



2020 South Dakota Legislature
House Bill 1012
ENROLLED

AN ACT

ENTITLED An Act to correct technical errors in statutory cross-references.

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

Section 1. That § 1-14-1 be AMENDED:

**1-14-1. Continuation of bureau--Department of Executive Management--
Central office location.**

The Bureau of Administration shall continue within the Department of Executive Management, and all its functions shall be performed by the Department of Executive Management.

The bureau shall maintain a central office in Pierre which shall be the official address of the bureau and the place for serving process or papers of any kind upon it.

Section 2. That § 1-33B-2 be AMENDED:

1-33B-2. Energy conservation measure defined--Inclusions--Limitation.

For the purposes of this chapter, the term, energy conservation measure, means a training program or facility alteration intended to reduce either energy consumption or operating costs, or both, or increase operating revenues through the generation of energy, renewable energy, or improved metering technology, including the following:

- (1) Insulation of the building or any structure associated with the building;
- (2) Window or door replacement, weather stripping, or modifications that reduce energy consumption;
- (3) Automated or computerized energy control systems;
- (4) Replacement or modification to increase the energy efficiency of the lighting, heating, air conditioning, or ventilating systems;
- (5) Energy recovery or cogeneration systems;
- (6) Repair or maintenance items, when included in energy efficiency improvements of the building, if overall measures meet the fifteen-year payback as provided in § 1-

33B-8;

- (7) Energy source conversions which provide either operational or energy cost savings, or both; and
- (8) Other energy or utility-related improvements in facilities, systems, or technology that improve energy or metering efficiency or increase operating revenues through the generation of energy, renewable energy, or improved metering technology.

Nothing in this section addresses the relationship between an electric utility and its customer under a proposed energy exchange contract, where the customer seeks status as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as defined by 18 CFR Part 292, Subpart B, as it existed on January 1, 2005.

Section 3. That § 1-40-20.1 be AMENDED:

1-40-20.1. Water Management Board--Functions transferred.

The functions of the Water Management Board relating to water pollution control grants, community water systems grants, and lake protection grants, respectively, are transferred to the Board of Water and Natural Resources.

Section 4. That § 1-45-27.1 be AMENDED:

1-45-27.1. Education and Cultural Affairs Planning Commission--Functions transferred.

The functions of the Education and Cultural Affairs Planning Commission are transferred to the secretary of education.

Section 5. That § 3-22-5 be AMENDED:

3-22-5. Bureau of Administration--Powers.

The bureau may:

- (1) Select a director who shall serve at the pleasure of the bureau;
- (2) Enter contracts for actuarial determinations, claims adjustment and investigation, loss control and risk management, legal services, or other services the director determines to be necessary to carry out the purposes of this chapter;
- (3) Enter contracts for insurance and reinsurance the director determines to be necessary to carry out the purposes of this chapter. Any such contract is not subject to the provisions of chapters 5-18A and 5-18D;
- (4) Develop a coverage document, agreed to by the director and the Governor, to

establish the type and scope of covered claims, limits of coverage, terms and conditions of coverage, and costs of coverage; and

- (5) Based on annual actuarial calculations, impose and collect contributions from covered state entities for the estimated amount necessary to extend coverage and maintain appropriate reserves for covered claims.

Section 6. That § 4-7-2 be AMENDED:

4-7-2. Bureau of Finance and Management continued--Functions performed--Purpose.

The Bureau of Finance and Management is hereby continued within the Department of Executive Management, for the purpose of promoting economy and efficiency in the fiscal management of the state government. All its functions shall be performed by the Department of Executive Management.

Section 7. That § 4-8A-17 be AMENDED:

4-8A-17. Legislative priority pilot program contingency fund created.

On June 29, 2015, the state treasurer shall transfer to the legislative priority pilot program contingency fund, which is hereby created, the sum of one million dollars (\$1,000,000) from the South Dakota risk pool fund. The contingency funds are to be made available in accordance with the provisions of §§ 4-8A-9, 4-8A-10, 4-8A-11, and 4-8A-12. The contingency funds shall be used to fund legislative priority pilot programs. Interest earned on money in the fund shall be deposited into the general fund.

Section 8. That § 5-6-13 be AMENDED:

5-6-13. Amount of forest products determined--State forester.

The commissioner of school and public lands may authorize the state forester to determine the amount of forest products to be harvested from school and endowment lands.

Section 9. That § 5-18A-24 be AMENDED:

5-18A-24. Grade A milk processors--Competitive bid contracts.

Any milk processor for Grade A milk that is bidding any milk or milk product under a competitive bid contract shall receive the bid contract if the processor's bid is equal to, or within five percent or less, of any other bidder who is not a licensed processor.

Section 10. That § 7-12-17 be AMENDED:

7-12-17. Mileage and food costs--Reimbursement--Deductions.

Nothing in § 7-12-15 shall be construed to change the reimbursement of the sheriff for costs of mileage incurred while on official business nor to change the fee received by the sheriff for the costs of food for boarding of prisoners. In the event that housing and utilities are furnished by a county to the sheriff, the county board of commissioners is authorized to establish a reasonable value for such quarters, based upon the general level of housing accommodation rentals prevailing at the county seat, and to deduct from the regular salary of the sheriff an equivalent amount therefor.

Section 11. That § 7-20-12 be AMENDED:

7-20-12. Removal from office--Cause.

Any county officer neglecting or refusing to comply with the provisions of §§ 7-20-1 through 7-20-10 is subject to removal from office. No county treasurer is liable on the county treasurer's official bond for any loss of money deposited in compliance with the provisions of these sections.

Section 12. That § 9-3-26 be AMENDED:

9-3-26. State or local tax funds--Prohibition--Exception.

Such municipality shall not be authorized to receive any state or local tax funds or any distribution from either state or local sources except such as are specifically provided under § 7-18-12 or similar laws hereafter enacted, for tourist, educational, and recreational activities.

Section 13. That § 9-38-90 be AMENDED:

9-38-90. City attorney--Duties--Recreation board--Special counsel.

The city attorney as a part of his duties shall conduct all court proceedings under §§ 9-38-80 through 9-38-106, and shall be the legal adviser of the recreation board. When in its judgment the interests of the first or second class municipality demand, the recreation board may employ special counsel to assist the city attorney.

Section 14. That § 9-41A-48 be AMENDED:

9-41A-48. Encumbrance of property to secure bonds and notes--Filings.

For the security of bonds or notes issued, or to be issued, by a municipal power agency, the municipal power agency may mortgage or execute deeds of trust of the whole or any part of its property and franchises in the same manner and with the same effect as provided for public utilities in § 49-34-9. Any mortgage or deed of trust and any assignment or discharge thereof shall be filed and recorded in the Office of the Secretary of State with the same force and effect as provided in §§ 49-34-11 and 49-34-12. All filings required under the Uniform Commercial Code to perfect a security interest against the personal property or fixtures of a municipal power agency shall be made and maintained in the Office of the Secretary of State, with the same force and effect as provided for a debtor public utility.

Section 15. That § 9-51-23 be AMENDED:

**9-51-23. Net revenues pledged to payment of special obligation bonds--
Additional covenants authorized.**

Bonds authorized and issued under §§ 9-51-22 through 9-51-28 may be made payable as to both principal and interest out of the net revenues or moneys levied and appropriated as set forth in § 9-51-14, provided that in the ordinance authorizing such bonds the governing body may on behalf of the municipality make any or all of the irrevocable covenants in §§ 9-51-24 through 9-51-28 with and for the benefit of the holders from time to time of said bonds.

Section 16. That § 10-4-33 be REPEALED.

**10-4-33. Property used as employee day-care cooperative exempt--
Determining value.**

Section 17. That § 10-6-33.35 be AMENDED:

**10-6-33.35. Agricultural Land Assessment Implementation and Oversight
Advisory Task Force.**

There is hereby established the Agricultural Land Assessment Implementation and Oversight Advisory Task Force. The task force shall consist of the following fourteen members:

- (1) The speaker of the House of Representatives shall appoint four members of the House of Representatives, no more than two of whom may be from one political party;
- (2) The speaker of the House of Representatives shall appoint three members of the general public, at least one of the members shall have an agricultural background and at least one of the members shall have a business background;
- (3) The president pro tempore of the Senate shall appoint four members of the Senate, no more than two of whom may be from one political party; and
- (4) The president pro tempore of the Senate shall appoint three members of the general public, at least one of the members shall have an agricultural background and at least one of the members shall have a business background.

The initial appointments shall be made no later than July 1, 2008, and shall serve until January 12, 2009. The speaker of the House of Representatives and president pro tempore of the Senate before the close of each regular session of the Legislature held in odd-numbered years shall appoint members to the task force for a term of two years. If there is a vacancy on the task force, the vacancy shall be filled in the same manner as the original appointment.

The task force shall advise the department regarding the rules promulgated by the department to administer the provisions concerning the assessment and taxation of agricultural lands and shall review the implementation of the provisions of law concerning the assessment and taxation of agricultural land. The task force shall report to the Senate and House of Representatives and may submit a copy of its report to the Governor. The task force may present draft legislation and policy recommendations to the Legislative Research Council Executive Board.

The task force shall make recommendations in the following areas:

- (1) The proper percentage of annual earning capacity to be used to determine the agricultural income value pursuant to § 10-6-33.28;
- (2) The proper capitalization rate in order to have total taxable valuation for the taxes payable in 2011 from agricultural property be not more than total taxable valuation for the taxes payable in 2010 from agricultural property plus the estimated growth in agricultural property value in 2010;
- (3) The changes, if any, that must be made to §§ 13-16-7, 13-37-16, and 13-37-35.1 to ensure that the total amount of additional taxes that may be generated on agricultural land by a school district pursuant to the provisions of §§ 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue increase

for the school district pursuant to the implementation of the productivity system pursuant to §§ 10-6-33.28 to 10-6-33.33, inclusive;

- (4) The changes, if any, that must be made to §§ 13-16-7, 13-37-16, and 13-37-35.1 to ensure that the total amount of property taxes that may be lost on agricultural land by a school district pursuant to the provisions of §§ 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue decrease for the school district pursuant to the implementation of the productivity system pursuant to §§ 10-6-33.28 to 10-6-33.33, inclusive; and
- (5) The distribution of the local effort for the general fund of school districts between the classifications of real property as provided by § 13-13-72.1 which establishes the real property tax contribution from agricultural property for the general fund of school districts as a fixed ratio of the total local effort for such levies. The task force shall also consider the other taxes paid by agricultural property, the relationship of the total assessed value of agricultural property to the total assessed value of all real property, and other factors the task force deems appropriate.

Section 18. That § 10-10-13 be AMENDED:

10-10-13. Appeal from state or county board.

Any appeal under § 10-10-11 must be taken within thirty days after the filing of the decision in the office of the board making the same.

Section 19. That § 10-11-26 be AMENDED:

10-11-26. County board of equalization--Powers--De novo appeals.

A county board of equalization has all the power and authority of a local board of equalization in all unorganized territories. A county board of equalization may:

- (1) Correct clerical errors of the assessment roll;
- (2) Hear appeals from individuals regarding aggregate assessments, classification, and equalization; and
- (3) Equalize between taxing districts and between classes of property. The board shall raise or lower, if necessary, each class of property on a percentage basis covering the class as a whole within the assessment district.

Appeals to the county board of equalization shall be heard de novo.

Section 20. That § 10-11-72 be AMENDED:

10-11-72. Consolidated board of equalization--Powers.

A consolidated board of equalization may:

- (1) Correct clerical errors of the assessment roll;
- (2) Hear appeals from individuals regarding aggregate assessments, classification, and equalization; and
- (3) Equalize between taxing districts and between classes of property. The board shall raise or lower, if necessary, each class of property on a percentage basis covering the class as a whole within the assessment district.

Section 21. That § 10-39A-3 be REPEALED.

10-39A-3. Collection and administration according to mineral severance tax procedures.

Section 22. That § 10-39A-7 be AMENDED:

10-39A-7. Tax in lieu of other taxes.

This tax is in lieu of all other occupational, excise, income, privilege, franchise taxes, and any other mineral taxes levied by this state, but is not in lieu of sales, use, and property taxes.

Section 23. That § 10-45-61 be AMENDED:

10-45-61. Exemption certificate--Responsibilities of purchaser--Violation as misdemeanor--Retention of certificate--Rules and forms.

A seller who possesses an exemption certificate from a purchaser of tangible personal property, any product transferred electronically, or services which indicates the items or services being purchased are exempt, may rely on the exemption certificate and not charge sales tax to the provider of the exemption certificate until the provider of the exemption certificate gives notice that the items or services being purchased are no longer exempt by filing a new exemption certificate with the seller.

The exemption certificate shall be signed by the purchaser. The exemption certificate shall provide the purchaser's name, address, and valid state tax license number, if applicable. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the

exemption certificate. A seller of property, any product transferred electronically, or services which are generally described under the exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser.

If the purchaser later determines there is any tax due and owing, the purchaser shall remit the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase and later determines that the goods or services purchased are not exempt, the purchaser shall report the transaction and pay the use tax on the next filing of the purchaser's return.

Any purchaser who knowingly files an exemption certificate with a retailer in order to purchase tangible personal property, any product transferred electronically, or services with the intent to evade payment of the tax, and fails to timely report the same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest may be charged on the penalty.

The seller shall retain the exemption certificate for a period of three years from the date it is filed by the purchaser and provide the exemption certificate to the department upon request.

The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for exemption certificates.

Section 24. That § 10-52-3 be AMENDED:

10-52-3. Referendum procedure--Certain municipalities to review tax ordinances.

Any tax imposed by the governing board of any municipality pursuant to the provisions of this chapter, may be referred to a vote of the people for its approval or disapproval in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal ordinance which was in effect on December 31, 2003, is continued under the provisions of this chapter if:

- (1) The governing board of the municipality has reviewed the existing tax ordinance to determine compliance with the provisions of this chapter; and
- (2) The governing board of the municipality documents the review, any amendment, and the intent to continue the tax in the official minutes of the governing board.

Any amendment made by the municipality to comply with the provisions of chapter 10-45C, §§ 10-1-44.3, 10-45-1 to 10-45-1.4, inclusive, 10-45-2.3, 10-45-3.4, 10-45-5, 10-45-5.3, 10-45-8, 10-45-24, 10-45-30, 10-45-61, 10-45-108 and 10-45-109, 10-46-

1, 10-46-17.6, 10-52-2, 10-52-2.10, 10-52-3, 10-52-9, 10-52-13 through 10-52-15, and 10-59-27 or the determination to continue the tax under the provisions of this chapter is deemed to be an administrative decision pursuant to § 9-20-19 and is not subject to referendum.

Section 25. That § 11-3-1.1 be AMENDED:

11-3-1.1. Definitions.

Terms used in this chapter mean:

- (1) "Governing body," the board of county commissioners, the city council, city commission, or town board;
- (2) "Improvement district," an improvement district constituted under authority of chapter 7-25A;
- (3) "Municipality," an incorporated city or town;
- (4) "Planning commission," a planning commission constituted under authority of chapters 11-2, 11-4, and 11-6;
- (5) "Plat," a map, or representation on paper, of a piece of land subdivided into lots, parcels, tracts, or blocks, including streets, commons, and public grounds, if any, all drawn to scale;
- (6) "Registered land surveyor," a registered land surveyor, registered in good standing and legally authorized to practice land surveying;
- (7) "Streets," streets, avenues, boulevards, roads, lanes, alleys, or other ways.

Section 26. That § 11-11-179 be AMENDED:

11-11-179. Retirement and redemption of investments in sponsor of multifamily units and day-care facilities.

The authority shall have the power, in the supervision of housing sponsors of multifamily residential housing units and day-care facilities and their real and personal property, to regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year such percentage, as may be determined by rules of the authority or as specified in the agreement between the authority and the housing sponsor of the original face amount of any investment or equity in any housing sponsor. Projects whose rents or income limits applicable to project residents are established, subsidized or regulated by federal law, or whose loans are insured or guaranteed by the federal government shall be subject to an agreement between the authority and the housing

sponsor which will subject said sponsor and its principals or stockholders, if any, to those limitations established by federal law, or such lower limitation as shall be prescribed by the authority, in regulating the retirement of any capital investment or the redemption of stock of the original face amount of any investment or equity in any housing sponsor.

Section 27. That § 12-6-6 be AMENDED:

12-6-6. Joint petitions for delegate and legislative candidates--Individual petitions.

Two or more candidates for delegates to the state convention of the party, and except as to candidates in joint legislative districts, candidates for two or more legislative offices may be included in one nominating petition. Except as provided under this section, individual nominating petitions shall be filed.

Section 28. That § 12-20-48.1 be AMENDED:

12-20-48.1. Certification to state party chairman of votes for national convention slates.

Upon the completion of the state canvass of the results of the primary election for delegates and alternates to the national convention, the State Canvassing Board shall certify to the state chairman of each political party the slates (groups of delegates and alternates) entered in the primary for each political party and the number of votes in the primary for each slate.

Section 29. That § 12-27-43 be AMENDED:

12-27-43. Action for civil penalty--Limitation.

The attorney general may bring an action for a civil penalty against any person, political committee, political party, or organization that violates § 12-27-16, in addition to any other penalties provided by law. The civil penalty may not exceed two thousand dollars for each violation.

Section 30. That § 13-6-13.1 be AMENDED:

13-6-13.1. Former school district representation areas for consolidated districts--Establishment--Election of board members.

When the reorganization plan is submitted, the school board or the electors of the district may establish school board representation areas to represent each former school

district which consolidated to form the reorganized school district. Each former school district representation area shall be formed by adhering to standards of population deviance as established by judicial precedence. The former school district representation areas shall be established after an election is called and held pursuant to §§ 13-8-3 to 13-8-5, inclusive, by a majority vote of the electors voting at the election. The former school district representation areas, if established, shall become effective January first of the following year. If former board member representation areas are established, the school board member candidate shall be a resident voter and reside within the representation area to qualify. The reorganization plan shall state whether the school board member candidates shall be elected at large or elected by the voters who reside within the representation area.

Any current board members shall serve the balance of their term. At the time of an election or vacancy, board members shall be elected or appointed in order that each representation area shall have a resident board member.

Section 31. That § 13-13-10.1 be AMENDED:

13-13-10.1. Definitions.

The education funding terms and procedures referenced in this chapter are defined as follows:

- (1) Repealed by SL 2016, ch 83, § 4;
- (1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the fall enrollment of the receiving district when enrolled in the receiving district;
- (2) Repealed by SL 2016, ch 83, § 4;
- (2A) "Fall enrollment," is calculated as follows:
 - (a) Determine the number of kindergarten through twelfth grade students enrolled in all schools operated by the school district on the last Friday of September of the current school year;
 - (b) Subtract the number of students for whom the district receives tuition except for:
 - (i) Nonresident students who are in the care and custody of a state agency and are attending a public school district; and
 - (ii) Students who are being provided an education pursuant to § 13-28-11;

(c) Add the number of students for whom the district pays tuition.

When computing state aid to education for a school district pursuant to § 13-13-73, the secretary of the Department of Education shall use the school district's fall enrollment;

(2B) Repealed by SL 2010, ch 84, § 1;

(2C) "Target teacher ratio factor," is:

(a) For school districts with a fall enrollment of two hundred or less, the target teacher ratio factor is 12;

(b) For districts with a fall enrollment of greater than two hundred, but less than six hundred, the target teacher ratio factor is calculated as follows:

(1) Multiplying the fall enrollment by .00750;

(2) Adding 10.50 to the product of subsection (b)(1);

(c) For districts with a fall enrollment of six hundred or greater, the target teacher ratio factor is 15.

The fall enrollment used for the determination of the target teacher ratio for a school district may not include any students residing in a residential treatment facility when the education program is operated by the school district;

(2D) "Limited English proficiency (LEP) adjustment," is calculated by multiplying 0.25 times the number of kindergarten through twelfth grade students who, in the prior school year, scored below level four on the state-administered language proficiency assessment as required in the state's consolidated state application pursuant to 20 USC § 6311(b)(7) as of January 1, 2013;

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

(4) "Target teacher salary," for the school fiscal year beginning July 1, 2019 is \$50,360.26. Each school fiscal year thereafter, the target teacher salary is the previous fiscal year's target teacher salary increased by the index factor;

(4A) "Target teacher benefits," is the target teacher salary multiplied by twenty-nine percent;

(4B) "Target teacher compensation," is the sum of the target teacher salary and the target teacher benefits;

(4C) "Overhead rate," is thirty-three and six hundredths percent.

Beginning in school fiscal year 2018, the overhead rate shall be adjusted to take into account the sum of the amounts that districts exceed the other revenue base amount;

- (5) "Local need," is calculated as follows:
- (a) Divide the fall enrollment by the target teacher ratio factor;
 - (b) If applicable, divide Limited English proficiency (LEP) adjustment pursuant to subdivision (2D) by the target teacher ratio factor;
 - (c) Add the results of subsections (a) and (b);
 - (d) Multiply the result of subsection (c) by the target teacher compensation;
 - (e) Multiply the product of subsection (d) by the overhead rate;
 - (f) Add the products of subsections (d) and (e);
 - (g) When calculating local need at the statewide level, include the amounts set aside for costs related to technology in schools and statewide student assessments; and
 - (h) When calculating local need at the statewide level, include the amounts set aside for sparse school district benefits, calculated pursuant to §§ 13-13-78 and 13-13-79;
- (5A) "Alternative per student need," is calculated as follows:
- (a) Add the total need for each school district for school fiscal year 2016, including the small school adjustment and the limited English proficiency adjustment, to the lesser of the amount of funds apportioned to each school district in the year preceding the most recently completed school fiscal year or school fiscal year 2015 pursuant to §§ 13-13-4, 23A-27-25, 10-33-24, 10-36-10, 11-7-73, 10-35-21, and 10-43-77;
 - (b) Divide the result of (a) by the September 2015 fall enrollment, excluding any adjustments based on prior year student counts;
- (5B) "Alternative local need," is the alternative per student need multiplied by the fall enrollment, excluding any adjustments based on prior year student counts;
- (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42. Beginning on July 1, 2017, local effort will include the amount of funds apportioned to each school district in the year preceding the most recently completed school fiscal year pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 and that exceeds the other revenue base amount;

(6A) "Other revenue base amount," for school districts not utilizing the alternative local need calculation is the amount of funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 calculated as follows:

- (a) Beginning on July 1, 2017, equals the greatest of the amounts of the funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 for school fiscal years 2013, 2014, and 2015;
- (b) Beginning on July 1, 2018, multiply eighty percent times subsection (a);
- (c) Beginning on July 1, 2019, multiply sixty percent times subsection (a);
- (d) Beginning on July 1, 2020, multiply forty percent times subsection (a);
- (e) Beginning on July 1, 2021, multiply twenty percent times subsection (a);
- (f) Beginning on July 1, 2022, is zero.

For school districts utilizing the alternative local need calculation, the other revenue base amount is zero until such time the school district chooses to no longer utilize the alternative local need calculation. At that time, the other revenue base amount is calculated as defined above.

For a school district created or reorganized after July 1, 2016, the other revenue base amount is the sum of the other revenue base amount for each district before reorganization, and the new school district may not utilize the alternative local need calculation.

In the case of the dissolution and annexation of a district, the other revenue base amount of the dissolved school district will be prorated based on the total number of students in the fall enrollment as defined in subdivision (2A) who attend each district to which area of the dissolved district were annexed to in the first year of reorganization. The amount apportioned for each district will be added to the annexed districts' other revenue base;

(6B) "Wind energy tax revenue," any wind energy tax revenue apportioned to school districts pursuant to § 10-35-21 from a wind farm producing power for the first time before July 1, 2016, shall be considered local effort pursuant to subdivision (6) and other revenue base amount pursuant to subdivision (6A). However, any wind energy tax revenue apportioned to a school district from a wind farm producing power for the first time after June 30, 2016, one hundred percent shall be retained by the school district to which the tax revenue is apportioned for the first five years of producing power, eighty percent for the sixth year, sixty percent for the seventh

year, forty percent for the eighth year, twenty percent for the ninth year, and zero percent thereafter;

- (7) "Per student equivalent," for funding calculations that are determined on a per student basis, the per student equivalent is calculated as follows:
 - (a) Multiply the target teacher compensation times the sum of one plus the overhead rate;
 - (b) Divide subsection (a) by 15;
- (8) "Monthly cash balance," the total amount of money for each month in the school district's general fund, calculated by adding all deposits made during the month to the beginning cash balance and deducting all disbursements or payments made during the month;
- (9) "General fund base percentage," is determined as follows:
 - (a) Forty percent for a school district with a fall enrollment as defined in subdivision (2A) of two hundred or less;
 - (b) Thirty percent for a school district with fall enrollment as defined in subdivision (2A) of more than two hundred but less than six hundred; and
 - (c) Twenty-five percent for a school district with fall enrollment as defined in subdivision (2A) greater than or equal to six hundred.

When determining the general fund base percentage, the secretary of the Department of Education shall use the lesser of the school district's fall enrollment as defined in subdivision (2A) for the current school year or the school district's fall enrollment from the previous two years;

- (10) "Allowable general fund cash balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school year.

Section 32. That § 13-13-11 be AMENDED:

13-13-11. General school aid--Purpose.

It is the purpose of §§ 13-13-10.1 through 13-13-41 to establish a procedure for the distribution of state funds to local school districts. The following subdivisions are hereby declared to be the policy of this state:

- (1) Education is a state and local function.
- (2) No one source of taxation should bear an excessive burden of the costs of education.
- (3) In order to provide reasonable equality in school tax rates among the various school districts in the state and to provide reasonable equality of educational opportunity for all the children in the state, the state shall assist in giving a basic educational

opportunity to each student by contributing state aid to education funds toward the support of his educational program.

- (4) State aid to education funds should be distributed to school districts in accordance with the formula as provided in §§ 13-13-10.1 through 13-13-41.
- (5) A minimum of twenty-five percent of the total general fund expenditures of the school districts of the state for the preceding school fiscal year should be distributed annually to school districts as state aid to education funding.
- (6) No school district should be eligible to receive state aid which does not provide an educational program which meets the requirements and standards as provided in §§ 13-13-10.1 to 13-13-41, inclusive.

Section 33. That § 13-25-9 be AMENDED:

13-25-9. Authority to close school or vacate building if hazards not eliminated.

If any school governing body, or other agency operating a school, fails to comply with the order provided by § 13-25-7, and fails to appeal from the order after the time for appeal has expired, or the time to comply with the order has passed, whichever is later, the State Fire Marshal may immediately close the school or school facility to further use or occupancy, and may vacate and place out of service said school or school building, or facility until such time as its requirements are fulfilled.

Section 34. That § 13-25-12 be AMENDED:

13-25-12. Public school attendance centers--Response time--Exemption.

If the state fire marshal finds that due to the remote location of the public school attendance center the response time of the local fire department makes saving the attendance center from extensive fire damage unlikely, he may exempt certain remote small public school attendance centers from § 13-25-11.

Section 35. That § 13-33A-8 be AMENDED:

13-33A-8. Epinephrine auto-injector administration--Immunity.

No school district, administrator, school board, school nurse, or designated school personnel that possess or make available epinephrine auto-injectors pursuant to §§ 13-33A-4 through 13-33A-8; authorized health care provider that prescribes epinephrine auto-injectors to a school; or a health care professional that provides training pursuant to

§ 13-33A-7 may be held liable for any injury or related damage that results from the administration of, self-administration of, or failure to administer an epinephrine auto-injector that may constitute ordinary negligence. This immunity does not apply to an act or omission constituting gross, willful, or wanton negligence. The administration of an epinephrine auto-injector in accordance with the provisions of §§ 13-33A-4 through 13-33A-8 does not constitute the practice of medicine. The immunity from liability provided under this section is in addition to, not in lieu of, that provided in any other law.

Section 36. That § 13-36-4 be AMENDED:

13-36-4. Delegation of control, supervision, and regulation of high school interscholastic activities to association.

The school board of a public school, approved and accredited by the secretary of the Department of Education, may delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if:

- (1) Membership in the association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title;
- (2) The constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board;
- (3) The report of any audit required by § 13-36-5 is made public on the association's website as well as the Department of Legislative Audit's website;
- (4) The association complies with the provisions of chapter 1-25 and chapter 1-27. However, the association, and its employees, meetings, and records, are afforded the same exemptions and protections as a political subdivision or public body is provided under chapter 1-25 and chapter 1-27; and
- (5) The association shall report to the Government Operations and Audit Committee annually, or at the call of the chair.

The governing body of a nonpublic school, approved and accredited by the secretary of the Department of Education, or AdvancED, or the Association of Christian Schools International (ACSI), or the Association of Classical and Christian Schools (ACCS), or Christian Schools International (CSI), or National Lutheran School Accreditation (NLSA),

or Commission for Oceti Sakowin Accreditation (COSA), or Wisconsin Evangelical Lutheran Synod School Accreditation, may also delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title, and if the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

Any association which complies with this section may exercise the control, supervision, and regulation of interscholastic activities, including interscholastic athletic events of member schools. The association may promulgate reasonable uniform rules, to make decisions and to provide and enforce reasonable penalties for the violation of the rules.

Section 37. That § 13-36-14 be AMENDED:

13-36-14. Cause of action not created.

Sections §§ 13-36-9 through 13-36-13 do not create any liability for, or create any cause of legal action against, a school, a school district, or any officer or employee of a school or school district.

Section 38. That § 13-37-16 be AMENDED:

13-37-16. District tax levy for special education--School district special education fund.

For taxes payable in 2020, and each year thereafter, the school board shall levy no more than one dollar and sixty-one and six tenths cents per thousand dollars of taxable valuation, as a special levy in addition to all other levies authorized by law for the amount so determined to be necessary, and the levy shall be spread against all of the taxable property of the district. The proceeds derived from the levy shall constitute a school district special education fund of the district for the payment of costs for the special education of all children in need of special education or special education and related services who reside within the district pursuant to the provisions of §§ 13-37-8.4 through 13-37-8.10. The levy in this section shall be based on valuations such that the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. The total amount of taxes that would be generated at the levy

pursuant to this section shall be considered local effort. Money in the special education fund may be expended for the purchase or lease of any assistive technology that is directly related to special education and specified in a student's individualized education plan. This section does not apply to real property improvements.

Section 39. That § 13-37-40.1 be AMENDED:

13-37-40.1. Certification required for funding.

A school district is not eligible for funding from the money set aside in § 13-37-40 unless the school district certifies to the secretary of education that its ending special education fund balance will not exceed ten percent of its special education expenditures for the current fiscal year.

Section 40. That § 13-37-44 be AMENDED:

13-37-44. Reduction of district's aid for special education for excess balance in fund.

A school district's state aid for special education as calculated pursuant to § 13-37-36.1 shall be reduced by the amount which its ending special education fund balance exceeds twenty-five percent of its special education expenditures for the prior fiscal year or one hundred thousand dollars, whichever is greater, if the school district did not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount which its ending special education fund balance exceeds ten percent of its special education expenditures for the prior fiscal year if the school district received money set aside in § 13-37-40 during the prior fiscal year.

Section 41. That § 13-37-45 be AMENDED:

13-37-45. Allocation of undistributed appropriations.

Any funds appropriated as state aid for special education which are not distributed according to § 13-37-36.3 shall be used to fund any shortfall of the appropriation provided for in § 13-13-73. The remaining funds shall be allocated by the secretary of the Department of Education for the purposes specified in § 13-37-40. The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the special education formula in the current year. If a shortfall in the state aid appropriation for special education exists that cannot be covered by § 13-13-73, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Section 42. That § 13-42-5.1 be AMENDED:

13-42-5.1. Use of institute funds--Vouchers and warrants.

The state institute fund shall be used for the purpose of writing and publishing bulletins, accreditation rules, and materials essential to the school systems of this state, and to support activities related to school accreditation and teacher training and retention, and as otherwise may be provided by law; and the state institute fund is hereby appropriated for such purposes and shall be paid out upon warrants drawn by the state auditor on duly itemized vouchers approved by the secretary of the Department of Education.

Section 43. That § 13-49-14.3 be AMENDED:

13-49-14.3. Employee insurance benefits through self-insured plan--Joining state plan.

The Board of Regents, at its discretion, may elect to provide all, or any part of, the insurance benefits for its employees by means of a plan which is self-insured in whole or in part. The board may execute a contract or contracts with such claims administrators as the board may select. In making such selection, the board shall consider, among other things, financial stability, experience, and claims facilities. In evaluating these factors, the board may employ the services of impartial, professional analysts or actuaries, or both.

Section 44. That § 15-12-20 be AMENDED:

15-12-20. Definitions.

Terms, as used in §§ 15-12-20 to 15-12-37, inclusive, unless the context otherwise requires, mean:

- (1) "Action," any action or special proceeding in the trial court, whether civil or criminal or quasi-criminal;
- (2) "Canon" or "Canons," the canons set forth in the South Dakota Code of Judicial Conduct appearing as an appendix to chapter 16-2;
- (3) "Judge," a judge of the circuit court or a retired justice or judge acting pursuant to appointment by the Chief Justice;
- (4) "Magistrate," a magistrate judge as defined by § 16-12A-1.1; and
- (5) "Party," any party within the meaning of the rules of civil or criminal procedure and the statutes of this state.

Section 45. That § 16-2-21 be AMENDED:

16-2-21. Presiding judges for circuits--Appointment--Administrative powers and duties--Court held in each county.

The presiding judge in each judicial circuit, to be appointed by the Chief Justice, subject to the rules of the Supreme Court, has administrative supervision and authority over the operation of the circuit courts, the courts of limited jurisdiction, and clerks and other court personnel in the circuit. These powers and duties include, but are not limited to, the following:

- (1) Arranging schedules and assigning circuit judges for sessions of circuit courts;
- (2) Arranging or supervising the calendaring of matters for trial or hearing;
- (3) Appointing clerks, deputies and other personnel within the circuit to make available their services in every county in the circuit and, subject to standards established by the Supreme Court, fixing their compensation with approval of the Chief Justice, and supervising the personnel in the discharge of their functions;
- (4) Assigning matters and duties to clerks, and prescribing times and places at which clerks shall be available for the performance of their duties;
- (5) Making arrangements with proper authorities for the drawing of jury panels and determining which sessions shall be jury sessions;
- (6) Arranging for the reporting of cases by court reporters or other authorized means;
- (7) Arranging for the orderly disposition of specialized matters, including, but not limited to traffic, domestic relations, and proceedings under chapters 26-7A, 26-8A, 26-8B, and 26-8C;
- (8) Promulgating a schedule of offenses for which magistrates or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefor;
- (9) Assigning to other circuit judges in the circuit various powers and duties in this chapter provided;
- (10) Periodically reviewing the performance and application by magistrates, clerks and deputy clerks of schedules they are to follow, and correcting, with or without the request of the person affected, erroneous application thereof.

The presiding judge shall arrange that a circuit judge is available to hold court in the county seat of each county in the circuit as necessary to distribute the work of the courts, alleviate congestion, and secure the prompt disposition of cases for each county.

Section 46. That § 16-18-34.7 be AMENDED:

16-18-34.7. Recommendations in attorney disciplinary proceedings.

Any recommendation for disbarment or suspension made by the Disciplinary Board or the referee under § 16-19-67 shall contain a recommendation as to the restrictions or conditions of employment and supervision of the accused attorney as a legal assistant.

Section 47. That § 21-1-13.2 be AMENDED:

21-1-13.2. Application of interest statutes.

The provisions of § 21-1-13.1 apply to any suit commenced on or after July 1, 1990.

Section 48. That § 21-44-27 be AMENDED:

21-44-27. Termination of spousal joint tenancy by any interested person.

If the spouse of a decedent is the sole surviving joint tenant in real property, any interested person may terminate the joint tenancy by furnishing the register of deeds of the county where the property is located with an affidavit setting forth the following:

- (1) The name and date of death of the deceased joint tenant;
- (2) The legal description of the real property held in joint tenancy;
- (3) The name of the surviving spouse of the deceased joint tenant;
- (4) That the surviving spouse of the deceased joint tenant is the sole surviving joint tenant in the real property.

The affidavit shall be accompanied by a certified copy of the death certificate of the deceased joint tenant.

Section 49. That § 21-49-11 be AMENDED:

21-49-11. Foreclosure alternatives available on small tracts subject to chapter--Mortgages under earlier law.

Any mortgage made pursuant to this chapter on real property of an area of not more than forty acres containing therein a power of sale, upon default being made in the conditions of the mortgage, may be foreclosed as provided in chapter 21-47 or 21-48 or as provided in this chapter. Any mortgage made prior to July 1, 1977 may be foreclosed as provided in this section.

Section 50. That § 22-24B-1 be AMENDED:

22-24B-1. Sex crimes defined.

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia prior to July 1, 2006;
- (11) Felony indecent exposure prior to July 1, 1998 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this section;
- (16) Any crime, court martial offense, or tribal offense committed in a place other than this state that constitutes a sex crime under this section if committed in this state;
- (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires anyone convicted of that crime register as a sex offender in that state;
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;

- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor; or
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor.

Section 51. That § 24-15-30 be AMENDED:

24-15-30. Written waiver of right to hearing or appearance.

A request for waiver of a right to a parole hearing or an appearance at a parole hearing pursuant to § 24-15-8, 24-15-23, 24-15A-39, or 24-15A-41 shall be submitted in writing to the Board of Pardons and Paroles by the inmate or parolee.

Section 52. That § 26-9-3 be AMENDED:

26-9-3. Original jurisdiction of prosecutions.

The circuit court in all counties shall have original jurisdiction of all prosecutions under this chapter.

Section 53. That § 28-13-32.11 be AMENDED:

28-13-32.11. Determination of household's ability to purchase health insurance.

For purposes of subsections 28-13-27(6)(c) and (d), when determining whether the household was financially able to purchase health insurance which would have covered the medical costs the county is being requested to pay, the county shall use the following methodology:

- (1) Determine the household's income and resources according to §§ 28-13-32.7 and 28-13-32.8;
- (2) Determine the household's contributions for taxes, social security, medicare, and payments to other standard retirement programs according to subdivision 28-13-32.9(1);
- (3) Except for the medical expenses for which the household is requesting assistance, determine the household's expenses according to subdivision 28-13-32.9(2);
- (4) Determine the amount of the household's discretionary income by subtracting the sum of the household's contributions and expenses from the household's income. Divide the amount of the household's discretionary income in half. The result added to the household's adjusted resources determined according to § 28-13-32.8 equals the household's discretionary income that was available to purchase health

insurance;

- (5) Subtract the amount of the monthly health insurance premium that was available to the household if known or, if unknown, an estimate of the premium the household could be expected to incur. For purposes of this subdivision, the county shall establish such estimate either by obtaining premium estimates from two major medical insurance carriers doing business in the state or by using an estimate based on the rate data provided to the county by the Division of Insurance of the Department of Labor and Regulation. If the result is a negative number, the health insurance was not affordable. If the result is a positive number, health insurance was affordable and the individual is considered to be indigent by design.

Section 54. That § 31-2-14.3 be AMENDED:

31-2-14.3. Annual appropriation to Department of Revenue--Distribution.

There is hereby appropriated each fiscal year from the state highway fund the sum of one million thirty-three thousand two hundred sixty-nine dollars and ten cents to the Department of Revenue for distribution to the counties. The moneys shall be distributed to the counties in the same amounts as funds were distributed to the counties by the Department of Game, Fish and Parks for license fees in calendar year 1997. The moneys shall be deposited in the special highway fund of each county. The secretary of revenue shall distribute the money prior to December thirty-first of each year.

Section 55. That § 31-3-19 be AMENDED:

31-3-19. County location proceedings--Highways to which applicable.

The provisions of §§ 31-3-23 through 31-3-37 apply to all public highways by whatever authority located within any organized county which are not within the limits of any municipality, except that no portion of the state trunk highway system or county highway systems shall be vacated, changed, or located except with the approval of and in accordance with the order of the Department of Transportation to be first made.

Section 56. That § 31-3-23 be AMENDED:

31-3-23. Proceedings on short highway without usual number of petitioners--Payment of damages.

Where such public highway proposed to be located is not more than one mile in length, the board of county commissioners shall in all things proceed as provided in §§ 31-

3-23 through 31-3-37 although the petition for such highway may be by but one or more petitioners and the board of county commissioners shall require the petitioner or petitioners for such highway to pay the damages assessed for the location thereof.

Section 57. That § 31-12-42 be AMENDED:

31-12-42. Vehicle license collections to be used outside municipalities.

The portion of the county road and bridge fund derived from motor vehicle license collections credited pursuant to § 32-11-4.1 shall be used by the board of county commissioners for constructing and maintaining county highways outside the limits of municipalities, and also for constructing and maintaining secondary roads.

Section 58. That § 31-12A-5.1 be AMENDED:

31-12A-5.1. Territory within or without subdivision jurisdiction of municipality--Requirement for approval of petition.

If any territory is within the subdivision jurisdiction of a municipality, the petition for the incorporation described in § 31-12A-3 shall first be submitted to the municipality's governing body for approval at its discretion, and upon approval shall be presented to the county board of commissioners.

Section 59. That § 31-12A-23 be AMENDED:

31-12A-23. Certification to county auditor of delinquent charges for road district services--Penalty and interest--Tax sale--Referendum on assessment or bond issue.

The board of trustees may cause the amount of any charges, and interest and penalties on the charges, for road district service rendered or made available to any land within and part of the district, which are due and unpaid on the first day of October in each year to be certified by the clerk of the district to the county auditor in the manner provided in § 10-12-7 together with any taxes levied by the district for corporate purposes. All amounts so certified shall be inserted by the county auditor upon the tax list of the current year and are payable and delinquent at the same time and shall incur penalty and interest and shall be collected by the same procedure as real estate taxes on the same property. In the event of a tax sale or the issuance of a tax deed, the provisions of §§ 9-43-112 and 9-43-113 apply to all amounts so certified and then delinquent, in the same manner as delinquent installments of special assessments. Five percent of the

eligible voters of the district may petition the board of trustees for referendum of any special assessment or bond issue. A majority of the eligible voters of the district who own the lots, tracts, or parcels of land subject to a special assessment or bond issue by the road district is required for approval of the special assessment or bond issue. For purposes of a referendum, if more than one person holds an interest in a lot, tract, or parcel of land subject to a special assessment or bond issue, the vote for the lot, tract, or parcel of land shall be exercised as the owners may among themselves determine and in no event may more than one vote be cast with respect to any one lot, tract, or parcel of land in any referendum. The referendum shall be governed, to the extent applicable, by chapter 9-20. The referendum petition shall be filed with the clerk of the district within twenty days after the notice of the levy of the special assessment or bond issue has been given the landowner.

Section 60. That § 31-13-14 be AMENDED:

31-13-14. Township funds from motor vehicle license fees--Transfer to county.

Each organized township in the state has power to transfer upon resolution to the county in which it is situated for its highway purposes surplus funds acquired from the prorationing of the fees from the motor vehicle licenses as provided in §§ 32-11-4.1 through 32-11-7.

Section 61. That § 31-13-36 be AMENDED:

31-13-36. Assumption of portion of cost by township--Referendum.

If it is deemed expedient for the township to assume and pay any portion of the cost of the improvement, the resolution may so provide, or the portion to be assumed may be provided by a subsequent resolution, subject to the right of referendum on such resolution, pursuant to the procedure set forth in § 31-3-14.

Section 62. That § 31-13-41 be AMENDED:

31-13-41. Waiting period before actions on improvement--Ratification of prior actions.

After twenty days from the adoption and publication of the resolution referred to in § 31-13-40, unless the referendum be invoked, pursuant to § 31-3-14 or unless a written protest shall have been filed with the township clerk and signed by the owners of

more than fifty-five percent of the frontage of property liable to assessment, the board of supervisors may cause the improvement to be made, may contract therefor, and may levy and collect special assessments therefor as provided in this chapter. Any proceedings taken prior to the adoption of the resolution shall be deemed ratified.

Section 63. That § 31-19-46 be AMENDED:

31-19-46. Exchange of non-right-of-way property.

Notwithstanding § 31-2-27, the Department of Transportation may exchange acquired lands with landowners from whom right-of-way or real property may be needed.

Section 64. That § 31-20-6 be AMENDED:

**31-20-6. Consideration for sale--Amount necessary for redemption--
Distribution of proceeds by county auditor--Distribution pro rata.**

In case the county sells right-of-way to the state pursuant to § 31-20-5 any consideration received therefor shall be distributed as follows:

If the sale price received from said sale shall equal or exceed the amount required to redeem said parcel from said sale the auditor shall pay to various taxing districts their share of said money in no case exceeding the sum they would have received if same had been redeemed and the balance of the consideration, if any, shall be paid into the county general fund.

If the sale price received for said parcel shall be less than the amount required to redeem the amount received shall be divided among the taxing districts pro rata as their interests may appear.

Section 65. That § 31-26-7 be AMENDED:

31-26-7. Telephone lines--Compliance with other statutes.

Any person engaged in or about to engage in the furnishing of telephone service must comply with the provisions of § 49-31-20, and nothing in §§ 31-26-1 to 31-26-6, inclusive, shall be construed to limit the rights granted by § 49-32-1 to telegraph and telephone companies.

Section 66. That § 31-28-25 be AMENDED:

31-28-25. Traffic light control.

Nothing in §§ 31-28-19 through 31-28-23.1 limits the existing authority of South Dakota law enforcement officers in the performance of their duties involving traffic light control.

Section 67. That § 31-29-60 be AMENDED:

31-29-60. Compensation for removal of nonconforming signs--Federal contributions.

No sign, display, or device may be required to be removed unless at the time of removal there are sufficient funds appropriated and available to pay the affected parties just compensation after due allowance for any contribution which may be available from the federal government, and if the latter contribution is available for immediate payment.

Section 68. That § 31-29-62 be AMENDED:

31-29-62. Definition of terms.

Terms used in this chapter mean:

- (1) "Abandoned sign," a sign or sign structure that is blank, obliterated or displays obsolete advertising material for a period in excess of twelve continuous months;
- (2) "Advertising area," the area of the sign face including border and trim, but not supports or aprons;
- (3) "Blank sign," a sign that is void of advertising material;
- (4) "Department," the South Dakota State Department of Transportation;
- (5) "Directional information," route markers, mileage markers, directions to on-site location and information sufficient to guide a traveling motorist to a specific facility;
- (6) "Directional sign," a sign designated, described and authorized by 23 U.S.C. § 131(c)(1) and the rules and regulations promulgated thereunder as of July 1, 1979;
- (7) "Information center," an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the Department of Tourism may consider desirable;
- (8) "Interstate system," that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the state Department of Transportation and approved by the United States secretary of transportation, pursuant to the provisions of Title 23,

United States Code;

- (9) "Obliterated sign," a sign that is totally or partially painted out so as not to identify a particular product, service or facility;
- (10) "Obsolete advertising material," material advertising a product or service no longer in use or available;
- (11) "On-premise sign," a sign identifying an establishment's activities, products or services conducted or available on the property upon which it is located and signs advertising the sale or lease of the property upon which they are located;
- (12) "Outdoor advertising," any outdoor sign, display, device, light, figure, drawing, painting, message, plaque, poster, or billboard, which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary systems;
- (13) "Primary system," that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state department of transportation, and approved by the United States secretary of transportation, pursuant to the provisions of Title 23, United States Code;
- (14) "Quadrant of an interstate interchange," one of the four quarters created by the intersection of an interstate highway and a crossroad that is not part of the interstate system;
- (15) "Safety rest area," an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public;
- (16) "Service road," a graded and surfaced road providing public access to property within two thousand five hundred feet of an interstate highway centerline;
- (17) "Specific or defined area," an economic area that would suffer substantial economic hardship by the removal of any directional sign, display, or device, providing directional information about goods and services in the interest of the traveling public;
- (18) "Tourist oriented directional sign, display or device providing directional information about goods and services in the interest of the traveling public," any sign, display, or device giving directional information pertaining to rest stops, food services, lodging, campgrounds, gasoline and automotive services, and natively produced handicraft goods, and informing the traveling public of highway route mileage and site location and reference. Such directional information shall be in existence on

such signs as of May 5, 1976;

- (19) "Urban area," as defined by 23 U.S.C. § 101; and
- (20) "Zoned commercial or industrial areas," those areas which are zoned commercial or industrial pursuant to Title 11.

Section 69. That § 31-29-63 be AMENDED:

31-29-63. Advertising prohibited within specified distances of main-traveled way--Exceptions.

No outdoor advertising may be erected within six hundred sixty feet of the nearest edge of the right-of-way and visible from the main-traveled way or beyond six hundred sixty feet of the nearest edge of the right-of-way visible from the main-traveled way, located outside an urban area and erected with the purpose of its message being read from the main-traveled way of the interstate or primary systems except the following:

- (1) Directional and official signs and notices, as defined by subdivision 31-29-62(6);
- (2) Signs, displays, and devices advertising the sale or lease of property upon which they are located;
- (3) Signs, displays, and devices advertising activities conducted on the property upon which they are located;
- (4) Signs, displays, and devices located in areas which are designated industrial or commercial by local authority as provided by Title 11 and within six hundred sixty feet of an interstate or primary highway;
- (5) Signs, displays, and devices located in unzoned industrial or commercial areas as provided by this chapter and within six hundred sixty feet of an interstate or primary highway;
- (6) Signs, including both official public, and private business signs, for which the department shall make a uniform charge, giving specific information in the interest of the traveling public located within the rights-of-way of the interstate and primary systems in areas at appropriate distances from interchanges or intersections on such systems, the location of which shall be determined by the department, any provision of chapter 31-28 or of this chapter to the contrary notwithstanding;
- (7) Signs lawfully in existence on October 22, 1965, determined by the State Transportation Commission to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this chapter;
- (8) Warning signs placed by public utilities for the protection of underground utility

cables;

- (9) Signs exempt from removal in certain defined areas that are in the specific interest of the traveling public and have qualified for an economic hardship exemption; or
- (10) Signs, displays, and devices advertising the distribution of nonprofit organizations of free coffee to individuals traveling on the interstate system or the primary system. For the purposes of this subdivision, the term, free coffee, includes coffee for which a donation may be made, but is not required.

Section 70. That § 31-32-12 be AMENDED:

31-32-12. Bridges over ditches and canals excepted from notice requirements.

Nothing in § 31-32-10 may be construed as imposing any liability upon the county for any injury sustained by reason of any violation of § 46-8-16 relating to bridges over ditches and canals.

Section 71. That § 32-4-10.1 be AMENDED:

32-4-10.1. Forfeiture of vehicle, trailer or component part--Return to lawful owner not precluded--Assignment of identification number.

Any motor vehicle, trailer, or component part described in § 32-4-10 is deemed contraband and no property right exists in it. If such motor vehicle, trailer, or component part comes into the custody of a law enforcement officer, it shall be forfeited. Nothing in this section precludes the return of such a motor vehicle, trailer, or component part to its lawful owner following presentation of satisfactory evidence of ownership and assignment of an identification number by the Department of Revenue under the provisions of § 32-3-22.

Section 72. That § 32-4-12 be AMENDED:

32-4-12. Impounding vehicle or part believed stolen--Disposition.

If a peace officer has probable cause to believe that a motor vehicle or trailer or any component part of a vehicle is stolen, he shall impound the vehicle or part and notify its lawful owner and the agency to which the theft was reported of its recovery and location.

A vehicle or component part which has been impounded pursuant to this section shall be released to its lawful owner if the owner presents satisfactory evidence of his ownership.

A vehicle or component part that has been impounded under this section and which has not been claimed within ninety days following notice of recovery to the owner or if the owner cannot be located after a reasonable effort within ninety days following impoundment is forfeited and shall be disposed of.

Section 73. That § 32-4-14 be AMENDED:

32-4-14. Seizure of property on arrest for trafficking--Forfeiture.

Upon the arrest of any person or entity for violation of § 32-4-13, the law enforcement officer may seize all vehicles or vehicle parts, all vehicles and other equipment used to transport such vehicle or vehicle parts, all tools, equipment, and other materials and all real and personal property and all money or other proceeds used or acquired as a result of such violation.

Upon the conviction of any person or entity, all items seized shall be forfeited to the state.

Section 74. That § 32-10-3.1 be REPEALED.

32-10-3.1. Commission abolished--Performance of functions--Collection and forwarding of fees.

Section 75. That § 32-32-4 be AMENDED:

32-32-4. Use of color for other vehicles prohibited--Repainting of buses formerly used--Violation as petty offense.

No person, persons, or organizations may use the color reserved for school buses as provided in § 32-32-3 in connection with the operation of any other vehicle or vehicles, whether school bus or not, for purposes not connected with or incident to the transportation of school children to and from school and as authorized under § 13-29-1. Any school bus which was formerly used by school districts to transport children shall be completely repainted in a color other than national school bus yellow or any colors commonly referred to as yellow. A violation of this section is a petty offense.

This section does not apply to school buses if they are used by a municipality to provide public transportation in times of a local fuel shortage, as determined by the governing body of the municipality.

Section 76. That § 34-16-15 be AMENDED:

**34-16-15. County disposal of dead animal on failure of township to act--
Liability for expense.**

Whenever the owner of a dead animal or the township supervisor fails to act within two days after the knowledge of the fact that such dead animal exists, it shall then be the duty of the superintendent of the county board of health to forthwith cause the body of such dead animal to be burned or buried, and the expense of the same shall be paid by the county, and the amount of such expenses paid by the county shall constitute a lien against the township in which said animal was found and shall be paid by such township, and the township shall in turn recover such expenses from the owner or person in charge of such dead animal.

Section 77. That § 34-20B-70 be AMENDED:

34-20B-70. Property subject to forfeiture.

The following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

- (1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;
- (2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;
- (3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
- (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2). This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance

as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;

- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;
- (7) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance or marijuana.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of § 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

Section 78. That § 34-23B-6 be AMENDED:

34-23B-6. Referral of pregnant woman to alcohol or drug prevention or treatment program--Immunity from liability.

Any physician, physician's assistant, nurse, certified nurse practitioner, certified nurse midwife, counselor, social worker, licensed or registered child welfare provider, employee or volunteer of a domestic abuse center, chemical dependency counselor, or safety sensitive position as defined in subdivision 3-6C-1(25) who provides services to a pregnant woman may make a referral to a prevention or treatment program accredited pursuant to chapter 34-20A if the provider has information that a pregnant woman is engaging in the abusive use of alcohol or use of any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapter 22-42 or 34-20B. Any such provider, who, in good faith, makes a referral to a prevention or treatment program accredited pursuant to chapter 34-20A of a pregnant woman engaging in abusive use of alcohol, abusive use of a lawfully prescribed controlled substance, or use of any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapter 22-42 or 34-20B, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the referral. This immunity also extends to any public

official who in good faith is involved in the investigation of such conduct or to any person described in this section who in good faith cooperates with any public official in an investigation. Any referral pursuant to this section is permissive and nothing in this section requires the making of any referral.

Section 79. That § 34-31A-35 be AMENDED:

34-31A-35. Change of district boundaries--Prior rights unimpaired--Liability for debts.

The boundaries of any rural fire protection district organized under the provisions of this chapter may be changed in the manner prescribed by §§ 34-31A-5 through 34-31A-9, but the changes of boundaries of any such district may not impair or affect its organization or its right in or to property; nor may it impair, affect or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. Any portion or area of land which was part of a rural fire district, organized under §§ 34-31A-5 through 34-31A-9, and which is annexed into a bordering municipality, is liable for any indebtedness incurred while within the boundaries of the fire district. Nothing in this section may preclude a municipality, by ordinance, when annexing land within a rural fire protection district, of assuming a portion or all of the indebtedness on the annexed land which is a result of being in the rural fire protection district.

Section 80. That § 34-48A-10 be AMENDED:

34-48A-10. Special permits for emergency movement of persons and property in lieu of other permits.

The Governor may, by executive order, provide for the issuance of special permits for the movement of persons, commodities, and equipment in the event of disaster or impending disaster from any cause to the extent that the civilian or livestock population, or any part thereof, will be deprived of necessary, and essential food, fuel, supplies, and equipment. The special permits herein provided shall be issued without fee and shall be in lieu of compensation for the unusual use of the highways and in lieu of those permits required by § 32-22-38.

Section 81. That § 34A-5-40 be AMENDED:

34A-5-40. Certification of unpaid charges and tax levies--Collection with real estate taxes--Tax sales.

The board of trustees may cause the amount of any charges, and interest and penalties on the charges, for sewer service rendered or made available to any land within the district, which are due and unpaid on the first day of October in each year to be certified by the clerk of the district to the county auditor in the manner provided in § 10-12-7 together with any taxes levied by the district for corporate purposes. All amounts so certified shall be inserted by the county auditor upon the tax list of the current year and shall be payable and delinquent at the same time and shall incur penalty and interest and shall be collected by the same procedure as real estate taxes on the same property. In the event of a tax sale or the issuance of a tax deed, the provisions of §§ 9-43-112 and 9-43-113 shall apply to all amounts so certified and then delinquent, in the same manner as delinquent installments of special assessments.

Section 82. That § 34A-6-66 be AMENDED:

34A-6-66. Promulgation of rules for waste tire stockpiling and processing facilities.

The department shall determine the number of stockpiling facilities that are necessary; and the board shall promulgate rules pursuant to chapter 1-26 for waste tire stockpiling and processing facilities. The rules shall include the following:

- (1) The prohibition of burning within one hundred yards of a tire stockpile;
- (2) The maximum height, width, and length of a tire stockpile;
- (3) Plans to control mosquitos and rodents;
- (4) A facility closure plan;
- (5) Specifications for fire lanes between stockpiles;
- (6) Limitation of the total number of tires allowed at a single stockpile site;
- (7) Criteria for the issuance of permits to qualified waste tire stockpiling and processing facilities. No waste tire stockpiling or processing may be done without a permit; and
- (8) Appropriate waste tire processing methods.

Section 83. That § 34A-6-70 be AMENDED:

34A-6-70. Solid waste evaluation.

Each county and first class municipality shall prepare or have prepared, on or before January 1, 1993, a solid waste evaluation coordinated with the state solid waste management plan. The evaluation shall cover a fifteen-year time period, shall serve as

the basis for county and municipal decisions on the need for facilities, and shall be provided to the board for its consideration in determining whether to issue facility permits under § 34A-6-1.13. The evaluation shall include an analysis of the current and projected volume of solid waste, disposal capacity including all existing and planned facilities, the potential for source reduction, reuse, recycling, resource recovery, and shared and regional recycling and waste management facilities. The evaluation shall include a full accounting of the true and total cost, including the long-term costs, of all options analyzed in the evaluation. Counties and municipalities subject to this section shall consider in their solid waste evaluation, 40 CFR parts 257 and 258 of the environmental protection agency solid waste disposal criteria commonly known as "RCRA subtitle D regulations," as finally adopted and published in the Federal Register on October 9, 1991, and as amended to January 1, 2011; the statewide comprehensive solid waste management plan; and all rules promulgated by the board.

Section 84. That § 34A-13-4 be AMENDED:

34A-13-4. Immediate corrective action by department.

To assure an adequate response to a release, the director may take corrective action if the department determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment. Before taking any action pursuant to this section, the department shall make all reasonable efforts, taking into consideration the urgency of the situation, to order and permit a responsible person to take a corrective action and notify the owner of real property where the corrective action is to be taken.

Section 85. That § 34A-13-18 be AMENDED:

34A-13-18. Deposit and crediting of revenue.

Revenue from the following sources shall be deposited in the state treasury and credited to a petroleum release compensation fund:

- (1) Any fees imposed by § 34A-13-20;
- (2) Any money recovered by the fund pursuant to § 34A-13-9, including administrative expenses, and any money paid under an agreement, stipulation, or settlement;
- (3) Any interest attributable to investment of money in the fund;
- (4) Any money received by the secretary of environment and natural resources in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund;

- (5) Any money or other assets received by the secretary of environment and natural resources in connection with any loan from the fund or any account in the fund.

Section 86. That § 36-11A-4 be AMENDED:

36-11A-4. Pharmacy distributor determined.

A pharmacy distributor is any pharmacy or hospital pharmacy that is engaged in the delivery or distribution of prescription drugs either to another pharmacy or to another person or entity, including to a wholesale drug distributor, that is engaged in the delivery or distribution of prescription drugs and who is involved in the actual, constructive, or attempted transfer of a drug in this state to other than the ultimate consumer, if the financial value of the drugs so delivered or distributed is equivalent to at least five percent of the total gross sales of the pharmacy.

Section 87. That § 36-11A-23 be AMENDED:

36-11A-23. Normal distribution channel determined.

For the purposes of §§ 36-11A-20 through 36-11A-46, a normal distribution channel is a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, or from that manufacturer to that manufacturer's co-licensed partner, or from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

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

Section 88. That § 36-11A-34 be AMENDED:

36-11A-34. Returns or exchanges of prescription drugs.

A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled, or otherwise nonsaleable pharmaceutical products shall be distributed by the receiving wholesale distributor only to either the original manufacturer or a third party returns processor. Wholesale distributors and pharmacies shall be held accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

Section 89. That § 36-31-6 be AMENDED:

36-31-6. Application for licensure--Requirements.

Any applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements:

- (1) Residence: Applicant need not be a resident of this state;
- (2) Character: Applicant shall be of good moral character;
- (3) Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board:
 - (a) The occupational therapy educational program shall be accredited by the committee on allied health education and accreditation/American Medical Association in collaboration with the American Occupational Therapy Association;
 - (b) The occupational therapy assistant educational program shall be approved by the American Occupational Therapy Association.
- (4) Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association:
 - (a) For an occupational therapist, a minimum of six months of supervised fieldwork experience is required;
 - (b) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.

- (5) Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination approved by the board upon recommendation by the occupational therapy committee;
- (6) Certification: In order to apply physical agent modalities, an occupational therapist or occupational therapist assistant shall be qualified pursuant to this subdivision, as follows:
 - (a) Has successfully completed twenty-five hours of American Occupational Therapy Association or American Physical Therapy Association approved education covering physical agent modalities and completed a supervised mentorship to include five case studies on each class of modality to be incorporated into patient care;
 - (b) Is certified as a hand therapist by the Hand Therapy Certification commission or other equivalent entity recognized by the board; or
 - (c) Has completed education during a basic occupational therapy educational program that included demonstration of competencies on each class of the physical agent modalities.

A supervising therapist or mentor may be a physical therapist, a certified hand therapist, or an occupational therapist who has completed a supervised mentorship and has five years of clinical experience utilizing each class of physical agent modalities; or an occupational therapist who has graduated from an occupational therapy program whose curriculum includes physical agent modality education.

Section 90. That § 37-2-16 be AMENDED:

37-2-16. Violation as misdemeanor.

A violation of any provision in §§ 37-2-5 to 37-2-25, inclusive, and §§ 37-2-30, 37-2-31, and 37-2-33 is a Class 1 misdemeanor.

Section 91. That § 37-23-4 be AMENDED:

37-23-4. Powers and duties of attorney general.

The attorney general shall, in addition to other powers and duties vested in him by this or any other law:

- (1) Receive and forward to appropriate agencies of the state for final processing and determination of complaints from any citizen of South Dakota relating to consumer affairs. It shall be the further responsibility of that agency to maintain records

- indicating the final disposition of any matters so referred;
- (2) Advise the Governor as to all matters affecting the interests of the public consumer;
 - (3) Review state policies and programs of primary importance to consumers or to meet consumer needs which can be met appropriately through state action;
 - (4) Consider the aspects of state policies, programs, and operations wherein the view of consumers should be made available to state officials and the manner in which such views can be communicated to appropriate departments and agencies;
 - (5) Recommend the enactment of such legislation as he deems necessary to protect and promote the interest of the public as consumers;
 - (6) Appear before governmental departments, agencies, and commissions to represent and be heard on behalf of consumer interests, except before the interstate commerce commission, where specific authority to represent the public interest has been vested in the public utilities commission;
 - (7) Cooperate with and establish necessary liaison with consumer organizations;
 - (8) Assist in the coordination of federal, state, and municipal activities relating to consumer affairs; and
 - (9) Do such other acts which may be necessary to the exercise of powers and functions under this chapter.

Section 92. That § 41-6-30 be AMENDED:

41-6-30. Nonresident predator/varmint license--Privileges--When license not required--Violation as misdemeanor.

Except as provided in this section, it is a Class 2 misdemeanor for a nonresident to hunt, take, or kill species defined as a predator/varmint in § 41-1-1 without a nonresident predator/varmint license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A nonresident predator/varmint license allows a nonresident to take or kill species defined as a predator/varmint in § 41-1-1, except by means of aerial hunting or as prohibited by statute or rule.

However, if a nonresident possesses a nonresident small game license, a nonresident waterfowl license, a nonresident big game license, a nonresident shooting preserve license while on a licensed shooting preserve, or a nonresident turkey license as provided in § 41-6-17, 41-6-18.1, 41-6-20, or 41-6-28, the nonresident need not acquire the nonresident predator/varmint license as provided in this section to hunt the species enumerated by this section in the manner and places permitted. A nonresident small game license, a

nonresident waterfowl license, a nonresident big game license, or a nonresident turkey license is valid for hunting those animals permitted by the nonresident predator/varmint license from date of purchase until the end of the license year as provided by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26. However, a nonresident shooting preserve license is valid for hunting species defined as a predator/varmint in § 41-1-1 on a licensed shooting preserve during the shooting preserve season.

Section 93. That § 41-6-61 be AMENDED:

41-6-61. Licenses to be issued by secretary--Discretionary licenses.

Licenses under §§ 41-6-25 to 41-6-28, inclusive, under §§ 41-6-31 to 41-6-33, inclusive, under §§ 41-6-38 to 41-6-43, inclusive, may be issued by the secretary of game, fish and parks. The granting of licenses provided under §§ 41-6-32 to 41-6-33, inclusive, and under §§ 41-6-39 to 41-6-43, inclusive, shall be in the discretion of the secretary.

Section 94. That § 41-6-70.1 be AMENDED:

41-6-70.1. Portion of license fees to be used for certain designated purposes.

A portion of the license fees collected by the Department of Game, Fish and Parks, in an amount equal to one million thirty-three thousand two hundred sixty-nine dollars and ten cents per year, shall be used only for the following purposes: administration of licensing services provided by the department; increased contribution to the animal damage control fund as provided in § 40-36-11; development of public access, other than fee-title purchase of land, for hunting and fishing; wildlife habitat improvements; management of wildlife damage; or to be credited toward a reduction of resident license fees. The Game, Fish and Parks Commission shall approve amounts allocated to the specific purposes identified in this section.

Section 95. That § 42-7-89 be AMENDED:

42-7-89. Payments to state in lieu of other taxes.

The payments required in §§ 42-7-63, 42-7-79, 42-7-85, and 42-7-102 to be made by the licensee to the state treasurer are in lieu of all other or further excise or occupational taxes to the state or any county, municipality, or other political subdivision.

Section 96. That § 42-8-41 be AMENDED:

42-8-41. Operation of boat or departure from premises without required equipment prohibited.

No person may operate or give permission for the operation of a boat which is not equipped as required by rules adopted pursuant to § 32-3A-1. Neither the owner of a boat, nor the owner's agent or employee, may permit any motorboat or any boat to depart from the owner's premises unless it is provided, either by owner or renter, with the equipment required pursuant to such rules. A violation of this section is a Class 2 misdemeanor.

Section 97. That § 42-8-42 be AMENDED:

42-8-42. Muffler required--Use of cutouts prohibited--Racing boats excepted.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for racing boats competing in a regatta or boat race approved as provided by rules adopted pursuant to § 32-3A-1, and for such racing boats while on trial runs, during a period not to exceed forty-eight hours immediately preceding a regatta or race and for motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following a regatta or race. A violation of this section is a Class 2 misdemeanor.

Section 98. That § 43-15B-7 be AMENDED:

43-15B-7. Sale of unregistered project prohibited--Exception--Issuance of restricted licenses.

No person may offer to sell in this state any time-share project, or offer to sell outside the state any time-share in a time-share project located within this state without first registering the time-share project with the South Dakota Real Estate Commission. The sale or transfer of a time-share project by an owner other than the developer or sales agent is exempt from this chapter. The Real Estate Commission may issue restricted brokers' or salesmen's licenses for time share brokers or salesmen in accordance with rules promulgated under § 36-21A-47.

Section 99. That § 46A-10A-116 be AMENDED:

46A-10A-116. Powers and duties of board of trustees.

The board of trustees may control, supervise, and manage the district. Subject to the legal controls for drainage management under § 46A-10A-20, the board of trustees may, in conformity with any applicable local, state, and federal laws, rules, ordinances, and regulations:

- (1) Clean out, repair, and maintain an existing drainage ditch;
- (2) Deepen, widen, or enlarge a drainage ditch;
- (3) Create a new drainage ditch, or relocate an existing drainage ditch;
- (4) Extend an existing drainage ditch;
- (5) Acquire lands for right-of-way for ditches by purchase or condemnation or any other lawful method in conformity with chapter 21-35 and any other provision of state law;
- (6) Repair levies, dikes, and barriers for the purpose of drainage;
- (7) Regulate the flow and direction of water to prevent downstream flooding;
- (8) Employ or contract with an engineer, hydrologist, surveyor, appraiser, assessor, legal counsel, or any other specialists as they deem necessary to carry out the powers and duties conferred by §§ 46A-10A-98 to 46A-10A-123, inclusive;
- (9) Let contracts for construction, maintenance, repair, or other necessary work pursuant to the provisions of chapters 5-18A and 5-18B and § 46A-10A-75. No member of the board of trustees may have any interest in any contract or employment entered into pursuant to this subdivision or subdivision (8);
- (10) Request the county commission or township board of supervisors to replace, repair, remove, and enlarge public highway culverts and bridges, pursuant to §§ 46A-10A-76, 31-12-19, 31-14-2, and 31-14-27;
- (11) Grant a request by a landowner to annex the landowner's land to the district and apportion the costs of clean out, maintenance, or construction according to the benefits received and subject to approval by a majority of the eligible landowners voting in a special election held by the board of trustees in conjunction with the district's annual election; and
- (12) Reclassify benefits and apportion costs of clean out, extension, enlargement, repairs, or improvements among landowners benefitting therefrom, if the landowners have land located within the drainage district.

Section 100. That § 46A-14-87 be AMENDED:

46A-14-87. State Conservation Commission determination on proposed dissolution.

After the public hearing required by § 46A-14-86, the State Conservation Commission shall determine whether the proposed dissolution is to be allowed. In making its determination, the commission shall consider written and verbal reports by the watershed district board, the public attitude displayed at the public hearing, and all other information the members of the commission deem relevant. At least one watershed district board member shall be present at the commission meeting to testify.

Section 101. That § 47-1A-120 be AMENDED:

47-1A-120. Requirements for documents.

Any document satisfying the following requirements, and the requirements of any other section that adds to or varies these requirements, is entitled to be filed by the Office of the Secretary of State:

- (1) The document is required or permitted to be filed in the Office of the Secretary of State;
- (2) The document contains the information required by this chapter;
- (3) The document is typewritten or printed or, if electronically transmitted, is in a format that can be retrieved or reproduced in typewritten or printed form;
- (4) The document is in the English language. A corporate name need not be in English if written in English letters or in English letters in combination with Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation;
- (5) The document is executed by one of the following persons:
 - (a) By the chair of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
 - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that receiver, trustee, or court-appointed fiduciary;
- (6) The person executing the document has signed it and has stated beneath or opposite the signature the person's name and the capacity in which the person signs. The document may, but need not, contain a corporate seal, attestation, acknowledgment, or verification;
- (7) If the Office of the Secretary of State has prescribed a mandatory form for the

- document under § 47-1A-121, the document is in or on the prescribed form;
- (8) The document is delivered to the Office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Office of the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Office of the Secretary of State may require one exact or conformed copy to be delivered with the document; and
 - (9) When the document is delivered to the Office of the Secretary of State for filing, the correct filing fee, and any license fee, or penalty required to be paid at that time by this chapter or other law is paid or provision for payment made in a manner permitted by the Office of the Secretary of State.

Section 102. That § 47-1A-120.1 be AMENDED:

**47-1A-120.1. Terms of plan or filed document dependent on extrinsic facts--
Applicable provisions.**

If a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

- (1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;
- (2) The facts may include:
 - (a) Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;
 - (b) A determination or action by any person, including the corporation or any other party to a plan or filed document; or
 - (c) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

For the purposes of this section, a filed document is a document filed with the Office of the Secretary of State under any provision of this chapter except §§ 47-1A-1502 through 47-1A-1601, and a plan is a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange.

Section 103. That § 47-1A-128 be AMENDED:

47-1A-128. Certificate of existence.

Any person may apply to the Office of the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation. A certificate of existence or authorization shall set forth:

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
- (2) That the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business in this state;
- (3) That all fees, taxes, and penalties owed to this state have been paid, if:
 - (a) Payment is reflected in the records of the Office of the Secretary of State; and
 - (b) Nonpayment affects the existence or authorization of the domestic or foreign corporation;
- (4) That its most recent annual report has been delivered to the Office of the Secretary of State;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the Office of the Secretary of State that may be requested by the applicant.

Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Office of the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Section 104. That § 47-1A-140 be AMENDED:

47-1A-140. Definitions.

Terms used in this chapter mean:

- (1) "Articles of incorporation," the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Office of the Secretary of State under any provision of this chapter. If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, from that time forward the articles do not include any prior documents;
- (2) "Authorized shares," the shares of all classes a domestic or foreign corporation is authorized to issue;

- (3) "Conspicuous," so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous;
- (4) "Corporation," "domestic corporation," or "domestic business corporation," any corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter;
- (5) "Deliver," or "delivery," any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Distribution," any direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise;
- (7) "Domestic unincorporated entity," an unincorporated entity whose internal affairs are governed by the laws of this state;
- (8) "Electronic transmission," or "electronically transmitted," any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;
- (9) "Eligible entity," any domestic or foreign unincorporated entity;
- (10) "Eligible interest," an interest or membership as defined in this section;
- (11) "Employee," includes any officer but not a director. However, a director may accept duties that make the director also an employee;
- (12) "Entity," includes domestic and foreign business corporation; estate; trust; domestic and foreign unincorporated entity; and state government, the United States government, and any foreign government;
- (13) "Facts objectively ascertainable," outside of a filed document or plan as defined in §§ 47-1A-120.1 to 47-1A-120.3, inclusive;
- (14) "Filing entity," any unincorporated entity that is of a type that is created by filing a public organic document;
- (15) "Foreign corporation," any corporation incorporated under a law other than the law of this state, which would be a business corporation if incorporated under the laws of this state;
- (16) "Foreign nonprofit corporation," any corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated

under the laws of this state;

- (17) "Foreign unincorporated entity," any unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state;
- (18) "Governmental subdivision," includes authority, county, district, and municipality;
- (19) "Individual," any natural person;
- (20) "Interest," either or both of the following rights under the organic law of an unincorporated entity:
 - (a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
 - (b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;
- (21) "Interest holder," any person who holds of record an interest;
- (22) "Membership," the rights of a member in a domestic or foreign nonprofit corporation;
- (23) "Nonfiling entity," any unincorporated entity that is of a type that is not created by filing a public organic document;
- (24) "Nonprofit corporation," or "domestic nonprofit corporation," any corporation incorporated under the laws of this state and subject to the provisions of chapters 47-22 to 47-28, inclusive;
- (25) "Organic document," any public organic document or a private organic document;
- (26) "Organic law," the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;
- (27) "Owner liability," personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:
 - (a) Solely by reason of the person's status as a shareholder, member, or interest holder; or
 - (b) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity;
- (28) "Person," includes an individual and an entity;

- (29) "Principal office," the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (30) "Private organic document," any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. If a private organic document has been amended or restated, the term means the private organic document as last amended or restated;
- (31) "Public organic document," the document, if any, that is filed of public record to create an unincorporated entity. If a public organic document has been amended or restated, the term means the public organic document as last amended or restated;
- (32) "Proceeding," includes civil suit and criminal, administrative, and investigatory action;
- (33) "Record date," the date established under §§ 47-1A-601 to 47-1A-603, inclusive, or §§ 47-1A-701 to 47-1A-747, inclusive, on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;
- (34) "Secretary," the corporate officer to whom the board of directors has delegated responsibility under § 47-1A-840 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;
- (35) "Shareholder," the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;
- (36) "Shares," the units into which the proprietary interests in a corporation are divided;
- (37) "Sign," or "signature," includes any manual, facsimile, conformed, or electronic signature;
- (38) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;
- (39) "Subscriber," any person who subscribes for shares in a corporation, whether before or after incorporation;
- (40) "Unincorporated entity," any organization or artificial legal person that either has a

separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and incorporated nonprofit association;

- (41) "United States," includes district, authority, bureau, commission, department, and any other agency of the United States;
- (42) "Voting group," all shares of one or more classes or series that, under the articles of incorporation or this chapter, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group;
- (43) "Voting power," the current power to vote in the election of directors.

Section 105. That § 47-1A-403 be AMENDED:

47-1A-403. Foreign corporation--Registration of corporate name.

A foreign corporation may register its corporate name, or its corporate name with any addition required by §§ 47-1A-1506.1 through 47-1A-1506.4, if the name is distinguishable upon the records of the Office of the Secretary of State from the corporate names that are not available under § 47-1A-401.1. A foreign corporation registers its corporate name, or its corporate name with any addition required by §§ 47-1A-1506.1 through 47-1A-1506.4 by delivering to the Office of the Secretary of State for filing an application:

- (1) Setting forth its corporate name, or its corporate name with any addition required by §§ 47-1A-1506.1 through 47-1A-1506.4 the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
- (2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

The name is registered for the applicant's exclusive use upon the effective date of the application.

Section 106. That § 47-1A-1520 be AMENDED:

47-1A-1520. Withdrawal of foreign corporation.

A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Office of the Secretary of State. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (3) That it revokes the authority of its registered agent to accept service on its behalf; and
- (4) The address of the corporation's principal office.

After the withdrawal of the corporation is effective, service of process is perfected in accordance with chapter 59-11.

Section 107. That § 47-1A-1522 be AMENDED:

47-1A-1522. Withdrawal upon conversion to a nonfiling entity.

A foreign business corporation authorized to transact business in this state that converts to a domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign business corporation and the name of the state or country under whose law it was incorporated before the conversion;
- (2) That it surrenders its authority to transact business in this state as a foreign business corporation;
- (3) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs;
- (4) If it has been converted to a foreign unincorporated entity:
 - (a) That it revokes the authority of its registered agent to accept service on its behalf; and
 - (b) The address of the entity's principal office.

After the withdrawal under this section of a corporation that has converted to a foreign unincorporated entity is effective, service of process is perfected in accordance with chapter 59-11.

After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process shall be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

Section 108. That § 47-1A-1531 be AMENDED:

47-1A-1531. Procedure for and effect of revocation.

If the Office of the Secretary of State determines that one or more grounds exist under § 47-1A-1530 for revocation of a certificate of authority, the Office of the Secretary of State shall serve the foreign corporation with written notice of that determination. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Office of the Secretary of State that each ground determined by the Office of the Secretary of State does not exist within sixty days after service of the notice is perfected, the Office of the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Office of the Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation.

The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

Section 109. That § 47-1A-1532 be AMENDED:

47-1A-1532. Appeal from revocation.

A foreign corporation may appeal the Office of the Secretary of State's revocation of its certificate of authority to the circuit court within thirty days after service of the certificate of revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Office of the Secretary of State's certificate of revocation.

The court may summarily order the Office of the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

Section 110. That § 47-1A-1601.1 be AMENDED:

47-1A-1601.1. Corporate records--Copies at principal office.

A corporation shall keep a copy of the following records at its principal office:

- (1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in § 47-1A-120.2 regarding facts on which a filed document is dependent;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 47-1A-1620;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the Office of the Secretary of State.

Section 111. That § 47-10-24 be AMENDED:

47-10-24. Applicability of other laws.

The provisions of §§ 47-1A-101 through 47-1A-863.3, §§ 47-1A-1401 through 47-1A-1440, and §§ 47-1A-1601 through 47-1A-1620 shall apply to corporations incorporated under this chapter, insofar as they may be applicable and not inconsistent with this chapter.

Section 112. That § 47-11A-1 be AMENDED:

47-11A-1. Formation of corporation and limited liability company authorized.

One or more chiropractors may form professional service corporations for the practice of chiropractic under the South Dakota Business Corporation Act, as amended, providing that such corporations are organized and operated in accordance with the provisions of this chapter. The articles of incorporation of such corporations shall contain provisions complying with the requirements of §§ 47-11A-1.1 through 47-11A-7.

Chiropractors may form professional limited liability companies under the South Dakota Limited Liability Company Act, as amended, providing that such limited liability companies are organized and operated in accordance with the provisions of this chapter. The articles of organization of such limited liability companies shall contain provisions complying with the requirements of §§ 47-11A-1.1 through 47-11A-7.

Section 113. That § 47-13A-1 be AMENDED:

47-13A-1. Professional corporations for practice of law authorized--Limited liability company.

One or more lawyers licensed pursuant to chapter 16-16 may form professional service corporations for the practice of law under §§ 47-1A-101 through 47-1A-863.3, §§47-1A-1401 through 47-1A-1440, and §§ 47-1A-1601 through 47-1A-1620, or may form limited liability companies under the South Dakota Limited Liability Company Act, providing that such corporations and limited liability companies are organized and operated in accordance with the provisions of this chapter. In any corporation formed under this chapter, one or more persons may act as the sole stockholders, directors or officers of such corporation. However, any limited liability company formed under this chapter shall comply with the South Dakota Limited Liability Act, as amended.

Section 114. That § 47-13B-6 be AMENDED:

47-13B-6. Disposition of shares held by person no longer qualified.

Provisions shall be made requiring any shareholder who ceases to be eligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any other qualified person.

Section 115. That § 47-18-16.4 be AMENDED:

47-18-16.4. Notice of grounds for dissolution--Time limit for corrections--Subsequent existence--Authority of agent.

If the secretary of state determines that one or more grounds exist under § 47-18-16.3 for dissolving a cooperative, the secretary shall serve the cooperative with written notice of that determination. If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative. A cooperative administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under this chapter. Administrative dissolution of a cooperative does not terminate the authority of its registered agent.

Section 116. That § 47-18-16.5 be AMENDED:

47-18-16.5. Application for reinstatement.

Any cooperative administratively dissolved under § 47-18-16.4 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution.

The application shall:

- (1) Recite the name of the cooperative and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

If the secretary of state determines that the application contains the information required and that the information is correct, the secretary shall cancel the certificate of dissolution and prepare an original and one copy of a certificate of reinstatement that recites that determination and the effective date of reinstatement, file the original of the certificate, and serve the copy on the cooperative. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the cooperative resumes carrying on its business as if the administrative dissolution had never occurred.

Section 117. That § 47-18-16.6 be AMENDED:

47-18-16.6. Denial of reinstatement--Appeal--Court action.

If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary shall serve the corporation with a written notice that explains the reason or reasons for denial. The cooperative may appeal the denial of reinstatement to the circuit court wherein its registered office is located within thirty days after service of the notice of denial is perfected. The cooperative appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial. The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

Section 118. That § 47-24-13.2 be AMENDED:

47-24-13.2. Notice of dissolution--Time limit for corrections--Continued existence--Authority of registered agent.

If the secretary of state determines that one or more grounds exist under § 47-24-13.1 for dissolving a corporation, the secretary shall serve the corporation with written notice of that determination. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation. A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under chapter 47-26 and notify claimants under §§ 47-26-4 and 47-26-34. Administrative dissolution of a corporation does not terminate the authority of its registered agent.

Section 119. That § 47-24-14.1 be AMENDED:

47-24-14.1. Denial of reinstatement--Appeal--Court action.

If the secretary of state denies a corporation's petition for reinstatement following administrative dissolution, the secretary shall serve the corporation with a written notice that explains the reason or reasons for denial. The corporation may appeal the denial of reinstatement to the circuit court of the county where the corporation's registered office or principal office was located within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement and the secretary of state's notice of denial. The court may order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate. The court's final decision may be appealed in the same manner as in any other civil proceedings.

Section 120. That § 47-24-16 be AMENDED:

47-24-16. Conforming petition for reinstatement filed--Certificate.

If a petition for reinstatement is filed and complies with the law, upon payment of the fee as provided under § 47-28-6, together with submission of any required report, the secretary of state shall endorse the word "filed" on the original and the copy and the

month, day, and year of filing. The secretary of state shall file the original in the Office of the Secretary of State and issue a certificate of reinstatement of corporation to which the secretary shall affix the copy.

The certificate of reinstatement of corporation, together with the copy of the petition for reinstatement, shall be returned to the applicants or their representatives.

Section 121. That § 48-7-1104 be AMENDED:

48-7-1104. Effective date, extended effective date, and repeal.

Except as set forth below, the effective date of this chapter is July 1, 1986, and the Uniform Limited Partnership Act is hereby repealed:

- (1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until July 1, 1987, the extended effective date, §§ 48-7-102 to 48-7-105, inclusive, 48-7-201 to 48-7-204, inclusive, and 48-7-206 are not effective until the extended effective date;
- (2) Section 48-7-402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date;
- (3) Sections 48-7-501, 48-7-502, and 48-7-608 apply only to contributions and distributions made after the effective date of this chapter;
- (4) Section 48-7-704 applies only to assignments made after the effective date of this chapter;
- (5) Sections 48-7-901 to 48-7-908, inclusive, dealing with registration of foreign limited partnerships, are not effective until the extended effective date;
- (6) Unless agreed otherwise by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of § 48-7-503, distributions to a withdrawing partner, rather than the provisions of § 48-7-604, and distribution of assets upon the winding up of a limited partnership, rather than the provisions of § 48-7-804, shall govern limited partnerships formed before the effective date of this chapter;
- (7) The repeal of any statutory provision by this chapter does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this chapter, nor does the repeal of any existing statutory provision by this chapter impair any contract or affect any right accrued before the

effective date of this chapter.

Section 122. That § 49-28-36.7 be AMENDED:

49-28-36.7. Application for permit.

A motor carrier shall make an application for a single trip permit, and the permit secured at a port of entry or by such other means designated by the department prior to beginning movement over the state's highways. The application shall include the applicant's name and business address, a description of the vehicle, and the route of travel suggested for the trip.

Section 123. That § 49-30-23 be AMENDED:

49-30-23. Transfer of stock--Stock deemed personal property.

The stock of every corporation organized under this chapter shall be deemed personal estate, and shall be transferable in the manner prescribed in its bylaws, subject to the provisions of §§ 57A-8-301 through 57A-8-307 and §§ 57A-8-401 through 57A-8-406, but no share shall be transferable until all previous calls shall have been fully paid in.

Section 124. That § 49-31-108 be AMENDED:

49-31-108. Violators subject to civil penalty imposed by commission.

Any person who violates §§ 49-31-99 through 49-31-107, or any rules promulgated pursuant to §§ 49-31-99 through 49-31-107, is subject to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The commission may impose a civil fine of not more than five thousand dollars for each offense. In determining the amount of the penalty upon finding a violation, or the amount of a compromise settlement, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, prior offenses and compliance history, and the good faith of the person charged in attempting to achieve compliance. Any telephone solicitation made to a person whose name first appears on the register is not a violation of §§ 49-31-99 through 49-31-107, if the solicitation is made within thirty days of the receipt of the register. Any penalty collected pursuant to this section shall be credited to the telephone solicitation account established pursuant to § 49-31-104.

Section 125. That § 49-33-5.1 be AMENDED:

49-33-5.1. Powers of corporation--Business corporation powers.

In addition to all provisions and powers in chapters 49-33 and 49-34 which are applicable to corporations organized thereunder, all provisions and powers set forth in the South Dakota Business Corporation Act, §§ 47-1A-101 through 47-1A-863.3, §§ 47-1A-1401 through 47-1A-1440, and §§ 47-1A-1601 through 47-1A-1620, applicable to domestic corporations are also applicable to corporations which have been or will be organized under chapters 49-33 and 49-34 except if in conflict with the express provisions of chapters 49-33 and 49-34.

Section 126. That § 49-33-21 be AMENDED:

49-33-21. Transfer of stock--Stock deemed personal property.

The stock of every corporation organized under this chapter shall be deemed personal property and shall be transferable in the manner prescribed by its bylaws, and subject to the provisions of §§ 57A-8-301 through 57A-8-307 and 57A-8-401 through 57A-8-406, but no shares may be transferable until all previous calls and assessments thereon have been fully paid.

Section 127. That § 49-37-4 be AMENDED:

49-37-4. Contractual powers--Sale of electrical appliances or equipment prohibited.

Subject to the limitations of the petition for its creation and all amendments thereto, a consumers power district may engage in, or transact business, or enter into any kind of contract or arrangement with any person, firm, corporation, limited liability company, association or labor union, state, county, municipality, governmental subdivision, or agency, or with the government of the United States, the Rural Electrification Administration, or with any officer, department, bureau, or agency thereof, or with any corporation organized by federal law, including the Reconstruction Finance Corporation, or any successor thereof, or with any body, politic or corporate, for any of the purposes mentioned in § 49-37-2 or for or incident to the exercise of any one or more of the foregoing powers, or for the generation, distribution, transmission, sale, purchase, exchange, interchange, wheeling, and pooling of electric power and energy for lighting, power, heating, and for any and every service involving, employing, or in any manner pertaining to the use of electric power and energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system or incident to any obligation

or indebtedness entered into or incurred by the district, except that such district may not engage in the sale of electrical appliances or equipment.

Section 128. That § 49-37-9.1 be AMENDED:

49-37-9.1. Prior joint contracts, expenditures and acquisitions validated despite noncompliance with competitive bid provisions.

All acts and proceedings had prior to January 1, 1975, and all contracts, expenditures and acquisitions made prior to January 1, 1975, by any consumers power district of the state where such consumers power district jointly with others contracted for the construction, building, alteration, extension, improvements, or the leasing of any power plant or system are in all things legalized, cured, and declared valid.

Section 129. That § 50-10-9 be AMENDED:

50-10-9. Regulations to be reasonable--Preexisting nonconforming structures.

No airport zoning regulation adopted under this chapter may be unreasonable. No regulation may require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulation when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in § 11-14-16.

Section 130. That § 51A-4-25 be AMENDED:

51A-4-25. Bank investments--Restrictions set by rule--Limitations.

A bank may purchase for its own account investment securities and registered mutual funds that invest exclusively in securities of the United States or its agencies and annuities as defined in § 51A-4-25.1 under such limits and restrictions as the commission may prescribe by rule, promulgated pursuant to chapter 1-26. In no event may the total amount of the investment securities of any one obligor or maker held by the bank for its own account exceed twenty percent of the capital stock and surplus and ten percent of the undivided profits of such bank except as provided in §§ 51A-4-26 and 51A-4-41.

Section 131. That § 51A-5-9 be AMENDED:

51A-5-9. Filing with Office of the Secretary of State by foreign bank or trust company acting as fiduciary--Designation as agent to receive process--Service of process.

Before qualifying or serving in this state in any fiduciary capacity, as defined in § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of attorney designating the secretary of state or the secretary of state's successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which the bank or trust company is acting in any fiduciary capacity with like effect as personal service on the bank or trust company. The power of attorney is irrevocable so long as any liability remains outstanding against the bank or trust company in this state. Service of process under this section may be made in the manner provided in chapter 59-11.

Section 132. That § 51A-7-13 be AMENDED:

51A-7-13. Definitions.

Terms used in §§ 51A-7-13 through 51A-7-26, mean:

- (1) "Acquisition of a branch," the acquisition of a branch located in a host state;
- (2) "Bank," a bank as defined in 12 U.S.C. § 1813(h) as of January 1, 1996. The term does not include any foreign bank as defined in § 12 U.S.C. 3101(7) as of January 1, 1996. However, the term includes any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) "Bank supervisory agency," any agency of another state with primary responsibility for chartering and supervising banks, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or any successor to these agencies;
- (4) "Branch," a branch bank as defined by subdivision 51A-1-2(7);
- (5) "Director," the director of the Division of Banking;
- (6) "Control," control as construed consistently with the provisions of 12 U.S.C. § 1841(a)(2) as of January 1, 1996;
- (7) "Home state," for a state bank, the state by which the bank is chartered; for a national bank, the state in which the main office of the bank is located; and for a

foreign bank, the state determined to be the home state of the foreign bank pursuant to 12 U.S.C. § 3103(c) as of January 1, 1996;

- (8) "Home state regulator," for an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered;
- (9) "Host state," a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch;
- (10) "Out-of-state bank," a bank whose home state is a state other than South Dakota;
- (11) "Out-of-state state bank," a bank chartered under the laws of any state other than South Dakota;
- (12) "State," any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;
- (13) "South Dakota state bank," a bank chartered under the laws of South Dakota;
- (14) "Commission," the State Banking Commission for South Dakota.

Section 133. That § 51A-7-19 be AMENDED:

51A-7-19. Examination of out-of-state bank's South Dakota branch.

The director may make such examinations of any branch established and maintained in South Dakota pursuant to §§ 51A-7-13 through 51A-7-26 by an out-of-state state bank as the director may deem necessary to determine whether the branch is operated in compliance with the laws of South Dakota and in accordance with safe and sound banking practices. The provisions of § 51A-2-18 apply to the examinations.

Section 134. That § 51A-7-23 be AMENDED:

51A-7-23. Joint examinations of joint enforcement actions by commission and bank supervisory agencies.

The commission may enter into joint examinations of joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in South Dakota by an out-of-state bank or any branch established and maintained by a South Dakota state bank in any host state. The director may at any time take any actions independently if the director deems such actions to be necessary or appropriate to carry out the commission's responsibilities under §§ 51A-7-13 through 51A-7-26 or to ensure compliance with the laws of South Dakota. However, in the case of an out-of-state state bank, the director shall recognize the exclusive authority of the home state regulator with respect to matters of safety and soundness.

Section 135. That § 51A-7-26 be AMENDED:

51A-7-26. Promulgation of rules to establish fees.

The commission may promulgate rules pursuant to chapter 1-26 to establish the fees provided by §§ 51A-7-13 through 51A-7-25, and to provide the necessary forms to administer §§ 51A-7-13 through 51A-7-25.

Section 136. That § 51A-12-13 be AMENDED:

51A-12-13. Collection of certain credit service charges by bank.

Notwithstanding any other provisions of law, a bank may contract for and collect the following credit service charges in connection with the extensions of credit made pursuant to § 51A-12-12 in an amount agreed to by the bank and the debtor either initially or pursuant to a change in terms authorized in § 54-11-12:

- (1) Membership fees, whether assessed on an annual or other periodic basis;
- (2) Transaction fees;
- (3) Interest charges permitted by § 54-3-1.1;
- (4) Charges for exceeding a designated credit limit;
- (5) Charges for stopping payment;
- (6) Charges for each return of a dishonored check, negotiable order of withdrawal or draft;
- (7) Other charges made in connection with the revolving loan or charge account arrangement.

All of the fees and charges permitted by this section shall be deemed interest. No fee, expense or other charge whatsoever may be taken or received by a bank under a revolving loan or charge account arrangement except as provided in this section.

Section 137. That § 55-13-3 be AMENDED:

55-13-3. Income--Principal--Charges.

- (a) Income is the return in money or property derived from the use of principal, including return received as
 - (1) rent of real or personal property, including sums received for cancellation or renewal of a lease;
 - (2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in § 55-13-7 on bond premium and bond discount;

- (3) income earned during administration of a decedent's estate as provided in § 55-13-5;
 - (4) corporate distributions as provided in § 55-13-6;
 - (5) accrued increment on bonds or other obligations issued at discount as provided in § 55-13-7;
 - (6) receipts from business and farming operations as provided in § 55-13-8;
 - (7) receipts from disposition of natural resources as provided in §§ 55-13-9 and 55-13-10;
 - (8) receipts from other principal subject to depletion as provided in § 55-13-11;
 - (9) receipts from disposition of any underproductive property.
- (b) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes
- (1) consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;
 - (2) proceeds of property taken on eminent domain proceedings;
 - (3) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;
 - (4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in § 55-13-6;
 - (5) receipts from the disposition of corporate securities as provided in § 55-13-7;
 - (6) royalties and other receipts from disposition of natural resources as provided in §§ 55-13-9 and 55-13-10;
 - (7) receipts from other principal subject to depletion as provided in § 55-13-11;
 - (8) any profit resulting from any change in the form of principal on underproductive property;
 - (9) receipts from disposition of any underproductive property;
 - (10) any allowances for depreciation established under §§ 55-13-8 and 55-13-13(a)(2).
- (c) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in § 55-13-13.

Section 138. That § 56-2-14 be AMENDED:

56-2-14. Satisfaction of principal obligation by surety--Reimbursement, exception as to other persons.

If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed including necessary costs and expenses, but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act.

Section 139. That § 57A-2-512 be AMENDED:

57A-2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

- (a) The nonconformity appears without inspection; or
- (b) Despite tender of the required documents the circumstances would justify injunction against honor under this title.

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 140. That § 57A-5-108 be AMENDED:

57A-5-108. Issuer's rights and obligations.

(a) An issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in § 57A-5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

- (1) To honor;
- (2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or
- (3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

- (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;
- (2) An act or omission of others; or
- (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under § 57A-5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this chapter:

- (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
- (2) Takes the documents free of claims of the beneficiary or presenter;
- (3) Is precluded from asserting a right of recourse on a draft under §§ 57A-3-414 and 57A-3-415;
- (4) Except as otherwise provided in §§ 57A-5-110 and 57A-5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
- (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Section 141. That § 57A-5-110 be AMENDED:

57A-5-110. Warranties.

(a) If its presentation is honored, the beneficiary warrants:

- (1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery; and
- (2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under chapters 57A-3, 57A-4, 57A-7, and 57A-8 because of the presentation or transfer of documents covered by any of those chapters.

Section 142. That § 57A-5-113 be AMENDED:

57A-5-113. Transfer by operation of law.

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in § 57A-5-108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in § 57A-5-108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Section 143. That § 57A-7-504 be AMENDED:

57A-7-504. Rights acquired in absence of due negotiation--Effect of diversion--Stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- (1) By those creditors of the transferor that could treat the transfer as void under § 57A-2-402 or 57A-2A-308;
- (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (4) As against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 57A-2-705 or a lessor under § 57A-2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Section 144. That § 57A-9-501.1 be AMENDED:

57A-9-501.1. Validation of noncomplying statements.

All statements to continue, release, assign, amend or terminate any financing statements filed subsequent to December 31, 1979, and prior to July 1, 1980, notwithstanding any noncompliance with the law regarding filing prior to July 1, 1980, are hereby cured, legalized and validated.

Section 145. That § 57A-10-101 be AMENDED:

57A-10-101. Effective date.

Such parts of this title as are necessary to effectuate the enactment of the Uniform Stock Transfer Act, including but not limited to subsection (1) of § 57A-1-102, § 57A-1-103, subsections (19), (28), (30), (32), (33) and (44) of § 57A-1-201, §§ 57A-8-103, 57A-8-204, 57A-8-206, 57A-8-207, 57A-8-301, 57A-8-306, 57A-8-307, and 57A-8-405, became effective July 1, 1966, and this title otherwise became effective July 1, 1967. It applies to transactions entered into and events occurring after that date.

Section 146. That § 58-2-39 be AMENDED:

58-2-39. Promulgation of rules regarding definitions, enrollment, disclosure, notice, claims, and records.

The Division of Insurance may promulgate rules pursuant to chapter 1-26 in the following areas:

- (1) Definition of terms used in §§ 58-17-30.2, 58-17-30.4, 58-18-32, 58-18-34, and 58-33-85 through 58-33-88;
- (2) Insurer enrollment procedures;
- (3) Disclosure and notice requirements;
- (4) Claim processing procedures; and
- (5) Record-keeping requirements for insurers and producers.

Section 147. That § 58-5-155 be AMENDED:

58-5-155. Qualified education loan insurer subject to Title 58--Exceptions.

Any qualified education loan insurer is subject to the provisions of Title 58 except as otherwise specifically provided in §§ 58-5-154 to 58-5-160, inclusive. Notwithstanding any other provision of Title 58, a qualified education loan insurer is not subject to the following provisions of Title 58 and any rules promulgated to implement any such provisions:

- (1) Sections 58-4-48 and 58-5-85;
- (2) Subdivision 58-5-7(5) to the extent that this subdivision permits only one class of authorized voting common stock or otherwise restricts the authorization of preferred stock, with or without voting rights; and
- (3) Chapter 58-5A.

Section 148. That § 58-6A-14 be AMENDED:

58-6A-14. Countersignature on policy not required.

A policy of insurance issued to a risk retention group or any member of that group is not required to be countersigned.

Section 149. That § 58-7-33 be AMENDED:

58-7-33. Duration of deposit of assets and securities.

Every deposit made in this state by an insurer pursuant to this title, including assets and securities held in another state under custodial arrangements, shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required; or if a deposit required under the retaliatory law, §§ 58-6-70 to 58-6-73, inclusive, the deposit shall be held for so long as the basis of such retaliation exists.

Section 150. That § 58-12-22 be AMENDED:

58-12-22. Transmission of information from insurer's database to Department of Social Services--Data match against medicaid eligible recipients or recipients of support services--Disclosure--Liability.

Within sixty days of a request from the Department of Social Services, the department and an insurer shall negotiate an acceptable format for the transmission of information from the insurer's database of policy holders, sponsors, subscribers, covered individuals in South Dakota, and coverage dates. The format shall include the data elements, medium, frequency of reporting, any costs of the insurer to be reimbursed, and procedures that will be followed when a data match is found. The Department of Social Services shall match the name, address, date of birth, and social security number if available, of the insured's policyholders, sponsors, subscribers, and covered individuals against the medicaid eligible recipients and recipients of support enforcement services as defined in subdivision 25-7A-1(19).

Upon discovery of a match, the department may incorporate the following information into its recipient database:

- (1) The name, address, date of birth, social security number if available, and the unique health care identification number of the covered individual;
- (2) The name, address, date of birth, social security number if available, policy number, and group identification number of the policyholder, sponsor, or subscriber;
- (3) The name and address of the employer if it is an employer-employee benefit plan;
- (4) Types of covered services under the plan or policy;
- (5) Coverage effective date and termination of coverage date for each covered

individual; and

- (6) The name and address of the claim administrator for the policy or plan.

The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance coverage information to the department or the director by any party when done so under the authority of §§ 58-12-22 through 58-12-28.

Section 151. That § 58-12-26 be AMENDED:

58-12-26. Insurer defined.

For the purposes of §§ 58-12-22 through 58-12-28, the term, insurer, means:

- (1) Any commercial insurance company, employer-employee benefit plan, health maintenance organization, professional association, service benefit plan, public self-funded employer or pool, union, or fraternal group selling or otherwise offering individual or group health insurance coverage including self-insured and self-funded plans;
- (2) Any profit or nonprofit prepaid plan offering either medical services of full or partial payment for services included in the department's medicaid plan;
- (3) Any other entity offering health benefits for which a medicaid recipient may be eligible in addition to public medical assistance;
- (4) Any managed care organization, third-party administrator, pharmacy benefits manager, or other entity which processes claims, administers services, or otherwise manages health benefits on behalf of any of the aforementioned insurers; or
- (5) Any other party that is by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service including workers' compensation, automobile insurance, and liability insurance plans.

Section 152. That § 58-12-27 be AMENDED:

58-12-27. Department defined.

For the purposes of §§ 58-12-22 through 58-12-28, the term, department, means the Department of Social Services, or an entity under contract with the Department of Social Services to carry out the functions of §§ 58-12-22 through 58-12-28.

Section 153. That § 58-16-54 be AMENDED:

58-16-54. Responsibilities of prior carrier and succeeding carrier upon discontinuance.

The following provisions dictate the responsibility of the prior carrier and succeeding carrier when coverage is discontinued:

- (1) After discontinuance of the policy, contract, or certificate, the prior carrier remains liable only to the extent of its accrued liabilities and extensions of benefits. The position of the prior carrier shall be the same whether the group policyholder or other entity secures replacement coverage from a new carrier, self-insures, or foregoes the provision of coverage;
- (2) If the individual was validly covered under the prior plan on the date of discontinuance, each individual who is eligible for coverage in accordance with the succeeding carrier's plan of benefits is, with respect to the class or classes of individuals, eligible and shall be covered under the succeeding carrier's plan if (a) any actively-at-work and nonconfinement rules are met, and (b) if required by the succeeding carrier, the individual requests enrollment;
- (3) Each person not covered under the succeeding carrier's plan of benefits in accordance with subdivision (2) shall nevertheless be covered by the succeeding carrier in accordance with the following rules if the individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the individual is a member of the class or classes of individuals eligible for coverage under the succeeding carrier's plan. Any reference in the following subdivisions to an individual who was or was not totally disabled is a reference to the individual's status immediately prior to the date the succeeding carrier's coverage becomes effective;
- (4) The minimum level of benefits to be provided by the succeeding carrier shall be the applicable level of benefits of the prior carrier's plan reduced by any benefits payable by the prior plan;
- (5) Coverage shall be provided by the succeeding carrier until the earliest of the following dates:
 - (a) The date the individual becomes eligible under the succeeding carrier's plan as described in subdivision (1);
 - (b) The date the individual's coverage would terminate in accordance with the succeeding carrier's plan provisions applicable to individual termination of coverage, such as at termination of employment or ceasing to be an eligible dependent; or

- (c) In the case of an individual who was totally disabled, and in the case of a type of coverage for which § 58-16-53 requires an extension of benefits or accrued liability, the end of any period of extension benefits or accrued liability that is required of the prior carrier by § 58-16-53, or if the prior carrier's policy, contract, or certificate is not subject to that section, but would have been required of the prior carrier had the policy, contract, or certificate been subject to § 58-16-53 at the time the prior carrier's plan was discontinued and replaced by the succeeding carrier's plan;
- (6) In any situation in which a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits available or pertinent information, sufficient to permit verification of the benefit determination or the determination itself by the succeeding carrier. For the purposes of this subdivision, benefits of the prior plan shall be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination shall be made as if coverage had not been replaced by the succeeding carrier;
- (7) A succeeding carrier's policy may contain a provision limiting benefits to employees who are actively at work. However, any individual who remains as an employee, was covered by the prior carrier, and was disabled as of the date the succeeding carrier coverage became effective for that employer, will continue to be covered by the prior carrier as long as the individual remains an employee. An individual who is not disabled and is not at work on the date the succeeding carrier's coverage commences is considered actively at work as long as the absence from work is an employer-approved absence.

Section 154. That § 58-17-87 be AMENDED:

58-17-87. Director to promulgate rules for individual health insurance--

Scope of rules.

The director shall promulgate rules pursuant to chapter 1-26 to cover:

- (1) Terms or renewability;
- (2) Conditions of eligibility;
- (3) Benefit limitations, exceptions, and reductions;
- (4) Definition of terms;
- (5) Filing requirements for forms, rates, and rate schedules;

- (6) Marketing practices;
- (7) Reporting practices;
- (8) Compensation arrangements between insurers or other entities and their agents, representatives, or producers;
- (9) Suitability and appropriateness of the policy sold;
- (10) Certificates of coverage;
- (11) Determinations with regard to waiting periods;
- (12) College plans;
- (13) Creditable coverages;
- (14) Breaks in coverage;
- (15) The application of waiting periods; and
- (16) Risk spreading mechanisms.

The director shall promulgate rules pursuant to chapter 1-26 that specify prohibited policy or certificate provisions not otherwise specifically authorized by statute which, in the opinion of the director, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under an individual policy or certificate. The director shall also promulgate rules pursuant to chapter 1-26 assuring public access to rate and form information and establishing procedures for rate and form approvals and disapprovals. If any federal standards are in place which would require additional steps to meet those standards beyond what is required by this chapter, the director shall promulgate rules to require the offering of health insurance plans, the underwriting and coverage criteria that may be utilized for such health insurance plans, and other requirements related to the coverage criteria and availability of health insurance to individuals in this state in order to minimally meet the federal standards.

Section 155. That § 58-18-52 be AMENDED:

58-18-52. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34A, § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-18-52 to 58-18-62, inclusive, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law. Stop loss or excess insurance may be purchased in the same manner as group health insurance is purchased pursuant to §§ 58-18-52 to 58-18-62, inclusive.

Section 156. That § 58-28-30 be AMENDED:

58-28-30. General insurance law applicable--Exceptions.

Except for §§ 58-15-13, 58-15-14, 58-15-15, 58-15-17, 58-15-18, 58-15-19, 58-15-21, 58-15-22, 58-15-29, 58-15-31, 58-15-32, 58-15-33, 58-15-34, 58-15-35, 58-15-36, 58-15-38, 58-15-39, and 58-27-108, as in the case of a variable life insurance policy, §§ 58-15-57, 58-15-62, 58-15-64, 58-15-65, 58-15-66, and 58-27-108, as in the case of a variable annuity contract and except as is otherwise provided in this chapter, all pertinent provisions of the insurance code apply to separate accounts and contracts relating thereto.

Section 157. That § 58-29B-104 be AMENDED:

58-29B-104. Circumstances under which claimant making late filing may share in distributions.

The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

- (1) The existence of the claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;
- (2) A transfer to a creditor was avoided under §§ 58-29B-61 to 58-29B-83, inclusive, or was voluntarily surrendered under §§ 58-29B-84 and 58-29B-85, and that the filing satisfies the conditions of §§ 58-29B-84 and 58-29B-85;
- (3) The valuation under §§ 58-29B-121 and 58-29B-122, of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

Section 158. That § 58-29C-48 be AMENDED:

58-29C-48. Definitions.

Terms used in this chapter mean:

- (1) "Account," either of the two accounts created under § 58-29C-49;
- (2) "Association," the South Dakota Life and Health Insurance Guaranty Association described in § 58-29C-49;
- (3) "Authorized assessment" or the term "authorized" when used in the context of assessments, means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member

insurers for a specified amount. An assessment is authorized when the resolution is passed;

- (4) "Benefit plan," a specific employee, union, or association of natural persons benefit plan;
- (5) "Called assessment" or the term "called" when used in the context of assessments, means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;
- (6) "Contractual obligation," an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 58-29C-46;
- (7) "Covered policy," a policy or contract or portion of a policy or contract for which coverage is provided under § 58-29C-46;
- (8) "Director," the director of the Division of Insurance of this state;
- (9) "Extra-contractual claims," include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs;
- (10) "Impaired insurer," a member insurer which, after July 1, 2003, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;
- (11) "Insolvent insurer," a member insurer which after July 1, 2003, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;
- (12) "Member insurer," an insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under § 58-29C-46, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
 - (a) A hospital or medical service organization, whether for profit or nonprofit;
 - (b) A health maintenance organization;
 - (c) A fraternal benefit society;
 - (d) A mandatory state pooling plan;
 - (e) A mutual assessment company or other person that operates on an assessment basis;
 - (f) An insurance exchange;
 - (g) An organization engaged in the issuance of charitable gift annuities, which is

described in § 58-1-16; or

- (h) An entity similar to any of the above;
- (13) "Moody's Corporate Bond Yield Average," the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto;
- (14) "Owner" of a policy or contract and "policy owner" and "contract owner," the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms owner, contract owner, and policy owner do not include persons with a mere beneficial interest in a policy or contract;
- (15) "Person," an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization;
- (16) "Premiums," amounts or considerations (by whatever name called) received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. The term, premiums, does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subpart B of § 58-29C-46 except that assessable premium may not be reduced on account of subsection 58-29C-46(B)(2)(c) relating to interest limitations and subdivision 58-29C-46(C)(2) relating to limitations with respect to one individual, one participant, and one contract owner. Premiums do not include:
 - (a) Premiums on an unallocated annuity contract; or
 - (b) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;
- (17) "Principal place of business" of a plan sponsor or a person other than a natural person, the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:
 - (a) The state in which the primary executive and administrative headquarters of

- the entity is located;
- (b) The state in which the principal office of the chief executive officer of the entity is located;
 - (c) The state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;
 - (d) The state in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;
 - (e) The state from which the management of the overall operations of the entity is directed; and
 - (f) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

- (18) "Receivership court," the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;
- (19) "Resident," a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this chapter, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

- (20) "Structured settlement annuity," an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;
- (21) "State," a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate;
- (22) "Supplemental contact," a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract;
- (23) "Unallocated annuity contract," an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Section 159. That § 58-29C-49 be AMENDED:

58-29C-49. Continuation of association--Membership--Function and organization--Accounts--Supervision--Meetings.

A. There is hereby continued the nonprofit legal entity known as the South Dakota Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under § 58-29C-53 and shall exercise its powers through a board of directors established under § 58-29C-50. For purposes of administration and assessment, the association shall maintain two accounts:

- (1) The life insurance and annuity account which includes the following subaccounts:
 - (a) Life insurance account; and
 - (b) Annuity account; and
- (2) The health insurance account.

B. The association shall come under the immediate supervision of the director and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

Section 160. That § 58-29C-53 be AMENDED:

58-29C-53. Plan of operation--Effective date--Requirements--Delegation of powers.

A. (1) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the director's written approval or unless it has not been disapproved within thirty days.

(2) If the association fails to submit a suitable plan of operation within one hundred twenty days following July 1, 2003, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. The rules shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

B. All member insurers shall comply with the plan of operation.

C. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

- (1) Establish procedures for handling the assets of the association;
- (2) Establish the amount and method of reimbursing members of the board of directors under § 58-29C-50;
- (3) Establish regular places and times for meetings including telephone conference calls of the board of directors;
- (4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) Establish the procedures whereby selections for the board of directors will be made and submitted to the director;
- (6) Establish any additional procedures for assessments under § 58-29C-52;
- (7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;
- (8) Establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer;
- (9) Require the board of directors to establish a policy and procedures for addressing conflicts of interests.

D. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision 58-29C-51(L)(3) and § 58-29C-52, are

delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subpart shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

Section 161. That § 58-29C-56 be AMENDED:

58-29C-56. Member assessment as offset against premium tax liability.

A. A member insurer may offset against its premium tax liability to this state an assessment described in subpart H of § 58-29C-52 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If the assessment is five hundred dollars or less, the member insurer shall take the total offset in the first year following the year in which the assessment was paid. However, total assessments offset against premium taxes may not exceed two million dollars in any year. If offsets exceed the annual limitation in this section, the excess may be carried forward to a subsequent year in which the annual limitation has not been exceeded. Any excess shall be apportioned among the contributing insurers in relation to their assessment that caused the limit to be exceeded. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

B. Any sums that are acquired by refund, pursuant to subpart F of § 58-29C-52, from the association by member insurers, and that have been offset against premium taxes as provided in subpart A of this section, shall be paid by the insurers to this state in such manner as the tax authorities may require. The association shall notify the director that refunds have been made.

Section 162. That § 58-29C-57 be AMENDED:

58-29C-57. Liability for unpaid assessment not reduced for impaired or insolvent insurer--Records of meetings--Association as creditor of impaired or insolvent insurer--Liquidation, rehabilitation, or conservation proceedings.

A. This chapter may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

B. Records shall be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under § 58-29C-51. The records of the association with respect to an impaired or insolvent insurer may not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except (i) upon the termination of the impairment or insolvency of the insurer, or (ii) upon the order of a court of competent jurisdiction. Nothing in this subpart shall limit the duty of the association to render a report of its activities under § 58-29C-58.

C. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subpart K of § 58-29C-51. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subpart, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

D. As a creditor of the impaired or insolvent insurer as established in subpart C of this section and consistent with § 58-29B-98, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

E. (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policy owners of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under § 58-29C-51 with respect to the insurer have been fully recovered by the association.

F. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (2) to (4), inclusive.

(2) No such distribution is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subpart shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under subdivision (3) is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 163. That § 58-29D-16 be AMENDED:

58-29D-16. Provisions in written agreement as to withdrawals from fiduciary account.

The administrator may not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from such account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address the following:

- (1) Remittance to an insurer entitled to remittance;
- (2) Deposit in an account maintained in the name of the insurer;
- (3) Transfer to and deposit in a claims-paying account;
- (4) Payment to a group policyholder for remittance to the insurer entitled to such remittance;
- (5) Payment to the administrator of its commissions, fees or charges; or
- (6) Remittance of return premium to the person or persons entitled to such return premium.

Section 164. That § 58-30-190 be AMENDED:

58-30-190. Waiver of privilege or claim of confidentiality.

No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the director under §§ 58-30-84 through 58-30-93, or as a result of sharing as authorized in § 58-30-187.

Section 165. That § 58-35-61 be AMENDED:

58-35-61. Policyholders to vote on merger plan--Notice of vote.

Following the adoption of the resolution approving the plan of merger required by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote upon the proposed merger plan. Written notice of the meeting of the policyholders shall be given to all policyholders, which may be either an annual or special meeting. Written notice shall be given to each policyholder of record whether or not entitled to vote at the meeting, not less than twenty days before the meeting, in the manner provided in §§ 47-1A-701 through 47-1A-747, and §§ 47-1A-1601 through 47-1A-1620, for the giving of notice of meetings of shareholders. Whether the meeting is an annual or special meeting, the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed plan of merger. A copy of the resolution passed by the board of directors shall be included in or enclosed with the notice.

Section 166. That § 58-38-25 be AMENDED:

58-38-25. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34A, § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-38-25 through 58-38-35, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law.

Section 167. That § 58-40-22 be AMENDED:

58-40-22. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34A, § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-40-22 through 58-40-32, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law.

Section 168. That § 58-41-99 be AMENDED:

58-41-99. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34A, § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-41-99 through 58-41-109, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law.

An Act to correct technical errors in statutory cross-references.

I certify that the attached Act originated in
the:

House as Bill No. 1012

Received at this Executive Office
this ____ day of _____,
2020 at _____ M.

_____ Chief Clerk

By _____
for the Governor

_____ Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

Attest:

_____ Chief Clerk

_____ Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

_____ President of the Senate

Attest:

Filed _____, 2020
at _____ o'clock __ M.

_____ Secretary of the Senate

_____ Secretary of State

House Bill No. 1012
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State