

# *JOURNAL OF THE SENATE*

## *NINETY-SIXTH SESSION*

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FOURTEENTH DAY

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STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Tuesday, February 02, 2021

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Pastor Greg Kroger, followed by the Pledge of Allegiance led by Senate page Makenna Miller.

Roll Call: All members present except Sen. Frye-Mueller who was excused.

### **APPROVAL OF THE JOURNAL**

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the 13th day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Which motion prevailed.

Respectfully submitted,  
Lee A. Schoenbeck, Chair

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**REPORTS OF STANDING COMMITTEES**

2 MR. PRESIDENT:

3 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
4 had under consideration **SB 99** and returns the same with the recommendation that said bill be  
5 referred to the Committee on Appropriations with a Do Pass recommendation.

6 Also MR. PRESIDENT:

7 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
8 had under consideration **SCR 604** and returns the same with the recommendation that said  
9 resolution do pass.

10 Also MR. PRESIDENT:

11 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
12 had under consideration the nomination of Douglas Sharp of Codington County, Watertown, South  
13 Dakota, to the Game, Fish and Parks Commission and returns the same with the recommendation  
14 that the Senate advise and consent to the confirmation of said appointment, and that said  
15 appointment having been certified as uncontested, be placed on the consent calendar.

16  
17

Respectfully submitted,  
Joshua Klumb, Vice-Chair

18 MR. PRESIDENT:

19 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
20 consideration **SB 55** and returns the same with the recommendation that said bill be amended as  
21 follows:

22

55A

23 On page 2, line 21, of the Introduced bill, after "consumers" insert " or create unreasonable  
24 unfair competition in the insurance market"

25 On page 2, line 30, of the Introduced bill, after "bulletin." insert " The waiver may not be  
26 construed to waive any requirements except those which inhibit the introduction of the innovative  
27 insurance product or service as addressed in the innovation waiver document."

28 On page 3, line 11, of the Introduced bill, after "(8)" insert "Chapter 58-25 concerning title  
29 insurance;

30 (9) Chapter 58-30 concerning sales through licensed insurance producers;

31 (10) "

32 On page 3, line 14, of the Introduced bill, delete "(9)" and insert "(11)"

33 On page 3, line 14, of the Introduced bill, delete " (8)" and insert " (10)"

34 On page 3, line 16, of the Introduced bill, delete "(10)" and insert "(12)"

35 On page 5, line 14, of the Introduced bill, delete "an initial " and insert "a "

36 On page 9, line 2, of the Introduced bill, after "58-48-11" insert ". Nothing in this section may  
37 be construed to modify the ability of a consumer to discover information in pursuit of a claim against  
38 a participant"

1 And that as so amended, said bill do pass.

2 Also MR. PRESIDENT:

3 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
4 consideration **SB 101** and returns the same with the recommendation that said bill be amended as  
5 follows:

6 101A

7 On page 1, line 1, of the Introduced bill, delete " vehicle dealers" and insert " certain repair  
8 facilities"

9 On page 1, line 3, of the Introduced bill, after "Dakota:" delete "Section 1. That § 32-6B-58  
10 be AMENDED."

11 On page 1, line 4, of the Introduced bill, after "AMENDED." delete "32-6B-58. "

12 On page 1, line 4, of the Introduced bill, after "32-6B-58. " delete "Franchisor or manufacturer-  
13 -Duties--Warranty agreements, labor, and parts--Disposition of dealer and customer claims."

14 On page 1, line 6, of the Introduced bill, after "claims." delete "Every franchisor or  
15 manufacturer shall properly fulfill any warranty agreement and compensate, as set forth in § 32-  
16 6B-61, each of its vehicle dealers for labor and parts. The franchisor or manufacturer shall pay all  
17 claims made by a vehicle dealer for the labor and parts within thirty days following their approval.  
18 The franchisor or manufacturer shall either approve or disapprove the claim within thirty days after  
19 its receipt. If a claim is disapproved, the vehicle dealer who submitted the claim shall be notified in  
20 writing of the claim's disapproval within the thirty-day period. Any claim rejected for technical  
21 reasons may be put into proper form by the vehicle dealer. Any claim resubmitted by the vehicle  
22 dealer within thirty days after the receipt of the claim shall be considered to be approved and  
23 payment shall be made within thirty days. The franchisor or manufacturer has the right to audit any  
24 vehicle dealer claim for a period of one year after the claim is paid to the dealer and to charge back  
25 to the new vehicle dealer the amount of any unsubstantiated claim. If there is evidence of fraud by  
26 the vehicle dealer, the audit period is two years from the actual or constructive notice of facts  
27 constituting the alleged fraud. The obligations set forth in this section also apply to a franchisor or  
28 manufacturer of a new motor vehicle engine, transmission, or rear axle that separately warrants its  
29 components to customers."

30 On page 1, after line 22, of the Introduced bill, insert "

31 **Section 1.** That a NEW SECTION be added:

32 32-6B-58.1. Franchisor or manufacturer--Duties--Separate warranty for an engine,  
33 transmission, or rear axle--Disposition of dealer and customer claims.

34 A franchisor or manufacturer that provides a separate warranty for an engine, transmission,  
35 or rear axle installed in a commercial medium- and heavy-duty on-highway vehicle, as defined in  
36 49 U.S.C. § 32901(a)(7) as of January 1, 2021, shall compensate any authorized repair facility that  
37 performs warranty work to repair or replace the engine, transmission or rear axle upon the same  
38 terms and conditions as provided in § 32-6B-61 for compensation of warranty work performed by a  
39 vehicle dealer. The franchisor or manufacturer shall pay all claims made by the facility for the labor  
40 and parts within thirty days following approval. The franchisor or manufacturer shall either approve  
41 or disapprove the claim within thirty days after receiving the claim. If a claim is disapproved, the  
42 facility that submitted the claim shall be notified in writing of the claim's disapproval within the  
43 thirty-day period. Any claim rejected for technical reasons may be put into proper form by the  
44 facility. Any claim resubmitted by the facility within thirty days after the receipt of the claim shall  
45 be considered to be approved and payment shall be made within thirty days. The franchisor or  
46 manufacturer has the right to audit any facility's claim for a period of one year after the claim is  
47 paid to the facility and to charge back to the facility the amount of any unsubstantiated claim. If

1 there is evidence of fraud by the facility, the audit period is two years from the actual or constructive  
2 notice of facts constituting the alleged fraud.

3 "

4 And that as so amended, said bill do pass.

5 Also MR. PRESIDENT:

6 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
7 consideration **SB 109** and returns the same with the recommendation that said bill be amended as  
8 follows:

9 109A

10 On page 2, line 6, of the Introduced bill, after "state" insert " under this chapter"

11 On page 2, line 17, of the Introduced bill, after "Act." delete "Section 4. That a NEW SECTION  
12 be added:

13 "

14 On page 2, line 18, of the Introduced bill, after "added:" delete "Shipping to South Dakota  
15 resident without license prohibited--Penalty."

16 On page 2, line 18, of the Introduced bill, after "prohibited--Penalty." delete "

17 No person in the business of selling distilled spirits may ship or cause to be shipped any distilled  
18 spirits to any South Dakota resident who does not hold a license issued pursuant to chapter 35-4.  
19 The department shall, for the first offense, send a certified letter to any person who violates this  
20 section and order such person to cease and desist any shipments of distilled spirits to nonlicensed  
21 South Dakota residents. Any subsequent violation of this section is a Class 1 misdemeanor."

22 And that as so amended, said bill do pass, and having been certified as uncontested, be placed  
23 on the consent calendar.

24 Also MR. PRESIDENT:

25 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
26 consideration **SB 110** which was deferred to the 41st Legislative Day.

27 Also MR. PRESIDENT:

28 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
29 consideration **SCR 603** and returns the same with the recommendation that said resolution do pass.

30 Respectfully submitted,  
31 Casey Crabtree, Chair

32 Mr. PRESIDENT:

33 The Committee on Legislative Procedure respectfully reports that the Office of Engrossing and  
34 Enrolling has carefully compared **SB 11, 19, 21, 25, 67, and 69** and finds the same correctly  
35 enrolled.

36 Respectfully submitted,  
37 Lee A. Schoenbeck, Chair

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**MESSAGES FROM THE HOUSE**

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2 Mr. PRESIDENT:

3 I have the honor to transmit herewith **HB 1029 and 1077** which have passed the House and  
4 your favorable consideration is respectfully requested.

5 Also Mr. PRESIDENT:

6 I have the honor to transmit herewith **HCR 6003** which has been adopted by the House and  
7 your concurrence is respectfully requested.

8 Also Mr. PRESIDENT:

9 I have the honor to return herewith **SB 11, 19, 21, 25, 67, and 69** which have passed the  
10 House without change.

11 Also Mr. PRESIDENT:

12 I have the honor to return herewith **SCR 601** in which the House has concurred.

13

14

Respectfully,  
Patricia Miller, Chief Clerk

15

**MOTIONS AND RESOLUTIONS**

16 Yesterday, Sen. Heinert announced his intention to reconsider the vote by which **SB 68** lost.

17 Sen. Heinert moved that the Senate do now reconsider the vote by which **SB 68** lost.

18 The question being on Sen. Heinert's motion to reconsider the vote by which **SB 68** lost.

19 And the roll being called:

20 Yeas 18, Nays 16, Excused 1, Absent 0

21 Yeas:

22 Bolin, Cammack, Castleberry, Crabtree, Curd, Diedrich, Foster, Heinert, David Johnson, Maher,  
23 Nesiba, Herman Otten, Rohl, Schoenfish, V. J. Smith, Stalzer, Steinhauer, and Wheeler

24 Nays:

25 Breitling, Duhamel, Duvall, Brock Greenfield, Hunhoff, Johns, Klumb, Kolbeck, Novstrup,  
26 Rusch, Schoenbeck, Sutton, Symens, Tobin, Wiik, and Zikmund

27 Excused:

28 Frye-Mueller

29 So the motion having received an affirmative vote of a majority of the members-elect, the  
30 President declared the motion carried and **SB 68** was up for reconsideration and final passage.

1 **SB 68:** FOR AN ACT ENTITLED, An Act to provide for the creation and funding of Oceti Sakowin  
2 community-based schools.

3 Having had its second reading was up for reconsideration and final passage.

4 Sen. Heinert moved that **SB 68** be amended as follows:

5 68A

6 On page 2, line 18, of the Introduced bill, delete "shall " and insert "may "

7 On page 16, line 31, of the Introduced bill, delete "that portion of the total funding " and insert  
8 "the state aid to education funds "

9 On page 16, line 31, of the Introduced bill, delete " in accordance with this chapter" and insert  
10 ", pursuant to § 13-13-36"

11 Sen. Nesiba requested that Joint Rule 5-17 be invoked on **SB 68**.

12 Which request was supported and **SB 68** with Sen. Heinert's pending motion to amend was  
13 deferred until Thursday, February 4, 2021, the 16<sup>th</sup> legislative day.

14 Sen. Schoenbeck moved that **SB 36** be referred from the Joint Committee on Appropriations  
15 to the Senate Committee on Appropriations.

16 Which motion prevailed.

17 **HCR 6003:** A CONCURRENT RESOLUTION, Appointing Mr. Russell Olson of Pierre, South  
18 Dakota, to the Office of Auditor General.

19 Was read the first time and referred to the Committee on State Affairs.

## 20 **CONSIDERATION OF REPORTS OF SELECT COMMITTEES**

21 Sen. Cammack moved that the report of the Senate Select Committee relative to appointments  
22 to the 2021 Legislative Redistricting Committee be adopted.

23 Which motion prevailed.

## 24 **CONSIDERATION OF JUDICIAL APPOINTMENTS**

25 The Senate proceeded to the consideration of the judicial appointment of Kirsten K. Aasen of  
26 Pennington County, Rapid City, South Dakota, to the Board of Pardons and Paroles.

27 The question being "Does the Senate advise and consent to the judicial appointment of  
28 Kirsten K. Aasen pursuant to the message as found on page 76 of the Senate Journal?"

29 And the roll being called:

30 Yeas 34, Nays 0, Excused 1, Absent 0

1 Yeas:  
2 Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Foster,  
3 Brock Greenfield, Heinert, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Nesiba,  
4 Novstrup, Herman Otten, Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer,  
5 Sutton, Symens, Tobin, Wheeler, Wiik, and Zikmund

6 Excused:  
7 Frye-Mueller

8 So the question having received an affirmative vote of a majority of the members-elect, the  
9 President declared the appointment confirmed.

## 10 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

11 **SB 170:** FOR AN ACT ENTITLED, An Act to prohibit the conduct of certain physical  
12 examinations or screenings on students in a school district without parental consent.

13 Introduced by: **Senator** Frye-Mueller

14 Was read the first time and referred to the Committee on Education.

15 **SB 167:** FOR AN ACT ENTITLED, An Act to establish criteria for a regional nursing facility  
16 designation and to provide an appropriation.

17 Introduced by: **Senator** Hunhoff

18 Was read the first time and referred to the Committee on Health and Human Services.

19 **SB 173:** FOR AN ACT ENTITLED, An Act to revise certain provisions related to competency  
20 hearings.

21 Introduced by: **Senator** Wheeler

22 **SB 174:** FOR AN ACT ENTITLED, An Act to revise provisions related to the automatic removal  
23 of certain charges or convictions from a defendant's public record.

24 Introduced by: **Senator** Wheeler

25 Were read the first time and referred to the Committee on Judiciary.

26 **SB 168:** FOR AN ACT ENTITLED, An Act to revise the population requirement for appointment  
27 of coroners.

28 Introduced by: **Senator** Bolin

29 Was read the first time and referred to the Committee on Local Government.

30 **SB 172:** FOR AN ACT ENTITLED, An Act to add nonvoting legislative members to the South  
31 Dakota Ellsworth Development Authority.

32 Introduced by: **Senator** David Johnson

33 Was read the first time and referred to the Committee on Military and Veterans Affairs.

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1       **SB 171:** FOR AN ACT ENTITLED, An Act to provide needs-based scholarship funding for South  
2       Dakota students, make an appropriation therefor, and declare an emergency.

3           Introduced by: **Senator** Schoenbeck

4           Was read the first time and referred to the Committee on State Affairs.

5       **SB 169:** FOR AN ACT ENTITLED, An Act to revise the time requirement for the automatic  
6       removal of speeding violations from a background check record.

7           Introduced by: **Senator** Novstrup

8           Was read the first time and referred to the Committee on Transportation.

### 9                                   **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

10       **HB 1029:** FOR AN ACT ENTITLED, An Act to require a permit to conduct mining operations for  
11       certain ore milling facilities.

12           Was read the first time and referred to the Committee on Agriculture and Natural Resources.

13       **HB 1077:** FOR AN ACT ENTITLED, An Act to provide for licensure by endorsement for certain  
14       licensed professionals and occupations.

15           Was read the first time and referred to the Committee on Commerce and Energy.

### 16                                   **SECOND READING OF CONSENT CALENDAR ITEMS**

17       **SB 95:** FOR AN ACT ENTITLED, An Act to provide immunity for actions assisting an impaired  
18       lawyer or judge.

19       **SB 96:** FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of  
20       telehealth technologies.

21       **HB 1004:** FOR AN ACT ENTITLED, An Act to repeal the registration requirement for medical  
22       assistants.

23       **HB 1005:** FOR AN ACT ENTITLED, An Act to repeal the emergency medical technician-student  
24       status license requirement.

25       **HB 1060:** FOR AN ACT ENTITLED, An Act to direct certain persons to notify funeral directors  
26       of communicable diseases or conditions.

27           Were read the second time.

28           The question being "Shall **SB 95, and HB 1060** pass as amended, and **SB 96, and HB 1004**  
29       **and 1005** pass?"

30           And the roll being called:

31           Yeas 34, Nays 0, Excused 1, Absent 0



1 Yeas:  
2 Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Foster,  
3 Brock Greenfield, Heinert, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Nesiba,  
4 Novstrup, Herman Otten, Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer,  
5 Sutton, Symens, Tobin, Wheeler, Wiik, and Zikmund

6 Excused:  
7 Frye-Mueller

8 So the bills having received an affirmative vote of a majority of the members-elect, the  
9 President declared the bills passed and the titles were agreed to.

## 10 **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

11 **SB 79:** FOR AN ACT ENTITLED, An Act to make certain uses of laser pointers unlawful.

12 Was read the second time.

13 The question being "Shall **SB 79** pass as amended?"

14 And the roll being called:

15 Yeas 32, Nays 2, Excused 1, Absent 0

16 Yeas:  
17 Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Foster,  
18 Brock Greenfield, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Novstrup, Herman Otten,  
19 Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer, Sutton, Symens, Tobin,  
20 Wheeler, Wiik, and Zikmund

21 Nays:  
22 Heinert and Nesiba

23 Excused:  
24 Frye-Mueller

25 So the bill having received an affirmative vote of a majority of the members-elect, the President  
26 declared the bill passed and the title was agreed to.

27 **SB 112:** FOR AN ACT ENTITLED, An Act to establish requirements for filling the vacancies of  
28 certain constitutional offices.

29 Was read the second time.

30 The question being "Shall **SB 112** pass?"

31 And the roll being called:

32 Yeas 32, Nays 2, Excused 1, Absent 0

33 Yeas:  
34 Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Foster,  
35 Brock Greenfield, Heinert, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Nesiba,  
36 Novstrup, Herman Otten, Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer,  
37 Symens, Tobin, Wheeler, and Zikmund

1 Nays:  
2 Sutton and Wiik

3 Excused:  
4 Frye-Mueller

5 So the bill having received an affirmative vote of a majority of the members-elect, the President  
6 declared the bill passed and the title was agreed to.

## 7 **SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

8 **HB 1006:** FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the practice  
9 of chiropractic.

10 Was read the second time.

11 The question being "Shall **HB 1006** pass as amended?"

12 And the roll being called:

13 Yeas 34, Nays 0, Excused 1, Absent 0

14 Yeas:  
15 Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Foster,  
16 Brock Greenfield, Heinert, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Nesiba,  
17 Novstrup, Herman Otten, Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer,  
18 Sutton, Symens, Tobin, Wheeler, Wiik, and Zikmund

19 Excused:  
20 Frye-Mueller

21 So the bill having received an affirmative vote of a majority of the members-elect, the President  
22 declared the bill passed and the title was agreed to.

## 23 **SIGNING OF BILLS**

24 The President publicly read the title to

25 **SB 11:** FOR AN ACT ENTITLED, An Act to revise provisions regarding highways and bridges.

26 **SB 19:** FOR AN ACT ENTITLED, An Act to correct errors in statutory cross-references in certain  
27 provisions regarding health care.

28 **SB 21:** FOR AN ACT ENTITLED, An Act to revise contracting procedure options for certain  
29 highway construction contracts.

30 **SB 25:** FOR AN ACT ENTITLED, An Act to remove an incorrect cross-reference in provisions  
31 regarding elections.

32 **SB 67:** FOR AN ACT ENTITLED, An Act to correct a cross-reference relating to sheriff's  
33 compensation.

34 **SB 69:** FOR AN ACT ENTITLED, An Act to correct certain provisions with incorrect cross  
35 references regarding county road district boundaries.



