.2. Upon receipt of names of current or potential employees or volunteers from the Juvenile Division of the Department of Corrections ~~or~~, any adolescent treatment program operated by the Department of Human Services, <u>any entity recognized as administering a CASA program as provided in § 16-2-51, or a court considering appointment of a guardian ad litem for a child in a proceeding pursuant to chapter 26-8A</u>, the Department of Social Services shall compare the names to the central registry for abuse and neglect and report any findings to the requesting program director ~~or~~, to the Bureau of Personnel human resource manager<u>, or to the court</u>. Any potential employee or volunteer under this section shall give written consent prior to completion of the abuse and neglect screening. Failure to submit to abuse and neglect screening disqualifies an applicant from employment <u>or appointment</u>.

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

284P0335

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1080 - 1/25/2008

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

FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a student athlete development center on the campus of South Dakota State University and to make an appropriation therefor.

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

Section 1. The Board of Regents may contract for the construction, completion, furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos abatement, removal of existing roofing and structures, and such other services and improvements as may be required to erect, a student athlete development center on the campus of South Dakota State University in Brookings, in Brookings County, at an estimated cost of six million dollars.

Section 2. There is hereby appropriated the sum of six million dollars ($6,000,000), or so much thereof as may be necessary, of other fund expenditure authority, payable from funds donated for the purposes of this Act, to the Board of Regents for the construction authorized by this Act.

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Section 3. The design and construction of the facilities approved by this Act shall be under the general supervision of the Bureau of Administration as provided in § 5-14-2. The commissioner of the Bureau of Administration and the executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0338

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1081 - 1/25/2008

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

FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to replace storage facilities at the Cottonwood Agricultural Experiment Station and to make an appropriation therefor.

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

Section 1. The Board of Regents may contract for the construction, completion, furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos abatement, and such other services as may be required to construct a new machine and equipment storage shed and hoop barn at the Cottonwood Agricultural Experiment Station, located near Cottonwood in Jackson County, in conjunction with the agricultural experiment station, at an estimated cost of two hundred thousand dollars.

Section 2. The Board of Regents shall provide for the removal or demolition of existing storage sheds pursuant to § 13-51-12.

Section 3. There is hereby appropriated from pesticide registration fees designated for the

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agricultural experiment station in subdivision 38-20A-59(4) the sum of two hundred thousand dollars ($200,000), or so much thereof as may be necessary, to the Board of Regents for the purpose of constructing the facility described in this Act.

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

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0339

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1082 - 1/25/2008

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

FOR AN ACT ENTITLED, An Act to revise the appropriation for a new dairy manufacturing plant at South Dakota State University.

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

Section 1. That section 2 of chapter 93 of the 2006 Session Laws be amended to read as follows:

Section 2. There is hereby appropriated to the Board of Regents ~~four million dollars ($4,000,000)~~ <u>five million eight hundred fifty-two thousand dollars ($5,852,000)</u>, or so much thereof as may be necessary, from private donations and grants received by South Dakota State University to construct the facility described in section 1 of this Act.

Section 2. That section 3 of chapter 93 of the 2006 Session Laws be repealed.

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

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0340

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1083 - 1/25/2008

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

FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a new public restroom facility at McCrory Gardens on the campus of South Dakota State University and to make an appropriation therefor.

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

Section 1. The Board of Regents may contract for the construction, completion, furnishing, equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos abatement, removal of existing roofing and structures, and such other services and improvements as may be required to erect, a new public restroom facility at McCrory Gardens on the campus of South Dakota State University in Brookings, in Brookings County, at an estimated cost of fifty thousand dollars.

Section 2. There is hereby appropriated the sum of fifty thousand dollars ($50,000), or so much thereof as may be necessary, of other fund expenditure authority, payable from funds donated for the purposes of this Act, to the Board of Regents for the construction authorized by this Act.

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Section 3. The design and construction of the facilities approved by this Act shall be under the general supervision of the Bureau of Administration as provided in § 5-14-2. The commissioner of the Bureau of Administration and the executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

862P0295

HOUSE JUDICIARY ENGROSSED NO. HB 1099 -
1/24/2008

Introduced by: Representatives Vehle, Deadrick, and Elliott and Senator Hansen (Tom) at the request of the Interim Committee on Education for Divorcing Parents, Visitation, and Custody Task Force

FOR AN ACT ENTITLED, An Act to require custody or visitation dispute mediation under certain circumstances.

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

Section 1. That § 25-4-56 be amended to read as follows:

25-4-56. In any custody or visitation dispute between parents, the court shall, unless the court deems it inappropriate under the facts of the case, order mediation to assist the parties in formulating or modifying a plan, or in implementing a plan, for custody or visitation and shall allocate the cost of the mediation between the parties <u>unless:</u>

<u>(1) One of the parents has been convicted of domestic abuse as defined in subdivision 25-10-1(1); or</u>

<u>(2) One of the parents has been convicted of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household; or</u>

<u>(3) One of the parents has a history of domestic abuse; or</u>

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1 (4) Mediation is not readily available or the court determines that mediation is not
2 appropriate based on the facts and circumstances of the case.
3 The court may also direct that an investigation be conducted to assist the court in making a
4 custody or visitation determination and shall allocate the costs of such investigation between
5 the parties. A history of domestic abuse may only be proven by greater convincing force of the
6 evidence.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

268P0292

HOUSE JUDICIARY ENGROSSED NO. HB 1100 -
1/24/2008

Introduced by: Representatives Vehle, Deadrick, Dennert, and Elliott and Senator Hansen (Tom) at the request of the Interim Committee on Education for Divorcing Parents, Visitation, and Custody Task Force

FOR AN ACT ENTITLED, An Act to create a rebuttable presumption against the award of custody to any person with a proven history of domestic abuse.

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

Section 1. That § 25-4-45.5 be amended to read as follows:

25-4-45.5. In awarding custody involving a minor, the court shall consider ~~a~~:

(1) A conviction of domestic abuse as defined in subdivision 25-10-1(1); or ~~a~~

(2) A conviction of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household; or

(3) A history of domestic abuse.

The conviction or history of domestic violence creates a rebuttable presumption that awarding custody to the abusive parent is not in the best ~~interests~~ interest of the minor. A history of domestic abuse may only be proven by greater convincing force of the evidence.

Section 2. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

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1 For purposes of this chapter, in determining whether a history of domestic abuse exists, the
2 court's consideration shall include the issuance of a protection order against a parent, or the
3 arrest of a parent following response of law enforcement to a report of alleged domestic abuse,
4 or a conviction for domestic abuse.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

831P0015

HOUSE COMMERCE ENGROSSED NO. HB 1112 -
1/23/2008

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

Introduced by: Representatives Brunner, Buckingham, DeVries, Gilson, Hills, Juhnke, Kirkeby, Krebs, Nelson, Noem, Olson (Betty), Pitts, Rhoden, Sigdestad, Vanneman, and Vehle and Senators Hansen (Tom), Abdallah, Duenwald, Lintz, Maher, and McNenny

FOR AN ACT ENTITLED, An Act to revise certain provisions related to the direction, supervision, and registration fees for veterinary technicians.

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

Section 1. That § 36-12-21.1 be amended to read as follows:

36-12-21.1. Any veterinarian licensed to practice ~~his profession~~ veterinary medicine in the State of South Dakota may use the services of ~~not more than two~~ one or more registered veterinary technicians. Veterinary technicians provided for in this section before being employed by a licensed veterinarian shall be registered by the board as provided by §§ 36-12-21.3 and 36-12-21.4 and while registered and employed by a licensed veterinarian ~~may not be~~ are not considered to be engaged in the practice of veterinary medicine.

Section 2. That § 36-12-21.3 be amended to read as follows:

36-12-21.3. An application for registry of a veterinary technician shall be filed with the board by the licensed veterinarian under whom the technician will practice. The application for

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registry shall set out the qualifications of the technician required by the rules of the board and the application shall be on forms provided by the board. The fee for registration of a veterinary technician ~~is ten dollars and the~~ shall be established by the State Board of Veterinary Medical Examiners in rules promulgated pursuant to chapter 1-26 and may not exceed fifty dollars. The fee shall accompany the application.

Section 3. That § 36-12-21.6 be amended to read as follows:

36-12-21.6. A veterinary technician may only work under the direction or supervision of the licensed veterinarian or veterinarians by whom ~~he~~ the technician is employed. The State board of Veterinary Medical Examiners shall promulgate rules pursuant to chapter 1-26 to define the terms direction and supervision.

Section 4. That § 36-12-21.7 be amended to read as follows:

36-12-21.7. A veterinary technician registered under §§ 36-12-21.3 and 36-12-21.4 may not maintain or operate any office separate from the office of the licensed veterinarian by whom ~~he~~ the technician is employed.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

970P0248

HOUSE JUDICIARY ENGROSSED NO. HB 1135 -
1/25/2008

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

FOR AN ACT ENTITLED, An Act to revise certain provisions relating to filing petitions for protection and to declare an emergency.

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

Section 1. That § 22-19A-9 be amended to read as follows:

22-19A-9. A petition for relief under §§ 22-19A-8 to 22-19A-16, inclusive, may be filed in circuit court <u>or in a magistrate court with a magistrate judge presiding</u>. Venue lies where any party to the proceedings resides.

Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

596P0392

HOUSE JUDICIARY ENGROSSED NO. HB 1138 -
1/24/2008

Introduced by: Representatives Novstrup (Al), DeVries, Elliott, Gassman, Gosch, Hills, Howie, McLaughlin, and Turbiville and Senators Gant and Turbak Berry

FOR AN ACT ENTITLED, An Act to prohibit the use of a false academic degree or a degree that is not completed.

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

Section 1. No person may knowingly use a false academic degree or falsely claim to have a valid academic degree for the following purposes:

(1) To obtain employment;

(2) To obtain a promotion or higher compensation in employment;

(3) To obtain admission to postsecondary education; or

(4) In connection with any business, trade, profession, or occupation.

A violation of this section is a Class 1 misdemeanor.

For the purposes of this Act, a false academic degree is a degree document, a certification of completion of a degree, coursework, or degree credit, including a transcript, that provides evidence or demonstrates completion of a course of instruction or coursework that results in the attainment of an associate degree or higher which is issued by a person or entity that is neither

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currently accredited by a regional, state, or national accrediting agency recognized by the United States Department of Education pursuant to 20 U.S.C. § 1099b as amended to January 1, 2008, is participating in any federal financial assistance program authorized by Title IV of the Higher Education Act of 1965 as amended to January 1, 2008, nor for a degree granted by an institution in another country similarly recognized or accredited under the laws of that country.

The provisions of this section do not apply to any documents issued by a religious institution that offers credit or degree solely for the purpose of conferring status or authority within that religion.

Section 2. No person, for the following purposes, may knowingly use any false degree, certificate, diploma, transcript, or other document indicating that the person has completed an organized program of study or completed courses when the person has not completed the organized program of study or the courses indicated on the degree, certificate, diploma, transcript, or document or falsely claim to have any valid degree, certificate, diploma, transcript, or other such document:

(1) To obtain employment;

(2) To obtain a promotion or higher compensation in employment;

(3) To obtain admission to postsecondary education; or

(4) In connection with any business, trade, profession, or occupation.

A violation of this section is a Class 1 misdemeanor.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

248P0556

HOUSE TRANSPORTATION ENGROSSED NO. HB 1241 - 1/24/2008

Introduced by: Representatives Olson (Russell), Faehn, and Lucas and Senators Hauge, Abdallah, and Gant

FOR AN ACT ENTITLED, An Act to provide licensed dealers additional time to deliver a title under certain conditions.

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

Section 1. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as follows:

If a licensed dealer does not deliver title within thirty days as required by § 32-3-7, and the dealer has satisfied any lien in compliance with chapter 32-6B, 32-6C, 32-7A, or 32-7B and the delay in delivering title was caused because the lien holder failed to release the lien or deliver the title document in accordance with § 32-3-44, the dealer may request additional time to deliver title to the retail purchaser. The dealer's request for an extension shall be made within forty days of the date of sale. Any request after the forty days shall be denied and the dealer is in violation of § 32-3-7. The dealer shall provide to the department documentation to support the steps taken to satisfy the lien in a timely manner and request the title. If the department finds the request for additional time is substantiated, the department may authorize the issuance of

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1 another temporary license permit not to exceed thirty days.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0149

SENATE ENGROSSED NO. SB 2 - 1/16/2008

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

FOR AN ACT ENTITLED, An Act to prohibit public access to birth dates of voters contained in the master voter registration file.

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

Section 1. That § 12-4-9 be amended to read as follows:

12-4-9. The county auditor shall maintain and safeguard a file of voters in computer format that contains each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers and driver license numbers contained in the master registration file shall be ~~restricted~~ prohibited. Public access to each voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not restricted. The master registration file shall contain all information from each voter's registration card except the description of the location of the voter's residence. The master registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information.

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State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0143

SENATE LOCAL GOVERNMENT

ENGROSSED NO. SB 3 - 1/14/2008

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

FOR AN ACT ENTITLED, An Act to revise certain procedures concerning elections for special districts and to declare an emergency.

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

Section 1. That § 6-16-4 be amended to read as follows:

6-16-4. The county auditor shall publish the notice of the voter registration deadline at least once each week for two consecutive weeks, the last publication to be not less than ~~twenty-five~~ twenty-four nor more than thirty days prior to the election. The auditor shall publish notices of election at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election in at least one legal newspaper of general circulation in the proposed district.

Section 2. That § 6-16-5 be amended to read as follows:

6-16-5. ~~The~~ If the proposed district contains less than one thousand eligible voters as defined in § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within the district to conduct an election on the question of formation of the special district. The date

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may not be more than sixty days after the appropriate board declares that the application for incorporation is valid. The auditor shall appoint three judges of election, one of whom shall serve as the superintendent, to conduct the election. The vote upon the question of incorporation shall be by ballot which conforms to a ballot for a statewide question except that the statement required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast and counted, the judges shall prepare a certification showing the whole number of ballots cast, together with the number voting for and the number voting against incorporation, and shall return the certification to the county auditor. If a majority of the votes cast on the question of formation is in favor, an election shall be conducted by those present at the same meeting to elect the initial board of directors or trustees.

Section 3. That § 6-16-8 be amended to read as follows:

6-16-8. The State Board of Elections may promulgate rules pursuant to chapter 1-26 concerning:

(1) The petition form~~; and~~ for the formation of a special district;

(2) The notice of election; and

(3) The nominating petition.

The petition form and notice of election shall include a description of the proposed district boundaries.

Section 4. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as follows:

If the proposed district contains one thousand or more eligible voters as defined in § 6-16-6, the county auditor shall set a date for an election to be held within the district on the question of formation of the special district. The date may not be more than sixty days after the appropriate board declares that the application for incorporation is valid. The election shall be

conducted pursuant to Title 12. The vote upon the question of incorporation shall be by ballot which conforms to a ballot for a statewide question except that the statement required to be printed on the ballot shall be prepared by the state's attorney. The election shall be canvassed by the county commission.

Section 5. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as follows:

If a majority of the votes cast in an election conducted pursuant to section 4 of this Act is in favor on the question of formation of the special district, an election shall be conducted by the county auditor within sixty days after the official canvass to elect the initial board of directors or trustees. The election shall be conducted pursuant to Title 12. The county auditor shall publish a notice of vacancy no later than fifty days prior to the election. Circulation of nominating petitions may begin upon completion of the official canvass of the election to form the district. Nominating petitions shall be filed with the county auditor by 5:00 p.m. at least thirty days before the election. The nominating petitions shall contain signatures of at least twenty-five registered voters in the district. Absentee ballots shall be made available to the voters no later than twenty days before the date of election. The election shall be canvassed by the county commission.

Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.