

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

862P0298

SENATE JUDICIARY ENGROSSED NO. **HB 1096** -
2/13/2008

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

1 FOR AN ACT ENTITLED, An Act to authorize the court appointment of parenting
2 coordinators in certain custody and visitation disputes.

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

4 Section 1. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In any custody or visitation dispute between parents, the court may appoint a parenting
7 coordinator to assist the parents in resolving contested issues. The Supreme Court may
8 promulgate rules pursuant to § 16-3-1 to prescribe the authority, duties, appointment, and
9 compensation of parenting coordinators.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

862P0295

SENATE JUDICIARY ENGROSSED NO. **HB 1099** - 2/13/2008

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

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

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

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

5 25-4-56. In any custody or visitation dispute between parents, the court shall, ~~unless the~~
6 ~~court deems it inappropriate under the facts of the case,~~ order mediation to assist the parties in
7 formulating or modifying a plan, or in implementing a plan, for custody or visitation and shall
8 allocate the cost of the mediation between the parties. However, mediation shall not be ordered
9 if:

10 (1) One of the parents has been convicted of domestic abuse as defined in subdivision
11 25-10-1(1); or

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



1 (3) One of the parents has a history of domestic abuse; or

2 (4) Mediation is not readily available or the court determines that mediation is not
3 appropriate based on the facts and circumstances of the case.

4 The court may also direct that an investigation be conducted to assist the court in making a
5 custody or visitation determination and shall allocate the costs of such investigation between
6 the parties. A history of domestic abuse may only be proven by greater convincing force of the
7 evidence.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0199

SENATE STATE AFFAIRS ENGROSSED NO. **SB 40** - 1/30/2008

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

Introduced by: The Committee on State Affairs at the request of the Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to establish certain requirements regarding the separation
2 and protection of a gas and electric public utility's assets.

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

4 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Unless the commission otherwise orders:

- 7 (1) A public utility shall hold all owned or operated public utility assets in one or more
8 legal entities separate and segregated from the legal entities of any nonutility
9 subsidiaries or affiliates;
- 10 (2) All secured debt of a public utility may be used only for public utility purposes. If
11 more than twenty percent of a public utility's secured assets are divested, the debt
12 shall follow the assets or be retired in the same proportion as the divested assets; and
- 13 (3) No public utility may extend credit to any of its nonutility subsidiaries or affiliates,
14 pledge the assets of the public utility as collateral for the use or benefit of any of its



1 nonutility subsidiaries or affiliates, or guarantee any debt or obligations of any of its
2 nonutility subsidiaries or affiliates.

3 Any public utility which does not comply with the provisions of this Act shall have two
4 years within which to become compliant. Notwithstanding any provision of this Act, after notice
5 and opportunity for hearing, the commission may grant a waiver of any provision of this Act if
6 the commission finds a waiver would not pose an undue risk to the operation of the public utility
7 and is in the public interest.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0220

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 44** - 2/14/2008

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing and
2 regulation of grain dealers and buyers.

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

4 Section 1. That § 49-45-1 be amended to read as follows:

5 49-45-1. Before transacting the business of a grain ~~dealer~~ buyer in this state, a person shall
6 obtain a grain ~~dealer~~ buyer license from the commission. A violation of this section is a ~~Class~~
7 Class 1 misdemeanor. Each purchase of grain without a license is a separate offense.

8 Operation as a grain ~~dealer~~ buyer without a license may be enjoined upon complaint of the
9 commission. In addition, the commission may assess a civil fine against an unlicensed grain
10 ~~dealer~~ buyer in the amount of one ~~hundred thousand~~ dollars for each purchase of grain up to a
11 maximum fine of ~~five~~ twenty thousand dollars.

12 Section 2. That § 49-45-1.1 be amended to read as follows:

13 49-45-1.1. Terms used in this chapter mean:

14 (1) "Commission," the Public Utilities Commission;



1 (2) "Grain," grain, grain sorghums, beans, and oil seeds. However, the term does not
2 include grain that has been cleaned, processed, and specifically identified for an
3 intended use of planting for reproduction ~~and for which a grain warehouse receipt has~~
4 ~~not been issued~~ or grain purchased to feed livestock;

5 (3) ~~"Grain dealer," any person who buys grain for the purpose of resale. However,~~
6 ~~nothing in this chapter applies to the isolated or occasional resale of grain by a person~~
7 ~~who does not hold himself or herself out as engaging in the business of reselling~~
8 ~~grain or to a person who purchases grain for the person's own use or consumption.~~
9 ~~The word, use, or the word, consumption, as used in this subdivision, does not mean~~
10 ~~the sale of the grain at retail or wholesale~~ buyer," any person who purchases grain for
11 the purpose of reselling the unprocessed grain or who purchases three hundred
12 thousand dollars worth or more of grain directly from producers in a calendar year.
13 However, nothing in this chapter applies to the isolated or occasional resale of grain
14 by a person who does not hold himself or herself out as engaging in the business of
15 reselling grain or to a person who purchases grain for the person's own use or
16 consumption;

17 (4) "Person," any natural person, firm, corporation, company, limited liability company,
18 partnership, association, joint stock company or the lessee, trustee, or receiver
19 appointed by any court for any one of the foregoing;

20 (5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to
21 be paid more than thirty days after the delivery or release of the grain for sale,
22 including those contracts commonly referred to as deferred-payment contracts,
23 deferred-pricing contracts and price-later contracts.

24 Section 3. That § 49-45-3 be amended to read as follows:

1 49-45-3. ~~Every~~ Each license issued pursuant to § 49-45-1 expires on the next June thirtieth
2 following the issuance of the license. The ~~Public Utilities Commission~~ commission may at any
3 time for cause shown revoke or suspend any grain ~~dealer~~ buyer license. However, ~~such the~~ grain
4 ~~dealer~~ buyer has the right of appeal from such decisions as provided by chapter 1-26 for the
5 review of final decisions of the commission.

6 Section 4. That § 49-45-6 be amended to read as follows:

7 49-45-6. The ~~Public Utilities Commission~~ commission shall supervise the business of grain
8 ~~dealers~~ buyers in this state and administer the laws relating thereto. The commission may
9 promulgate rules, pursuant to chapter 1-26, concerning:

- 10 (1) The form of a grain ~~dealer's~~ buyer's bond and application and the information
11 required to be included for licensing;
- 12 (2) Requirements for posting grain ~~dealer's~~ buyer's licenses;
- 13 (3) Requirements and procedures for obtaining, placing, and returning grain ~~dealer~~ buyer
14 decals and replacement decals;
- 15 (4) Notice requirements to sellers who enter into voluntary credit sale agreements; ~~and~~
- 16 (5) Requirements for filing financial statements with the commission and the financial
17 standards by which the statements are approved when considering whether to license
18 a grain ~~dealer~~ buyer; ~~and~~
- 19 (6) Requirements for grain buyers to provide information to sellers regarding the statutes
20 and rules relating to grain buyers.

21 Section 5. That § 49-45-7 be amended to read as follows:

22 49-45-7. An application for a grain ~~dealer~~ buyer license shall be filed with the commission
23 and shall be in a form prescribed by the commission. The application shall set forth the name
24 of each owner or principal in the management of the business. If the applicant is a corporation,

1 the application shall include the name of the president, secretary, and treasurer of the
2 corporation. The application shall also include the location of the principal office or place of
3 business and any additional places of business of the applicant and the number of tractors, truck
4 tractors, or straight trucks that will be used in the transportation of grain purchased under this
5 chapter.

6 Upon receipt of an application and sufficient bond as required by § 49-45-9, the commission
7 may grant the license applied for or may, for good cause shown and after notice and an
8 opportunity for hearing, deny the issuance of the license.

9 Section 6. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license.
12 No grain buyer with a Class B grain buyer's license may purchase grain in excess of ten million
13 dollars for the annual licensed period or enter into voluntary credit sale contracts. The
14 commission shall require an applicant for a Class A grain buyer's license to submit a more
15 detailed review of its financial condition than an applicant for a Class B grain buyer's license.

16 Section 7. That § 49-45-9 be amended to read as follows:

17 49-45-9. Before any grain ~~dealer~~ buyer license is issued by the commission, the applicant
18 shall file with the commission a bond conditioned to secure the faithful performance of the
19 applicant's obligations as a grain ~~dealer~~ buyer and full and unreserved compliance with the laws
20 of this state and the rules of the commission, relating to the purchase of grain by the grain ~~dealer~~
21 buyer. The bond is for the specific purpose of protecting persons selling grain to the grain ~~dealer~~
22 buyer. However, the bond may not benefit any person entering into a voluntary credit sale with
23 a grain ~~dealer~~ buyer. Any person who does business as a grain ~~dealer~~ buyer without a bond is
24 guilty of a ~~Class 2~~ Class 1 misdemeanor. Each day a person conducts the business of a grain

1 ~~dealer~~ buyer without a bond is a separate offense.

2 ~~The minimum bond required to obtain a grain dealer license is fifty thousand dollars. The~~
3 ~~amount of the bond for a Class A or Class B grain buyer's license shall be based on a rolling~~
4 ~~average of the dollar amount of grain purchased by the applicant in South Dakota during the last~~
5 ~~three calendar years. For a new grain buyer, the first year's bond shall be based on projected~~
6 ~~purchases. For a grain buyer with less than three years experience as a grain buyer, the bond~~
7 ~~shall be based on the average actual purchases made by the grain buyer in all of its previous~~
8 ~~years as a grain buyer. The bond applies to all grain purchases for all of the grain buyer's~~
9 ~~business locations.~~

10 The amount of the bond for a Class A grain buyer's license is:

| <u>Dollar Amount of Grain Purchased</u> | <u>Bond Requirement</u> |
|---|-------------------------|
| <u><\$2,000,000</u> | <u>\$50,000</u> |
| <u>\$2,000,001 - \$10,000,000</u> | <u>\$75,000</u> |
| <u>\$10,000,001 - \$50,000,000</u> | <u>\$100,000</u> |
| <u>\$50,000,001 - \$100,000,000</u> | <u>\$200,000</u> |
| <u>>\$100,000,000</u> | <u>\$300,000</u> |

17 The amount of the bond for a Class B grain buyer's license is:

| <u>Dollar Amount of Grain Purchased</u> | <u>Bond Requirement</u> |
|---|-------------------------|
| <u><\$2,000,000</u> | <u>\$50,000</u> |
| <u>\$2,000,001 - \$10,000,000</u> | <u>\$75,000</u> |

21 ~~If the commission finds, after an opportunity for notice and hearing, that the bond filed by~~
22 ~~a grain dealer, pursuant to this section, is inadequate because of circumstances peculiar to that~~
23 ~~grain dealer, the amount of that bond may be increased to such amount as the commission~~
24 ~~determines. In addition, the~~ The grain dealer buyer ~~may stipulate to a higher bond amount~~
25 ~~requested by the commission.~~

1 Section 8. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 If the commission determines, because a corporate surety company becomes insolvent or
4 ceases to write grain buyer bonds in this state, that a bond in the sum required by § 49-45-9
5 cannot be executed, the commission may, by rule promulgated pursuant to chapter 1-26,
6 authorize the filing of other financial documents in lieu of a corporate surety bond.

7 Section 9. That § 49-45-10 be amended to read as follows:

8 49-45-10. A grain ~~dealer~~ buyer shall pay the purchase price to the owner or ~~his~~ the owner's
9 agent for grain upon delivery or demand of the owner or agent unless payment is to be made in
10 accordance with the terms of a voluntary credit sale which complies with the requirements of
11 this chapter and rules promulgated thereto.

12 Section 10. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Upon receiving grain, a grain buyer shall issue to the seller an original uniform scale ticket
15 or comparable receipt for each load of grain received. Tickets or receipts shall be numbered
16 consecutively and a copy of each ticket or receipt shall be retained for six years.

17 Section 11. That § 49-45-11 be amended to read as follows:

18 49-45-11. All voluntary credit sales of grain entered into by a grain ~~dealer~~ buyer shall be in
19 writing. The ~~Public Utilities Commission~~ commission may, by ~~rule~~ rules promulgated pursuant
20 to chapter 1-26, prescribe the form and content of such writings. If a grain buyer's license is
21 terminated or not renewed, the grain buyer shall pay for grain subject to a voluntary credit sale
22 within ten days after the license expiration date.

23 Section 12. That § 49-45-13 be amended to read as follows:

24 49-45-13. The ~~Public Utilities Commission~~ commission shall cause the business facilities

1 of every grain ~~dealer~~ buyer, whether licensed or unlicensed, to be inspected at such times as it
2 the commission considers necessary, ~~by one or more members of the commission or by one of~~
3 ~~its agents or employees, who.~~ The inspector shall report in writing to the commission the result
4 of ~~such~~ the examination. The ~~commission or its agents or employees~~ inspector may at any time
5 during ordinary business hours enter any ~~office~~ structure, vehicle, or enclosure in which the
6 books ~~and~~ or accounts of any grain ~~dealer~~ buyer are kept, and may examine all the books or
7 accounts relating to the transactions of ~~such~~ the grain ~~dealer~~ buyer either within or without the
8 state. The commission may, in all matters arising under this chapter, exercise the power of
9 subpoena and examine witnesses in accordance with chapter 1-26.

10 Section 13. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Upon completing an inspection, an inspector may issue a memorandum of adjustments. The
13 commission may assess a civil fine in the amount of two hundred dollars for failure to comply
14 with the memorandum of adjustments within thirty days. After thirty days, each day that the
15 memorandum goes uncorrected may be considered a separate offense.

16 Section 14. That § 49-45-14 be amended to read as follows:

17 49-45-14. Every grain ~~dealer~~ buyer licensed ~~as such~~ in this state shall, at such times as the
18 ~~Public Utilities Commission~~ commission requires, furnish the commission on forms prepared
19 by the commission, reports showing the facts and information required by the commission. The
20 reports are not for public inspection, but the commission may, upon request, furnish the total
21 of the figures shown on such reports ~~when~~ if the figures requested are for not less than four
22 grain ~~dealers~~ buyers. The commission may also ~~call for, from time to time, and~~ require that a
23 grain ~~dealer~~ buyer shall provide; any other information regarding the business of the grain ~~dealer~~
24 buyer. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

1 Section 15. That § 49-45-16 be amended to read as follows:

2 49-45-16. ~~If any~~ The commission may immediately suspend the license of a grain buyer and
3 the grain buyer shall surrender the license to the commission if:

4 (1) The grain ~~dealer~~ buyer, whether licensed or unlicensed, refuses, neglects, or is
5 unable, upon proper demand, to redeem any scale ticket issued by ~~him~~ the grain
6 buyer, through redelivery or cash payment, ~~or if any;~~

7 (2) The grain ~~dealer~~ buyer refuses, neglects, or is unable to provide ~~the requisite a~~ a bond
8 to procure a grain dealer's license, the commission shall in an amount required by the
9 commission; or

10 (3) The commission has knowledge of any act of insolvency, including the filing of a
11 petition in bankruptcy naming the grain buyer as debtor.

12 Within fifteen days the grain buyer may request a hearing pursuant to chapter 1-26 to
13 determine if the license should be revoked. If no request is made within fifteen days, the
14 commission shall revoke the license. If the commission determines it is necessary, the
15 commission may apply to the circuit court in the county in which the grain ~~dealer~~ buyer operates
16 for that court to appoint a receiver. The receiver ~~shall have~~ has such powers and duties as the
17 court, ~~from time to time~~, may direct.

18 Section 16. That § 49-45-17 be amended to read as follows:

19 49-45-17. Any person injured by the breach of any obligation of a grain ~~dealer~~ buyer, for the
20 performance of which a bond has been given under any of the provisions of this chapter, may
21 sue on such bond in ~~his~~ the person's own name in any court of competent jurisdiction to recover
22 any damages ~~he~~ the person may have sustained by reason of such breach.

23 Section 17. That § 49-45-18 be amended to read as follows:

24 49-45-18. If the commission becomes aware of any act by any grain ~~dealer~~ buyer as

1 described in § 49-45-16, ~~or has knowledge of any act of insolvency, including, but not limited~~
2 ~~to, the filing of a petition in bankruptcy naming the grain dealer as debtor,~~ the commission shall
3 may:

- 4 (1) ~~Take immediate possession of the grain dealer's facility, and undertake~~ Undertake an
5 immediate audit and verify the names and addresses of all outstanding scale ticket
6 holders as revealed by the audit, and audit and certify the quantity and class or classes
7 of grain therein;
- 8 (2) Immediately notify the surety named in the grain ~~dealer~~ buyer bond, if any, held by
9 such grain ~~dealer~~ buyer.

10 Section 18. That § 49-45-19 be amended to read as follows:

11 49-45-19. Upon revocation, termination, or cancellation of a grain ~~dealer~~ buyer license, any
12 claim against the grain ~~dealer~~ buyer arising under this chapter shall be made in writing with the
13 commission, grain ~~dealer~~ buyer and surety on the grain ~~dealer~~ buyer bond within six months
14 after receiving notice of revocation, termination, or cancellation. Failure to make a timely claim
15 shall relieve the surety of all obligations to the claimant. However, this section may not be
16 construed to reduce the aggregate liability of the surety to other claimants below the face amount
17 of the bond then in effect. Upon revocation of a grain ~~dealer~~ buyer license, the commission shall
18 cause notice of ~~such the~~ the revocation to be published once each week for two consecutive weeks
19 in a newspaper of general circulation in each of the counties in which the licensee maintains a
20 business location and in a newspaper of general circulation within the state and shall cause
21 notice of ~~such the~~ the revocation to be sent by certified mail to all scale ticket holders named in the
22 audit prepared pursuant to § 49-45-18. The notice shall state the name and address of the grain
23 ~~dealer~~ buyer, the effective date of revocation, and the name and address of the surety on the
24 grain ~~dealer~~ buyer bond. The notice shall also state that any claims against the grain ~~dealer~~ buyer

1 shall be made in writing and sent by ordinary mail to the commission, the grain ~~dealer~~ buyer and
2 the surety on the grain ~~dealer~~ buyer bond within six months after receiving notice of revocation.
3 The provisions of this section do not apply if a receiver is appointed as provided in § 49-45-16
4 before the expiration of six months after receiving notice of revocation, termination, or
5 cancellation of the license.

6 Section 19. That § 49-45-20 be repealed.

7 ~~49-45-20. Every grain dealer shall keep posted at all times in a conspicuous place in his~~
8 ~~facilities a printed copy of the statutes relating to, and the rules of the commission relating to~~
9 ~~the conduct of grain dealers. A violation of this section is a Class 2 misdemeanor.~~

10 Section 20. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 A grain buyer with a Class A license shall keep all company owned grain in the grain buyer's
13 possession insured at current market value of the grain against loss by fire, windstorm, and
14 extended coverage risks. The grain buyer shall furnish the commission with proof of the
15 insurance when the grain buyer applies for a license. A violation of this section is a Class 1
16 misdemeanor.

17 Section 21. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A grain buyer shall keep all records of grain purchased and all contracts issued and canceled
20 in a safe place. The records shall be kept current and open for inspection by the commission.
21 Each record shall be retained for a period of six years.

22 Section 22. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 A grain buyer shall notify the commission, within twenty-four hours, if the facility of a

1 facility-based grain buyer is destroyed or substantially damaged.

2 Section 23. That § 49-45-21 be amended to read as follows:

3 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
4 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
5 Promotion Council pursuant to § 38-29-14, the South Dakota Corn Utilization Council pursuant
6 to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to § 38-34-21. Under the
7 terms of any such contract, the commission may inspect the records of licensed grain ~~dealers~~
8 buyers to determine compliance with assessment and checkoff requirements imposed by
9 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of chapter 38-34.

10 Section 24. That § 49-43-34 be repealed.

11 ~~49-43-34. Authorized inspectors employed by the Public Utilities Commission may place~~
12 ~~a person under arrest without warrant for a violation of any provision of this chapter which is~~
13 ~~committed in the presence of such inspector. Commission inspectors having been given such~~
14 ~~limited arrest powers are not "law enforcement officers" for the purposes of § 23-3-27.~~

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0222

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 45** - 1/17/2008

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise the requirements regarding the licensing and
2 regulation of public grain warehouses, to establish a grain warehouse fund, and to make a
3 continuous appropriation from that fund.

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

5 Section 1. That § 49-43-1 be amended to read as follows:

6 49-43-1. ~~If the operator of any public grain warehouse receives grain into such warehouse,~~
7 ~~he shall designate in writing whether the grain is to be sold or stored, such designation to be~~
8 ~~made in accord with any prior agreement with the owner, and settlement~~ Any grain delivered
9 to a public grain warehouse shall be considered stored at the time of delivery unless an
10 arrangement has been made with the public grain warehouse operator prior to or at the time of
11 delivery to apply the grain on contract, for shipment or consignment, or for cash sale. Grain may
12 be held in open storage, a grain bank account, or placed on a warehouse receipt. The warehouse
13 shall issue a scale ticket for any grain received by the warehouse. The warehouse shall keep
14 sufficient grain inventory to cover all stored grain. Settlement for all grain stored or sold shall



1 be made immediately on demand by the owner.

2 Section 2. That § 49-43-1.1 be amended to read as follows:

3 49-43-1.1. Terms used in this chapter mean:

4 (1) "Commission," the Public Utilities Commission of this state;

5 (1A) "Grain bank," grain which is received by a public grain warehouse from depositors
6 for storage and is to be withdrawn and processed into feed as needed;

7 (1B) "Open storage grain," grain received by a public grain warehouse from a depositor
8 for which a warehouse receipt has not been issued or a purchase made and is not
9 grain bank;

10 (2) "Public grain warehouse," any public warehouse where grain, as defined in
11 subdivision 49-45-1.1(2), is received for storage for hire. A public grain warehouse
12 may also purchase, receive or handle grain in accordance with the provisions of
13 chapter 49-45 relating to grain ~~dealers~~ buyers;

14 (3) "Receipt," a warehouse receipt which complies with the requirements of this chapter
15 and the rules of the commission promulgated pursuant thereto;

16 (4) "Scale ticket," a memorandum issued by a public grain ~~warehouseman~~ warehouse or
17 ~~grain dealer~~ buyer to a depositor at the time grain is initially delivered, showing the
18 weight of the load, kind of grain, date of delivery, and indicates whether the grain is
19 to be sold or stored or sold under a warehouse receipt, in open storage, or in a grain
20 bank account.

21 Section 3. That § 49-43-2 be amended to read as follows:

22 49-43-2. If any grain is delivered to any person doing a public grain warehouse business in
23 this state, ~~and a receipt is issued therefor providing for a delivery of a like kind, amount and~~
24 ~~grade to the holder of the receipt in return, such~~ and is held in open storage, in a grain bank

1 account, or placed on a warehouse receipt, the delivery is a bailment and not a sale of the grain
2 so delivered.

3 Section 4. That § 49-43-2.1 be amended to read as follows:

4 49-43-2.1. The ~~lessee, owner or manager~~ operator of a public grain warehouse shall give a
5 receipt for the grain received by it for storage, except for grain held in open storage or a grain
6 bank account. No receipt ~~forms~~ form may be used except ~~those~~ any form requested and ordered
7 in accordance with the ~~Public Utilities Commission~~ commission's rules promulgated pursuant
8 to chapter 1-26.

9 The commission shall determine by rule or order the form and contents of ~~the~~ any receipt
10 ~~forms~~ form, which shall be uniform.

11 ~~All~~ Any receipt ~~forms~~ form may be recovered by the commission ~~or its agents or employees~~
12 if the ~~warehouseman's~~ public grain warehouse license is revoked, suspended, or otherwise
13 terminated.

14 A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

15 Section 5. That § 49-43-3 be amended to read as follows:

16 49-43-3. In no case ~~shall~~ is the grain stored under a receipt as required by § 49-43-2.1, ~~be~~
17 open storage grain, or grain bank liable to seizure upon process of any court in any action
18 against the bailee, except an action by the owner of open storage grain, owner of grain bank, or
19 owner or holder of ~~such~~ a warehouse receipt to enforce the terms of the same. In the event of
20 the failure or insolvency of ~~such~~ the bailee, grain on hand in the public grain warehouse shall
21 first be applied to the redemption and satisfaction of outstanding receipts issued ~~from such~~ by
22 the warehouse and to owners of open storage grain and grain bank.

23 Section 6. That § 49-43-4 be repealed.

24 ~~49-43-4. Any public grain warehouseman storing his own grain and seed is subject to the~~

1 ~~grain warehouse law of this state and to the rules made thereunder.~~

2 Section 7. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The commission may promulgate rules pursuant to chapter 1-26 concerning:

- 5 (1) The procedure for filing grain reports;
- 6 (2) The form of a public grain warehouse's bond and application, and the information
7 required to be included for licensing;
- 8 (3) Requirements and procedures for releasing bonds;
- 9 (4) Requirements for posting public grain warehouse's licenses;
- 10 (5) Procedures and requirements for license suspension, revocation, transfer of
11 ownership, or insolvency by a public grain warehouse;
- 12 (6) Requirements for the form of, procedures for, and the issuance and control of grain
13 warehouse receipts and scale tickets;
- 14 (7) Specifications for the safe storage of grain;
- 15 (8) Requirements for filing financial statements with the commission and the financial
16 standards by which the statements are approved when considering whether to license
17 a public grain warehouse; and
- 18 (9) The rates for receiving, handling, redelivering, and storing grain.

19 Section 8. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 No owner, lessee, or manager of any public grain warehouse may transact any business as
22 a public grain warehouse until a license has been issued by the commission. Any person who
23 does business as a public grain warehouse without a license is guilty of a Class 1 misdemeanor.
24 Each day a person conducts the business of a public grain warehouse without a license is a

1 separate offense. The operation of a public grain warehouse without a license may be enjoined
2 by the commission. In addition, the commission may assess a civil fine against an unlicensed
3 warehouse operator in the amount of one thousand dollars a day up to a maximum of twenty
4 thousand dollars.

5 Section 9. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Before any license is granted to a public grain warehouse, the warehouse operator shall file
8 with the commission a bond conditioned to secure the faithful performance of the warehouse
9 operator's obligations as a public warehouse and full and unreserved compliance with the laws
10 of this state and the rules of the commission, relating to the storage of property for hire by the
11 public warehouse. The bond shall be in the amount specified by § 49-43-5.3. Operation as a
12 public grain warehouse without a bond is a Class 1 misdemeanor. Each day a person conducts
13 the business of a public grain warehouse without a bond is a separate offense.

14 Section 10. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Upon receipt of an application and sufficient bond, the commission may grant the license
17 applied for or may, for good cause shown, deny the issuance of the license.

18 Section 11. That § 49-43-5.3 be amended to read as follows:

19 49-43-5.3. The bond required by ~~§ 49-42-5.1~~ section 9 of this Act for public grain
20 ~~warehousemen~~ warehouses is for the specific purpose of protecting persons storing grain with
21 the ~~warehousemen~~ warehouse.

22 The ~~warehouseman~~ warehouse operator shall furnish a single bond in an amount equal to
23 one-half of the local market value of the grain stored in ~~his~~ the warehouse, or if multiple
24 warehouses are operated by the ~~warehouseman~~ warehouse operator, the bond shall equal

1 one-half of the local market value of the grain stored at all warehouse locations. However, a
 2 ~~warehouseman~~ warehouse operator shall provide a minimum bond of twenty-five thousand
 3 dollars at any one municipality or location. ~~Such~~ The minimum bond amounts per municipality
 4 or location does not limit the bond coverage available to depositors at any one warehouse
 5 location. The entire bond, up to the amount on its face, shall provide coverage to a depositor
 6 conducting business at any of the ~~warehouseman's~~ warehouse operator's locations.

7 The bond shall describe with particularity the exact locations of the warehouses to be
 8 covered.

9 Section 12. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
 10 follows:

11 Each license issued pursuant to section 10 of this Act expires on the next June thirtieth
 12 following the issuance of the license. The commission may at any time for good cause shown
 13 revoke or suspend any grain warehouse license. However, the grain warehouse operator has the
 14 right of appeal from the decision provided by chapter 1-26 for the review of final decisions of
 15 the commission.

16 Section 13. That § 49-43-5.6 be amended to read as follows:

17 49-43-5.6. ~~If any warehouseman~~ The commission may immediately suspend the license of
 18 a warehouse operator and the warehouse operator shall surrender the license to the commission
 19 if:

20 (1) The warehouse operator, whether licensed or unlicensed, refuses, neglects, or is
 21 unable, upon proper demand, to redeem any warehouse receipt or scale ticket for
 22 grain in open storage or in grain bank issued by ~~him~~ the warehouse operator, through
 23 redelivery or cash payment; ~~or if any warehouseman;~~

24 (2) The warehouse operator refuses, neglects, or is unable to provide ~~the requisite~~ a bond

1 to procure a warehouseman's license, the ~~Public Utilities Commission~~ shall in an
2 amount required by the commission; or

3 (3) The commission has knowledge of any act of insolvency, including the filing of a
4 petition in bankruptcy naming the warehouse as debtor.

5 Within fifteen days the warehouse operator may request a hearing pursuant to chapter 1-26
6 to determine if the license should be revoked. If no request is made within fifteen days, the
7 commission shall revoke the license. If the commission determines it is necessary, the
8 commission may apply to the circuit court in the county in which the ~~warehouseman~~ warehouse
9 operator operates for that court to appoint a receiver. The receiver shall have such powers and
10 duties as the court, ~~from time to time~~, may direct.

11 Section 14. That § 49-43-5.8 be amended to read as follows:

12 49-43-5.8. If the ~~Public Utilities Commission~~ commission becomes aware of any act by any
13 ~~warehouseman~~ warehouse operator as described in § 49-43-5.6, ~~or has knowledge of any act of~~
14 ~~insolvency, including but not limited to the filing of a petition in bankruptcy naming the~~
15 ~~warehouseman as debtor~~, the commission shall may:

16 (1) Take immediate possession of the warehouse facility, and undertake an immediate
17 audit and verify the names and addresses of all outstanding warehouse receipt holders
18 and scale ticket holders as revealed by the audit, and audit and certify the quantity
19 and class or classes of grain therein;

20 (2) Immediately notify the surety named in both the ~~warehouseman's~~ warehouse's and
21 ~~dealer's~~ grain buyer's bonds, if any, held by ~~such warehouseman~~ the warehouse.

22 Section 15. That § 49-43-9 be amended to read as follows:

23 49-43-9. The operator of ~~every~~ each public grain warehouse shall, on or before the tenth day
24 of each month and at such additional times as the commission requires, furnish the commission

1 on forms prepared by the commission, reports showing the facts and information required by
2 the commission. The reports are not for public inspection, but the commission may, upon
3 request, furnish the total of the figures shown on ~~such the reports when~~ if the figures requested
4 are for not less than four public grain warehouses. Nothing in this section prohibits the
5 commission from providing the reports to state or federal governmental agencies who may not
6 release information on individual reports to the public. A violation of this section by an operator
7 is a ~~Class 2~~ Class 1 misdemeanor.

8 Section 16. That § 49-43-10 be amended to read as follows:

9 49-43-10. Each public grain warehouse shall obtain a yearly measurement of all the grain
10 in its facility and shall provide the results of the measurement to the commission along with a
11 daily position report as of the time of the measurement. The measurement shall be performed
12 by a qualified person independent of the warehouse. If the commission finds the person
13 performing the measurement is not qualified or independent, the commission may require a
14 different person to perform the measurement.

15 The commission may also ~~call for, from time to time, and require~~ the operator of a public
16 grain warehouse ~~shall~~ to furnish under oath, a written report showing the condition and
17 management of the business, the total number of bushels of each kind and grade of grain
18 purchased and in store, the number delivered out, the number remaining in store at the date of
19 the report, and any other information regarding the business of the public grain warehouse
20 which the commission requires. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

21 No ~~warehouseman~~ warehouse need weigh the grain on hand more than once in each year,
22 unless the commission requires an additional measurement as part of an investigation of the
23 warehouse. If required by the commission, a ~~warehouseman~~ warehouse shall measure ~~his~~ its
24 grain inventory at ~~his~~ its expense. The commission shall designate a person who is qualified to

1 perform the measurement, which may be an agent or employee of the ~~warehouseman~~ warehouse
2 or a third party as appropriate under the circumstances of the investigation.

3 Section 17. That § 49-43-11 be amended to read as follows:

4 49-43-11. The lessee, owner, or manager of a public grain warehouse which has furnished
5 a bond and received a public grain warehouse license, shall receive for storage all grain offered
6 for storage at the warehouse, which at the time of ~~such~~ the offer are in suitable condition for
7 storage, and which are tendered in the usual course of business. ~~However, if the capacity of the~~
8 ~~warehouse to receive the grain is exhausted and the owner, lessee or manager of the warehouse~~
9 ~~is prevented from shipping the grain to a terminal market by inability to obtain cars for shipment~~
10 ~~or some other valid cause rendering the receiving of such grain impossible and over which the~~
11 ~~owner, lessee, or manager has no control, the provisions of this section are waived. However,~~
12 a warehouse operator may refuse to store grain if the capacity of the warehouse is exhausted or
13 for other good cause. If requested, a warehouse operator that refuses to store grain shall provide
14 the person requesting storage with the reason for the refusal in writing. The written notice of
15 refusal shall state that the person being refused storage may file a complaint with the
16 commission contesting the refusal. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

17 Section 18. That § 49-43-13 be amended to read as follows:

18 49-43-13. ~~The storage period for grain deposited in a public grain warehouse shall terminate~~
19 ~~on June thirtieth of each year. In the absence of a demand for delivery, order to sell, or request~~
20 ~~by the holder of an outstanding storage receipt, accompanied by the payment of all accrued~~
21 ~~storage and handling charges as prescribed by law, the warehouseman may, upon the expiration~~
22 ~~of the storage contract, sell such stored grain at the local market price, on the close of business~~
23 ~~of that day, deduct from the proceeds thereof all legal accrued charges and cash advances which~~
24 ~~may have been made upon such stored grain by the warehouseman and pay the balance of such~~

1 ~~proceeds to the owner upon surrender of the storage receipt. By June thirtieth of each year, each~~
2 ~~warehouse operator shall provide written notice to each current depositor of all outstanding~~
3 ~~warehouse receipts, grain in open storage, and grain in a grain bank account. The notice shall~~
4 ~~state the market value of the grain and any accrued storage charges. Copies of the notices shall~~
5 ~~be kept and made available for inspection by the commission.~~

6 Section 19. That § 49-43-15 be amended to read as follows:

7 49-43-15. No warehouse receipt may be issued by a public grain warehouse except upon
8 actual delivery of grain into the warehouse; nor may a receipt be issued for a greater quantity
9 of grain than was actually received; nor may more than one receipt be issued for the same lot
10 of grain, unless receipt for part of a lot is desired, and then the aggregate receipts for a particular
11 lot shall cover that lot and no more. A violation of this section is a ~~Class 2~~ Class 1
12 misdemeanor.

13 Section 20. That § 49-43-22 be amended to read as follows:

14 49-43-22. Upon the return of any storage receipt by a receipt holder, a scale ticket for open
15 storage grain, or a scale ticket for grain in a grain bank account, to the public grain warehouse
16 issuing the receipt or scale ticket, and the tender of all proper charges on the grain represented
17 by the receipt or scale ticket, ~~such~~ the grain or an equal quantity of the same grade, kind and
18 quality shall immediately be delivered to the holder of ~~such~~ the receipt or scale ticket as rapidly
19 as due diligence, care, and prudence justify.

20 Section 21. That § 49-43-23 be amended to read as follows:

21 49-43-23. Nothing in § 49-43-22 means the delivery of the identical grain specified in the
22 receipt or scale ticket. A ~~warehouseman~~ warehouse may instead deliver an equal amount of the
23 same grade, kind and quality. If the grain ~~so~~ delivered has not been cleaned by the
24 ~~warehouseman~~ warehouse, there shall be added to the amount ~~so~~ delivered the amount originally

1 deducted from the grain stored for ~~dirt~~. ~~When such dockage and foreign material~~. If the grain
2 is to be delivered from some terminal market point, the public grain ~~warehouseman~~ warehouse
3 issuing ~~such the~~ storage receipts or scale tickets shall guarantee weight, grade, and quality.

4 Section 22. That § 49-43-27 be repealed.

5 ~~— 49-43-27. A representative of the Division of Commercial Inspection and Licensing may at~~
6 ~~any time without notice enter any public warehouse in this state and test and seal any weighing~~
7 ~~scale and measure used in conducting the warehouse business. The division may acquire~~
8 ~~standard weights and measures and such additional facilities and equipment, including motor~~
9 ~~vehicles or such other means of conveyance it deems necessary and suitable in carrying on the~~
10 ~~work of inspecting, testing, and correcting scales in this state.~~

11 Section 23. That § 49-43-28 be repealed.

12 ~~— 49-43-28. If the person making an inspection pursuant to § 49-43-27 finds any scales in use~~
13 ~~in the public warehouse inaccurate, he shall condemn the scales and attach thereto a card, notice,~~
14 ~~or other device indicating that the scales are condemned. It is thereafter a Class 2 misdemeanor~~
15 ~~for any person to remove, deface or destroy such card, notice or other device placed upon the~~
16 ~~condemned scales, or to again use, or permit the use of such scales for any purpose, until they~~
17 ~~have been repaired, retested, and found to be correct, and until the Division of Commercial~~
18 ~~Inspection Licensing, or the person making the inspection, consents to the further use of such~~
19 ~~scales.~~

20 Section 24. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Open storage grain is considered stored grain and is covered by the warehouse bond required
23 pursuant to § 49-43-5.3.

24 Section 25. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A public grain warehouse shall keep all grain in the warehouse insured at current market
3 value against loss by fire, windstorm, and extended coverage risks. The warehouse operator
4 shall furnish the commission with proof of the insurance when the operator applies for a license.

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

6 Section 26. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 A public grain warehouse shall keep all records of grain purchased and stored and all
9 receipts, scale tickets, and contracts issued and canceled in a safe place. The records shall be
10 kept current and open for inspection by the commission. Each record shall be retained for a
11 period of six years.

12 Section 27. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The operator of a public grain warehouse shall notify the commission, within twenty-four
15 hours, if the public grain warehouse is destroyed or substantially damaged.

16 Section 28. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The commission shall cause every public grain warehouse to be inspected at such times as
19 the commission considers necessary. The inspector shall report in writing to the commission the
20 result of the inspection. The inspector may at any time during ordinary business hours enter any
21 public grain warehouse or any office in which the books and accounts of any public warehouse
22 are kept, and may examine all the books relating to the transaction of business in such public
23 grain warehouse either within or without the state. The commission may in all matters arising
24 under chapters 49-43 to 49-44, inclusive, exercise the power of subpoena and examine witnesses

1 in accordance with chapter 1-26.

2 Section 29. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any public grain warehouse operator in the state who refuses access to the warehouse's
5 books and accounts or hinders and delays the commission or any of its employees or agents in
6 examining the books and accounts, may be punished by a civil fine not exceeding two thousand
7 dollars. In addition, the commission may revoke the license of the public warehouse.

8 Section 30. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Upon completing an inspection an inspector may issue a memorandum of adjustments. The
11 commission may assess a civil fine in the amount of two hundred dollars for failure to comply
12 with the memorandum of adjustments within thirty days. After thirty days, each day that the
13 memorandum goes uncorrected may be considered a separate offense.

14 Section 31. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Unless otherwise specifically provided by this chapter, the provisions regarding uniform
17 warehouse receipts in chapter 57A-7 apply to the receipts and contracts of public grain
18 warehouses operating within this state.

19 Section 32. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any public grain warehouse operator, or any officer, agent, or employee, who issues a
22 receipt knowing that the goods for which the receipt is issued have not been actually received
23 by the warehouse, or are not under the warehouse's actual control at the time of issuing the
24 receipt, is guilty of a Class 5 felony.

1 Section 33. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Any grain warehouse operator, or any officer, agent, or employee who fraudulently issues
4 a receipt for goods knowing that it contains any false statement, is guilty of a Class 1
5 misdemeanor.

6 Section 34. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any grain warehouse operator, or any officer, agent or employee, who issues a duplicate or
9 additional negotiable receipt for goods knowing that a former negotiable receipt for the same
10 goods or any part of them is outstanding and uncanceled, without plainly placing upon the face
11 thereof the word, duplicate, except in the case of a lost or destroyed receipt after proceedings
12 as provided for in subdivision 57A-7-601(1), is guilty of a Class 5 felony.

13 Section 35. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If there are deposited with or held by a warehouse goods of which the warehouse is owner,
16 either solely or jointly or in common with others, the warehouse operator, or any officer, agent,
17 or employee, who, knowing this ownership, issues or aids in issuing a negotiable receipt for
18 such goods which does not state the ownership, is guilty of a Class 1 misdemeanor.

19 Section 36. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any grain warehouse operator, or any officer, agent, or employee, who delivers goods out
22 of the possession of the grain warehouse, knowing that a negotiable receipt, the negotiation of
23 which would transfer the right to the possession of such goods, is outstanding and uncanceled,
24 without obtaining the possession of the receipt at or before the time of the delivery, except in

1 the cases provided for in subdivisions 57A-7-206(1) to (3), inclusive, subdivisions
2 57A-7-210(1) and (2), and subdivision 57A-7-601(1), is guilty of a Class 1 misdemeanor.

3 Section 37. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any person who deposits goods to which the person does not have title, or upon which there
6 is a lien or mortgage, and who takes for the goods a negotiable receipt which the person
7 afterwards negotiates for value with intent to deceive and without disclosing the person's lack
8 of title or the existence of the lien or mortgage is guilty of a Class 1 misdemeanor.

9 Section 38. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 An aggrieved party may appeal any decision of the commission made in the course of
12 administration of this chapter in accordance with chapter 1-26.

13 Section 39. That chapter 49-33 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 It is a Class 1 misdemeanor for any person to falsely weigh any grain or any other
16 agricultural product.

17 Section 40. That chapter 49-43 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any money collected by the commission pursuant to chapters 49-43 and 49-45 shall be paid
20 into the state treasury and credited to the grain and warehouse fund which is hereby established
21 in the state treasury. Any money credited in the fund and any interest earned on the fund are
22 continuously appropriated to the commission for the implementation of the provisions of
23 chapters 49-43 and 49-45.

24 Section 41. The balance of funds in the grain and warehouse fund as established by § 49-42-

1 8 shall be transferred to the grain and warehouse fund established by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0379

SENATE ENGROSSED NO. **SB 48** - 1/30/2008

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

1 FOR AN ACT ENTITLED, An Act to make an appropriation for the payment of extraordinary
2 litigation expenses and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of three million two
5 hundred one thousand five hundred thirty-four dollars (\$3,201,534), or so much thereof as may
6 be necessary, to the extraordinary litigation fund for payment of eligible expenses.

7 Section 2. The commissioner of the Bureau of Administration shall approve vouchers for
8 payment of extraordinary expenses and the state auditor shall draw warrants to pay expenditures
9 authorized by this Act.

10 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall
11 revert in accordance with § 4-8-21.

12 Section 4. Whereas, this Act is necessary for the support of the state government and its
13 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
14 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0380

SENATE APPROPRIATIONS ENGROSSED NO. **SB** **49** - 1/25/2008

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

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to suppression
2 of wildfires in the state and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of four million fifty-
5 six thousand two hundred seventy-eight dollars (\$4,056,278), or so much thereof as may be
6 necessary, to the state fire suppression special revenue fund for costs related to the suppression
7 of wildfires in South Dakota.

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

10 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall
11 revert in accordance with § 4-8-21.

12 Section 4. Whereas, this Act is necessary for the support of the state government and its
13 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
14 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

832P0162

SENATE STATE AFFAIRS ENGROSSED NO. **SB 80** - 2/4/2008

Introduced by: Senators Jerstad, Hoerth, Hundstad, Katus, Kloucek, Koetzle, and Peterson (Jim) and Representatives Vehle, Cutler, Lucas, Lust, Nygaard, Rounds, and Thompson

1 FOR AN ACT ENTITLED, An Act to restrict the release or use of social security numbers by
2 the state and its political subdivisions unless certain security measures are taken.

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

4 Section 1. No state agency or any of its political subdivisions or any official, agent, or
5 employee of any state agency or political subdivision may:

6 (1) Knowingly release or post any person's social security number on the internet; or

7 (2) Require any person to transmit the person's social security number over the internet,
8 unless the connection is secure or the social security number is encrypted; or

9 (3) Require any person to use the person's social security number to access an internet
10 website, unless a password or unique personal identification number or other
11 authentication device is also required to access the internet website.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

283P0477

SENATE COMMERCE ENGROSSED NO. **SB 97** - 1/22/2008

Introduced by: Senators Napoli, Albers, Gant, Gray, Greenfield, Lintz, McCracken, and Smidt (Orville) and Representatives Brunner, Haverly, Olson (Betty), Rave, and Weems

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding property condition
2 disclosure statements.

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

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

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

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

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

9 Seller _____

10 Property Address _____

11 _____

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

13 _____ County of _____, State of South Dakota.

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



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

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

10 I. LOT OR TITLE INFORMATION

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

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

14 _____

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

16 Yes ____ No ____

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

19 Yes ____ No ____

20 4. Are there any unrecorded liens or financial instruments against the property, other than a
 21 first mortgage; or have any materials or services been provided in the past one hundred
 22 twenty days that would create a lien against the property under chapter 44-9?

23 Yes ____ No ____ Unknown ____

24 5. Are there any easements which have been granted in connection with the property (other

1 than normal utility easements for public water and sewer, gas and electric service, telephone
2 service, cable television service, drainage, and sidewalks)?

3 Yes ____ No ____ Unknown ____

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

5 Yes ____ No ____ Unknown ____

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

8 Yes ____ No ____ Unknown ____

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

11 Yes ____ No ____

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

14 Yes ____ No ____

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

18 Yes ____ No ____

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

20 Yes ____ No ____

21 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL ~~32-~~
22 ~~3-1~~ 10-13-39?

23 Yes ____ No ____

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

1 Yes ____ No ____ Unknown ____

2 14. Is the property leased?

3 Yes ____ No ____

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

5 Yes ____ No ____

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

7 how often ____?

8 Yes ____ No ____

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

10 association?

11 Yes ____ No ____

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

13 Payable to whom: _____

14 For what purpose? _____

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

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

17 Yes ____ No ____

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

19 Yes ____ No ____ Unknown ____

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

21 Yes ____ No ____ Unknown ____

22 II. STRUCTURAL INFORMATION

23 If the answer is yes to any of the following, please explain under additional comments or on an

24 attached separate sheet.

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

3 Yes ____ No ____

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

5 If any, when? _____

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

7 Yes ____ No ____

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

10 Yes ____ No ____

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

12 _____

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

14 Yes ____ No ____

15 Type of roof covering: _____

16 Age: _____

17 What roof repairs, if any, have been made, when and by whom? _____

18 Describe any existing unrepaired damage to the roof: _____

19 6. Are you aware of insulation in:

20 the ceiling/attic? Yes ____ No ____

21 the walls? Yes ____ No ____

22 the floors? Yes ____ No ____

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

24 Yes ____ No ____

- 1 8. Are you aware of the property having been treated for any pest infestation or damage?
2 Yes ___ No ___
3 If yes, who treated it and when? _____
- 4 9. Are you aware of any work upon the property which required a building, plumbing,
5 electrical, or any other permit?
6 Yes ___ No ___
7 If yes, describe the work: _____
8 Was a permit obtained? Yes _____
9 Was the work approved by an inspector? Yes ___ No ___
- 10 10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods,
11 hail, or snow)?
12 Yes ___ No ___
13 If yes, describe _____
- 14 Have any insurance claims been made?
15 Yes ___ No ___ Unknown ___
16 Was an insurance payment received?
17 Yes ___ No ___ Unknown ___
18 Has the damage been repaired?
19 Yes ___ No ___
20 If yes, describe in detail: _____
21 _____
- 22 11. Are you aware of any problems with sewer blockage or backup, past or present?
23 Yes ___ No ___
- 24 12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank,

1 or drain on the property into any adjoining lake, stream, or waterway?

2 Yes ____ No ____

3 If yes, describe in detail: _____

4 _____

5 III. SYSTEMS/UTILITIES INFORMATION

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

| | | | | |
|----|--------------------------------------|-------|-------|-------|
| 1 | 22. Microwave/Hood | _____ | _____ | _____ |
| 2 | 23. Plumbing and Fixtures | _____ | _____ | _____ |
| 3 | 24. Pool and Equipment | _____ | _____ | _____ |
| 4 | 25. Propane Tank | _____ | _____ | _____ |
| 5 | 26. Radon System | _____ | _____ | _____ |
| 6 | 27. Sauna | _____ | _____ | _____ |
| 7 | 28. Septic/Leaching Field | _____ | _____ | _____ |
| 8 | 29. Sewer Systems/Drains | _____ | _____ | _____ |
| 9 | 30. Smoke/Fire Alarm | _____ | _____ | _____ |
| 10 | 31. Solar House - Heating | _____ | _____ | _____ |
| 11 | 32. Sump Pump(s) | _____ | _____ | _____ |
| 12 | 33. Switches and Outlets | _____ | _____ | _____ |
| 13 | 34. Underground Sprinkler and Heads | _____ | _____ | _____ |
| 14 | 35. Vent Fan | _____ | _____ | _____ |
| 15 | 36. Water Heater - Electric or Gas | _____ | _____ | _____ |
| 16 | 37. Water Purifier | _____ | _____ | _____ |
| 17 | 38. Water Softener - Leased or Owned | _____ | _____ | _____ |
| 18 | 39. Well and Pump | _____ | _____ | _____ |
| 19 | 40. Wood Burning Stove | _____ | _____ | _____ |

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22

IV. HAZARDOUS CONDITIONS

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

25

| | |
|---------------------|-----------------|
| EXISTING CONDITIONS | TESTS PERFORMED |
|---------------------|-----------------|

26

| | | | |
|-----|----|-----|----|
| YES | NO | YES | NO |
|-----|----|-----|----|

27

| | | | | |
|----------------|-------|-------|-------|-------|
| 1. Methane Gas | _____ | _____ | _____ | _____ |
|----------------|-------|-------|-------|-------|

1 a. A human death by homicide or suicide? If yes, explain:

2 _____

3 Yes _____ No _____

4 b. Other felony committed against the property or a person on the property? If yes, explain:

5 _____

6 Yes _____ No _____

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

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

9 _____

10 7. Is the sewer system public _____ or private _____ (select one)?

11 8. If private, what is the date of the last time the septic tank was pumped? _____

12 9. Are there broken window panes or seals?

13 Yes _____ No _____

14 If yes, specify: _____

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

18 Yes _____ No _____

19 If yes, please list _____

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

22 Yes _____ No _____

23 If yes, explain: _____

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

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2
3
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CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.

If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

SELLER _____ DATE _____

SELLER _____ DATE _____

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

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

BUYER _____ DATE _____

BUYER _____ DATE _____

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

561P0142

SENATE ENGROSSED NO. **SB 107** - 1/31/2008

Introduced by: Senators Hunhoff, Abdallah, Albers, Dempster, Gant, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Katus, Kloucek, Koetzle, Maher, McNenny, Sutton, Turbak Berry, and Two Bulls and Representatives Gilson, Bradford, Cutler, DeVries, Elliott, Feinstein, Hargens, Jerke, Kirkeby, Krebs, Lucas, Moore, Olson (Betty), Olson (Russell), Olson (Ryan), Putnam, Rounds, Van Etten, and Weems

1 FOR AN ACT ENTITLED, An Act to authorize county special assessments for certain
2 improvements, maintenance, and repair to roadways in unorganized townships.

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

4 Section 1. That chapter 31-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The board of county commissioners of any county in which an unorganized township is
7 located may implement in the unorganized township any improvement, maintenance, or repair
8 to any street or roadway that is otherwise authorized for townships pursuant to §§ 31-13-32 to
9 31-13-54, inclusive. In implementing the improvement, maintenance, or repair, the board of
10 county commissioners may exercise any applicable power and shall perform any applicable duty
11 that is available to or is required of a township board of supervisors under §§ 31-13-32 to 31-13-
12 54, inclusive.

13 Section 2. That § 31-13-51 be amended to read as follows:



1 31-13-51. The township board of supervisors ~~or, in the case of any township which is no~~
2 ~~longer organized, the board of county commissioners, prior to, before~~ the assessment of real
3 property within the township, ~~or unorganized township,~~ for the next fiscal year, may levy
4 annually for the purpose of maintaining or repairing street surfaces, whether of a permanent type
5 or not, a special front foot assessment ~~not to exceed eighty cents per front foot~~ not to exceed one
6 dollar and fifty cents per front foot upon the real property fronting and abutting the roadway.
7 ~~Such~~ The assessment shall be apportioned on a front foot basis and shall be levied pursuant to
8 § 31-13-52. ~~If the board of county commissioners is levying a special assessment on real~~
9 ~~property pursuant to this section, the board of county commissioners shall perform the duties,~~
10 ~~as applicable, that are required of the township board of supervisors pursuant to §§ 31-13-32~~
11 ~~to 31-13-54, inclusive.~~

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

432P0552

SENATE ENGROSSED NO. **SB 109** - 2/4/2008

Introduced by: Senators Apa, Bartling, Gray, Greenfield, Hoerth, Hunhoff, Maher, and Smidt (Orville) and Representatives Tidemann, Carson, Dennert, Glenski, Haverly, and Putnam

1 FOR AN ACT ENTITLED, An Act to authorize the Fourth Circuit drug court program in the
2 Unified Judicial System, to make an appropriation therefor, and to declare an emergency.

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

4 Section 1. The Unified Judicial System may continue the Fourth Circuit drug court program
5 for the purpose of providing intensive, supervised rehabilitation to nonviolent adult felony
6 offenders who abuse controlled substances.

7 Section 2. There is hereby appropriated from the general fund the sum of fifty-nine thousand
8 seven hundred fifteen dollars (\$59,715), one hundred seventy-six thousand five hundred ninety-
9 six dollars (\$176,596) in federal fund expenditure authority, and thirty thousand eight hundred
10 dollars (\$30,800) in other fund expenditure authority, or so much thereof as may be necessary,
11 and 3.0 FTEs, to the Unified Judicial System for costs related to the Fourth Circuit drug court
12 program.

13 Section 3. That section 2 of chapter 136 of the 2007 Session Laws be amended to read as
14 follows:



1 Section 2. There is hereby appropriated from the general fund the sum of ~~two hundred~~
2 ~~twelve thousand one hundred ninety three dollars (\$212,193)~~ seventy-eight thousand dollars
3 (\$78,000), one hundred seventy-five thousand dollars (\$175,000) in federal fund expenditure
4 authority, and five thousand dollars (\$5,000) in other fund expenditure authority, or so much
5 thereof as may be necessary, and 3.0 FTEs to the Unified Judicial System for costs related to
6 the drug court program.

7 Section 4. The state court administrator shall approve vouchers and the state auditor shall
8 draw warrants to pay expenditures authorized by this Act.

9 Section 5. Any amounts appropriated in section 2 of this Act not lawfully expended or
10 obligated by June 30, 2009, shall revert in accordance with the procedures prescribed in chapter
11 4-8.

12 Section 6. Whereas, section 3 of this Act is necessary for the support of the state government
13 and its existing public institutions, an emergency is hereby declared to exist, and section 3 of
14 this Act shall be in full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

831P0124

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 111** - 2/14/2008

Introduced by: Senators Duenwald, Abdallah, Apa, Garnos, Hansen (Tom), Hauge, Lintz, Maher, McCracken, Napoli, Peterson (Jim), and Schmidt (Dennis) and Representatives Brunner, Cutler, DeVries, Gilson, Hackl, Jerke, Juhnke, Kirkeby, Koistinen, Lucas, Novstrup (David), Olson (Russell), Rausch, Steele, and Turbiville

1 FOR AN ACT ENTITLED, An Act to extend the prohibition of road hunting of big game to
2 include hunting using certain additional weapons.

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

4 Section 1. That § 41-9-1.2 be amended to read as follows:

5 41-9-1.2. No person may hunt big game on interstate highways or controlled access facilities
6 as defined in § 31-8-1 within this state.

7 No person may discharge a rifle firearm, muzzleloader, crossbow, or bow and arrow at a any
8 big game animal, except turkey to be taken with a shotgun using shot shells or with a bow and
9 arrow, from within the right-of-way of an improved public highway. However, any person who
10 possesses a disabled hunter permit issued by the department to shoot from a vehicle as provided
11 in § 41-8-37 may hunt on public rights-of-way adjoining publicly-owned hunting areas and on
12 rights-of-way adjoining private lands with the written permission of the owner or lessee.

13 Retrieval of lawfully taken big game is permitted on all public rights-of-way.



1 A violation of this section is a Class 2 misdemeanor.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

814P0538

SENATE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **SB 114** - 1/30/2008

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

Introduced by: Senators Nesselhuf, Bartling, Dempster, Garnos, Gray, Hansen (Tom), McCracken, and Sutton and Representatives Willadsen, Cutler, Dykstra, Elliott, Faehn, Halverson, Miles, Rounds, and Weems

1 FOR AN ACT ENTITLED, An Act to allow for risk pool eligibility and rate flexibility for
2 certain health insurance conversion plans.

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

4 Section 1. That § 58-17-74 be amended to read as follows:

5 58-17-74. Premium rates for individual health benefit plans subject to §§ 58-17-66 to 58-17-
6 87, inclusive, are subject to the following provisions:

7 (1) Any new policy issued after the effective date of §§ 58-17-66 to 58-17-87, inclusive,
8 is subject to the provisions of §§ 58-17-66 to 58-17-87, inclusive;

9 (2) The index rate for a rating period for any class of individual business may not exceed
10 the index rate for any other class of individual business by more than twenty percent;

11 (3) For a class of business, the premium rates charged during a rating period to
12 individuals with similar case characteristics for the same or similar coverage, or the
13 rates that could be charged to such individuals under the rating system for that class



1 of business, may not vary from the index rate by more than thirty percent of the index
2 rate;

3 (4) An adjustment applied to a single block of business may not exceed the adjustment
4 applied to all blocks of business by more than fifteen percent due to the claim
5 experience or health status of that block of business;

6 (5) Any adjustment in rates for claim experience and duration of coverage may not be
7 charged to specific individual policyholders. Any such adjustment shall be applied
8 uniformly to the rates charged for any person and dependents of the person within
9 each class of business;

10 (6) Premium rates for individual health benefit plans shall comply with the requirements
11 of §§ 58-17-66 to 58-17-87, inclusive;

12 (7) Each carrier shall apply rating factors consistently with respect to all persons in a
13 class of business. Rating factors shall produce premiums for identical persons which
14 differ only by the amounts attributable to plan design;

15 (8) No carrier may use characteristics other than age, gender, lifestyle, family
16 composition, and geographic area without prior approval of the director. The
17 maximum rating differential based solely on age may not exceed a factor of 5:1; and

18 (9) All rate adjustments based on geographic area shall reflect actual differences in the
19 health care costs of the respective areas.

20 The rating provisions of subdivisions (1), (2), (3), (4), and (6) of this section do not apply
21 to individual health benefit plans issued by a carrier to qualifying individuals on a guaranteed
22 issue basis. However, the rate for any individual covered on a guaranteed issue basis may not
23 exceed two and one half times the base rate of the class of business with the lowest index rate.

24 Section 2. That § 58-17-85 be amended to read as follows:

1 58-17-85. If a person has an aggregate of at least twelve months of creditable coverage, is
2 a resident of this state, and applies within sixty-three days of the date of losing prior creditable
3 coverage, the person is eligible for coverage as provided for in §§ 58-17-68, 58-17-70, 58-17-
4 85, and 58-17-113 to 58-17-142, inclusive, if none of the following apply:

- 5 (1) The applicant is eligible for continuation of coverage under an employer plan;
- 6 (2) ~~The applicant's most recent creditable coverage is a conversion plan from an~~
7 ~~employer group plan;~~
- 8 ~~(3)~~ The person is eligible for an employer group plan, Part A or Part B of medicare, or
9 medicaid;
- 10 ~~(4)~~(3) The person has other health insurance coverage;
- 11 ~~(5)~~(4) The person's most recent coverage was terminated because of the person's
12 nonpayment of premium or fraud;
- 13 ~~(6)~~(5) The person loses coverage under a short term or limited duration plan; or
- 14 ~~(7)~~(6) The person's last coverage was creditable coverage as defined in subdivision 58-17-
15 69(13).

16 Any person who has exhausted continuation rights and who is eligible for conversion or
17 other individual or association coverage has the option of obtaining coverage pursuant to this
18 section or the conversion plan or other coverage. If a person chooses conversion coverage, other
19 than pursuant to section 1 of this Act, in lieu of coverage pursuant to this section and the person
20 later exhausts the lifetime maximum of the conversion coverage, the person may obtain
21 coverage pursuant to this section as long as the person continues to satisfy the criteria of this
22 section. A person who is otherwise eligible for the issuance of coverage pursuant to this section
23 may not be required to show proof that coverage was denied by another carrier.

24 For purposes of this section, reasonable evidence that the prospective enrollee is a resident

1 of this state shall be required. Factors that may be considered include a driver's license, voter
2 registration, and where the prospective enrollee resides.

3 Any person who was eligible for the risk pool and opted for coverage pursuant to section
4 1 of this Act may, at any time while covered under that policy or within sixty-three days of
5 terminating that coverage, elect to enroll in the risk pool.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

471P0676

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 173** - 1/29/2008

Introduced by: Senators Hansen (Tom) and Hanson (Gary) and Representatives Halverson, Deadrick, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to exempt certain dairies from the restrictions of the Family

2 Farm Act.

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

4 Section 1. That chapter 47-9A be amended by adding thereto a NEW SECTION to read as

5 follows:

6 The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural lands acquired by

7 a corporation solely for the purpose of operating a dairy.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

795P0654

HOUSE STATE AFFAIRS ENGROSSED NO. **SB 176** - 2/15/2008

Introduced by: Senators Hunhoff, Abdallah, Albers, Bartling, Dempster, Duenwald, Gant, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Heidepriem, Hoerth, Hundstad, Jerstad, Katus, Kloucek, Knudson, Koetzle, Lintz, Maher, McCracken, McNenny, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schmidt (Dennis), Smidt (Orville), Sutton, Turbak Berry, and Two Bulls and Representatives Burg, Ahlers, Bradford, Brunner, Buckingham, Carson, Cutler, Davis, Dennert, DeVries, Dreyer, Dykstra, Elliott, Engels, Faehn, Feinstein, Gassman, Gillespie, Gilson, Glenski, Gosch, Hackl, Halverson, Hargens, Haverly, Heineman, Hills, Howie, Hunt, Jerke, Juhnke, Kirkeby, Koistinen, Krebs, Lust, McLaughlin, Miles, Moore, Nelson, Noem, Novstrup (Al), Novstrup (David), Nygaard, Olson (Betty), Olson (Russell), Olson (Ryan), Pederson (Gordon), Peters, Pitts, Putnam, Rausch, Rave, Rhoden, Rounds, Sigdestad, Steele, Street, Thompson, Tidemann, Turbiville, Van Etten, Van Norman, Vanneman, Vehle, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to authorize the Legislative Research Council to remodel,
2 renovate, and furnish certain facilities on the fourth floor of the State Capitol Building for
3 use by the Legislature, to make an appropriation therefor, and to declare an emergency.

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

5 Section 1. The Legislative Research Council may contract for the design, construction,
6 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
7 plumbing, water, sewer, electric facilities, architectural and engineering services, asbestos
8 abatement, computer and presentation systems, video studio facilities, programming, and such



1 other services as may be required to remodel for legislative use available space on the fourth
2 floor of the Capitol building in a manner consistent with a twenty-first century society and the
3 current state of technology at an estimated cost of ninety-nine thousand nine hundred ninety-
4 nine dollars to complete.

5 Section 2. There is hereby appropriated from the public buildings fund the sum of ninety-
6 nine thousand nine hundred ninety-nine dollars (\$99,999), or so much thereof as may be
7 necessary, to the Legislative Research Council to complete renovation, construction, and
8 completion of the facilities described in section 1 of this Act.

9 Section 3. The design, renovation, and construction of the facilities approved by this Act
10 shall be under the general supervision of the Bureau of Administration as provided in § 5-14-2.
11 The commissioner of the Bureau of Administration and the executive director of the Legislative
12 Research Council shall approve vouchers and the state auditor shall draw warrants to pay
13 expenditures authorized by this Act.

14 Section 4. Whereas, this Act is necessary for the support of the state government and its
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
16 full force and effect from and after its passage and approval.