

House Daily Reader

Monday, February 05, 2001

Bills Included				
HB 1003	HB 1019	HB 1126	HB 1127	HB 1205
HB 1218	HB 1249	SB 1	SB 2	SB 50
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State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

319E0036

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1003 - 02/01/2001

Introduced by: Representatives Monroe, McCoy, and Slaughter and Senators Ham and Madden at the request of the Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to prohibit the use of genetic tests in the offer, sale, or
2 renewal of certain types of insurance.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Genetic test," a test of human DNA, RNA, chromosomes, or genes performed in
6 order to identify the presence or absence of an inherited variation, alteration, or
7 mutation which is associated with predisposition to disease, illness, impairment, or
8 other disorder. Genetic test does not mean a routine physical measurement; a
9 chemical, blood, or urine analysis; a test for drugs or HIV infection; any test
10 commonly accepted in clinical practice; or any test performed due to the presence of
11 signs, symptoms, or other manifestations of a disease, illness, impairment, or other
12 disorder;

13 (2) "Health carrier," any person who provides health insurance in this state. The term
14 includes a licensed insurance company, a prepaid hospital or medical service plan, a

1 health maintenance organization, a multiple employer welfare arrangement, a fraternal
2 benefit contract, or any person providing a plan of health insurance subject to state
3 insurance regulation;

4 (3) "Health insurance," insurance provided pursuant to chapters 58-17 (except disability
5 income insurance), 58-17C, 58-18 (except disability income insurance), 58-18B, 58-
6 38, 58-40, and 58-41; and

7 (4) "Individual," an applicant for coverage or a person already covered by a health carrier.

8 Section 2. No health carrier, in determining eligibility for coverage, establishing premiums,
9 limiting coverage, renewing coverage, or any other underwriting decision, may, in connection
10 with the offer, sale, or renewal of health insurance:

11 (1) Require or request an individual or a blood relative of the individual to take a genetic
12 test; or

13 (2) Take into consideration the fact that a genetic test was refused by an individual or a
14 blood relative of the individual.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0218

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1019** -

02/01/2001

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and fees regarding various
2 agricultural related licenses, certificates, registrations, and inspections and to provide for the
3 disposition of certain fees.

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

5 Section 1. That § 38-12A-11 be amended to read as follows:

6 38-12A-11. No person may sell, distribute, advertise, solicit orders for, offer for sale, expose
7 for sale, or transport seed without first obtaining from the Department of Agriculture a permit
8 to engage in the business. A permit is not required of any person selling or advertising seed of
9 ~~his~~ the person's own production in South Dakota, ~~provided that if~~ if the seed is stored or delivered
10 to a purchaser only on or from the farm or premises where grown or the production and sale of
11 seed is not a primary endeavor and primary source of income to such persons. Each permit shall
12 expire on the ~~first thirty-first day of July~~ December of the year following the date of issue. The
13 ~~annual~~ biennial fee for a seed permit is: Seedsman ~~permit~~ -- ~~one~~ two hundred ~~fifty~~ dollars; Seed
14 ~~producers permit~~ producer -- ~~twenty-five~~ fifty dollars; Seed ~~dealers permit~~ dealer -- ~~twenty-five~~

1 ~~fifty dollars. A seed dealer's permit may be issued without fee when all lots of seed are furnished~~
2 ~~to him by seedsman or seed producer with valid South Dakota permits and all of those seedsmen~~
3 ~~and seed producers include application for the seed dealers permit as part of their application.~~
4 ~~All fees collected under the provisions of this chapter shall be paid into the state treasury and~~
5 ~~credited to the general fund.~~

6 Section 2. That chapter 38-12A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Fees collected pursuant to this chapter shall be deposited with the state treasurer in a special
9 revenue fund known as the seed fund. This fund shall consist of moneys from public and private
10 sources including legislative appropriations, federal grants, gifts, and the fees received pursuant
11 to this chapter. The fund shall be maintained separately and be administered by the department
12 in order to defray the expenses of all activities associated with administering the seed program.
13 Expenditures from the fund shall be appropriated through the normal budget process.
14 Unexpended funds and interest shall remain in the fund until appropriated by the Legislature.

15 Section 3. That § 38-18-3 be amended to read as follows:

16 38-18-3. Any person owning, leasing, or possessing bees shall file an application registering
17 the bees and each apiary with the secretary. The application shall be filed before the first day of
18 ~~June~~ February each year or within ten days of acquiring ownership or possession of any bees or
19 apiary or before moving bees into the state and shall contain each location by legal description,
20 the name of the landowner or lessee of the location, the number of colonies of bees in each
21 apiary, and any other information required by the secretary. The landowner or lessee authorizing
22 the placement of an apiary on a location may revoke the authorization by notifying the owner of
23 the apiary and the secretary in writing. Such revocation of authorization by a landowner or lessee
24 is not sufficient justification for a contested case hearing. If any person fails to register an apiary

1 within the time specified by this section, the landowner authorization for that location is invalid.
2 A registration application shall be approved or rejected by the secretary in compliance with this
3 chapter or rules promulgated pursuant to chapter 1-26. The secretary may deny applications,
4 revoke permits, or conduct contested case hearings in accordance with rules promulgated
5 pursuant to chapter 1-26. Any person failing to register ~~his~~ an apiary or bees pursuant to this
6 section is guilty of a Class 2 misdemeanor. In addition to the criminal penalty imposed by this
7 section, a person is subject to a civil penalty not to exceed five hundred dollars for each location
8 that ~~he~~ the person has failed to register.

9 Section 4. That § 38-18-5 be amended to read as follows:

10 38-18-5. Any person registering an apiary pursuant to § 38-18-3 shall pay a registration fee
11 of ~~ten~~ eleven dollars per permanent location and thirty dollars per temporary location. ~~The~~
12 ~~registration fee shall be deposited in the general fund.~~

13 Section 5. That § 38-18-36 be amended to read as follows:

14 38-18-36. There is hereby imposed upon each bee location within the state, ~~on or before the~~
15 ~~first day of June of each year~~ at the time of registration, a continuing annual assessment of one
16 dollar per location. The Department of Agriculture shall collect and deposit the funds in the
17 honey industry fund.

18 Section 6. That chapter 38-18 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Except as provided by § 38-18-36, fees collected pursuant to this chapter shall be deposited
21 with the state treasurer in a special revenue fund known as the apiary fund. This fund shall
22 consist of moneys from public and private sources including legislative appropriations, federal
23 grants, gifts, and the fees received pursuant to this chapter. The fund shall be maintained
24 separately and be administered by the department in order to defray the expenses of all activities

1 associated with administering the apiary program. Expenditures from the fund shall be
2 appropriated through the normal budget process. Unexpended funds and interest shall remain in
3 the fund until appropriated by the Legislature.

4 Section 7. That § 38-19-1 be amended to read as follows:

5 38-19-1. Terms, as used in this chapter, mean:

6 (1) "Available phosphoric acid," the sum of the water-soluble and the citrate-soluble
7 phosphoric acid and reported as phosphorus pentoxide;

8 (2) "Brand," a term, design, or trademark used in connection with one or several grades
9 of commercial fertilizer;

10 (3) "Bulk commercial fertilizer," any volume of a commercial fertilizer which is
11 transported or held for resale in an immediate reusable container in undivided
12 quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons
13 liquid measure;

14 (4) "Bulk commercial fertilizer storage facility," any area, location, tract of land, building,
15 structure, or premises constructed in accordance with rules promulgated by the
16 secretary for the storage of bulk commercial fertilizer;

17 (5) "Commercial fertilizer," any substance containing any recognized plant nutrient which
18 is used for its plant nutrient content and which is designed for use or claimed to have
19 value in promoting plant growth, except unmanipulated animal and vegetable
20 manures, marl, lime, limestone, lime sludge, sewage sludge, wood ashes, gypsum,
21 compost, and other products excluded by rule;

22 (5A) "Compost," a group of organic residues or a mixture of organic residues and soil that
23 have been piled, moistened, and allowed to undergo aerobic biological decomposition;

24 (6) "Distribute," to import, consign, manufacture, produce, compound, mix, or blend

1 commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial
2 fertilizer in this state;

3 (7) "Distributor," any person who distributes commercial fertilizer in this state;

4 (8) "Fertilizer material," a commercial fertilizer which either:

5 (a) Contains important quantities of no more than one of the primary plant
6 nutrients: nitrogen, phosphoric acid, and potash; or

7 (b) Has approximately eighty-five percent of its plant nutrient content present in
8 the form of a single chemical compound; or

9 (c) Is derived from a plant or animal residue or by-product or a natural material
10 deposit which has been processed in such a way that its content of primary
11 plant nutrients has not been materially changed except by purification and
12 concentration;

13 (9) "Grade," the percentage of total nitrogen, available phosphoric acid, and soluble
14 potash stated in whole numbers in the same terms, order, and percentages as in the
15 guaranteed analysis. However, speciality fertilizers may be guaranteed in fractional
16 units of less than one percent of total nitrogen, available phosphoric acid, and soluble
17 potash. Fertilizer materials, bone meal, manures, and similar raw materials may be
18 guaranteed in fractional units;

19 (10) "Investigational allowance," allowance for variations inherent in the taking,
20 preparation, and analysis of an official sample of commercial fertilizer;

21 (11) "Label," a display of written, printed, or graphic matter on or attached to the
22 immediate container of any article and the outside container or wrapper of the retail
23 package, or a statement or document accompanying a commercial fertilizer;

24 (12) "Labeling," all written, printed, or graphic matter, upon or accompanying any

- 1 commercial fertilizer or advertisements, brochures, posters, television, and radio
2 announcements used in promoting the sale of commercial fertilizer;
- 3 (13) "Licensee," any person who receives a license to distribute a commercial fertilizer
4 under the provisions of this chapter;
- 5 (14) "Metric ton," a net weight of one thousand kilograms;
- 6 (15) "Mixed fertilizer," a commercial fertilizer containing any combination or mixture of
7 fertilizer materials;
- 8 (16) "Nitrogen," the element of nitrogen;
- 9 (17) "Official sample," any sample of commercial fertilizer taken by the secretary of
10 agriculture or ~~his~~ department agent according to methods prescribed by this chapter;
- 11 (18) "Percent" or "percentage," the percentage by weight;
- 12 (19) "Primary nutrients," nitrogen, available phosphoric acid, and soluble potash;
- 13 (20) "Recognized plant nutrients," primary nutrients, secondary nutrients, and micro
14 nutrients;
- 15 (21) ~~"Registrant," any person who registers specialty fertilizers for distribution under the
16 provisions of this chapter to nonregistrants;~~
- 17 (22) "Secondary and micro nutrients," those nutrients other than primary nutrients that are
18 essential for the normal growth of plants and that may need to be added to the growth
19 medium. Secondary plant nutrients include calcium, magnesium, and sulfur; micro
20 plant nutrients include boron, chlorine, cobalt, copper, iron, manganese, molybdenum,
21 sodium, and zinc;
- 22 (23) "Secretary," the secretary of the Department of Agriculture;
- 23 (24) "Sell:"
- 24 (a) The act of selling, transferring ownership;

- 1 (b) The offering and exposing for sale, exchange, or distribution;
- 2 (c) Giving away; or
- 3 (d) Receiving, accepting, holding or possession for sale, exchange, or distribution;
- 4 (24A) "Sewage sludge," "sludge," "biosolids," any solid, semisolid, or liquid residue
- 5 removed during the treatment of municipal or domestic sewage by publicly-owned
- 6 treatment works regulated under 40 CFR Part 503, as amended to January 1, 1995,
- 7 and the Clean Water Act as amended to January 1, 1995;
- 8 (25) "Soluble potash," that portion of the potash contained in fertilizers or fertilizer
- 9 materials which is soluble in an aqueous ammoniacal solution of 0.8% ammonium
- 10 oxalate, after boiling in a 1.14% solution of ammonium oxalate and reported as
- 11 potassium oxide;
- 12 (26) "Speciality fertilizer," a commercial fertilizer, lime, lime sludge, compost, sewage
- 13 sludge, or products containing sewage sludge distributed for nonfarm use;
- 14 (27) "Ton," a net weight of two thousand pounds avoirdupois.

15 Section 8. That § 38-19-2.1 be amended to read as follows:

16 38-19-2.1. No person whose name appears on the label of a commercial fertilizer or who
17 manufactures or mixes a commercial fertilizer in this state may distribute that fertilizer until ~~he~~
18 the person has obtained a distribution license from the secretary of agriculture. A distribution
19 license is required for each location where commercial fertilizer is manufactured or mixed. The
20 license may be granted only after payment of a fee of twenty-five dollars by the licensee. Each
21 license expires on the thirty-first day of December of ~~each~~ the year. ~~This section does not apply~~
22 ~~to specialty fertilizers, which registration requirements appear in § 38-19-3.1~~ after the date of
23 issuance. Any distribution license application for renewal received after the thirty-first day of
24 January of any year shall be assessed a late payment fee equal to the original license fee, which

1 shall be added to the original fee and shall be paid by the applicant before the renewal license is
2 issued. Any person who fails to obtain the proper license is subject to a civil penalty not to
3 exceed one thousand dollars per violation. Notice ~~must~~ shall be given by registered mail prior
4 to the imposition of any civil penalty~~being imposed.~~

5 Section 9. That § 38-19-2.2 be amended to read as follows:

6 38-19-2.2. An application for a commercial fertilizer distribution license shall include the
7 name and address of the licensee ~~and the name and address of each distribution point operated~~
8 ~~by the licensee in the state.~~ The licensee's name and address as it appears on the license shall
9 appear on all labels and pertinent invoices used by the licensee and on all bulk storage units
10 operated by the licensee in this state.

11 Section 10. That § 38-19-3.1 be repealed.

12 ~~— 38-19-3.1. No person may distribute in this state a specialty fertilizer to a nonregistrant until~~
13 ~~it is registered with the secretary of agriculture by the manufacturer or distributor whose name~~
14 ~~appears on the label. An application in duplicate for each brand and product name of each grade~~
15 ~~of specialty fertilizer shall be made on a form furnished by the secretary and shall be accompanied~~
16 ~~with a registration and inspection fee of twenty-five dollars for each brand and product name of~~
17 ~~each grade. Two labels for each brand and product name of each grade shall accompany the~~
18 ~~application. Upon the approval of an application by the secretary, a copy of the registration shall~~
19 ~~be furnished the applicant. All registrations expire on the thirty-first day of December of each~~
20 ~~year.~~

21 Section 11. That § 38-19-3.2 be repealed.

22 ~~— 38-19-3.2. Any specialty fertilizer containing pesticides and meeting the requirements of~~
23 ~~chapter 38-20A is exempt from annual registration as required by § 38-20A-4.~~

24 Section 12. That § 38-19-4.1 be repealed.

1 ~~38-19-4.1. An application for registration shall include the following:~~

2 ~~(1) Name and address of the manufacturer or distributor;~~

3 ~~(2) The brand and product name;~~

4 ~~(3) The grade;~~

5 ~~(4) The guaranteed analysis;~~

6 ~~(5) The net weight.~~

7 Section 13. That § 38-19-10 be amended to read as follows:

8 38-19-10. There is paid to the secretary of agriculture for all commercial fertilizer distributed
9 ~~to nonlicensees in this state an inspection fee of twenty up to twenty-five cents per ton. This fee~~
10 ~~is increased by thirty cents per ton which increase shall be deposited annually into the~~
11 ~~groundwater protection fund to fund the groundwater research and education program~~
12 ~~established pursuant to § 46A-1-85 for five years, at which point the fertilizer inspection fee for~~
13 ~~each ton of fertilizer shall be twenty cents per ton. The secretary of agriculture may promulgate~~
14 ~~rules pursuant to chapter 1-26 to provide for an increase in the tonnage inspection fee of up to~~
15 ~~five cents per ton. Such increase shall be commensurate with the overall cost of conducting~~
16 ~~commercial fertilizer inspections, investigations, monitoring, providing information and~~
17 ~~education, and taking enforcement action against violators. The secretary of agriculture shall~~
18 ~~promulgate rules pursuant to chapter 1-26 to establish the inspection fee.~~

19 ~~However, sales or exchanges between importers, manufacturers, or licensees are exempt~~
20 ~~from the inspection fee. Also, the inspection fee does not apply to specialty fertilizer.~~

21 Section 14. That § 38-19-18 be amended to read as follows:

22 38-19-18. For the purposes of this chapter, a commercial fertilizer is deemed to be
23 adulterated:

24 (1) If it contains any deleterious or harmful ingredient in sufficient amount to render it

1 injurious to beneficial plant life when applied in accordance with directions for use on
2 the label, or if adequate warning statements or directions for use, which may be
3 necessary to protect plant life, are not shown on the label;

4 (2) If its composition falls below or differs from that which it is purported to possess by
5 its labeling; ~~or~~

6 (3) If it contains unwanted crop seed or weed seed; or

7 (4) If it contains any deleterious or harmful ingredient in sufficient amount that, if the
8 product is used in accordance with label instructions, it renders the commodity that
9 is derived from the treated crop injurious to humans, wildlife, livestock, or the
10 environment or renders the commodity unsaleable.

11 Section 15. That § 38-19-20 be repealed.

12 ~~— 38-19-20. The secretary of agriculture, pursuant to rules promulgated pursuant to the~~
13 ~~provisions of chapter 1-26, may cancel the license of any person or registration of any~~
14 ~~commercial fertilizer, or refuse to issue a license or registration as herein provided, upon~~
15 ~~satisfactory evidence that the licensee or registrant has used fraudulent or deceptive practices in~~
16 ~~evasions or attempted evasions of the provisions of this chapter or any rules promulgated~~
17 ~~hereunder. However, no license or registration may be revoked or refused until the licensee or~~
18 ~~registrant has been given an opportunity to appear for a hearing by the secretary, such notice and~~
19 ~~hearing to follow rules promulgated therefore pursuant to the provisions of chapter 1-26.~~

20 Section 16. That chapter 38-19 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Each license applicant or licensee shall, upon request of the secretary, furnish copies of labels
23 and labeling in order to permit the secretary to determine compliance with the provisions of this
24 chapter.

1 Section 17. That chapter 38-19 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The secretary of agriculture may reject the commercial fertilizer distribution license
4 application of any firm not in compliance with the provisions of this chapter and may cancel the
5 commercial fertilizer license of any firm subsequently found not to be in compliance with any
6 provision of this chapter. However, no commercial fertilizer distribution license may be refused
7 or canceled unless the licensee has been given an opportunity to be heard before the secretary
8 and to amend the application in order to comply with the requirements of this chapter.

9 Section 18. That § 38-19A-4 be amended to read as follows:

10 38-19A-4. Each separately identified soil conditioner product shall be registered before being
11 distributed in this state. The application for registration shall be submitted to the secretary of
12 agriculture on the form furnished or approved by the secretary and shall be accompanied by a
13 fee of twenty-five dollars per product. Upon approval by the secretary, a copy of the registration
14 shall be furnished to the applicant. Each registration shall expire on December thirty-first of the
15 year following the date of issuance. Each registrant shall submit to the secretary a copy of labels
16 and advertising literature with the registration request for each soil amendment.

17 Section 19. That § 38-19A-11 be amended to read as follows:

18 38-19A-11. Every distributor shall file with the secretary, on forms furnished by the secretary
19 of agriculture, ~~semiannual statements~~ an annual statement for ~~periods~~ the period ending
20 December thirty-first ~~and June thirtieth~~ of each year setting forth the number of net tons of each
21 soil amendment distributed in the state during that period. The report shall be due within thirty
22 days following each ~~semiannual~~ annual reporting period. If the report is not filed and the payment
23 of the inspection fee is not made within the time period specified, a collection fee amounting to
24 ten percent of the amount shall be assessed against the registrant. However, the minimum

1 ~~collection fee is ten dollars.~~ The secretary ~~shall have the authority to~~ may examine such records
2 to verify statements of tonnage. Such statement shall be accompanied by payment of an
3 inspection fee of twenty cents per ton for all soil amendments distributed in this state. The
4 secretary may allow payment of inspection fees on a calculated equivalent of volume to tons.

5 Section 20. That § 38-21-17 be amended to read as follows:

6 38-21-17. No person may engage in the business of applying pesticides to the lands of
7 another, advertise as being in the business of applying pesticides to the lands of another at any
8 time, apply pesticides while in the performance of ~~his~~ duties as a governmental employee or
9 otherwise act as a commercial applicator without an applicator's license issued by the secretary
10 of agriculture, unless exempted under the provisions of this chapter. The secretary shall require
11 ~~an annual~~ a fee of twenty-five dollars for each applicator license issued. The secretary of
12 agriculture shall issue an applicator license to government employees without a license fee. The
13 fee exempt license is valid only when the applicator is applying pesticides in the course of ~~his~~
14 employment for the governmental entity. Any person who violates this section is subject to a civil
15 penalty not to exceed five thousand dollars per violation.

16 Section 21. That § 38-21-26 be amended to read as follows:

17 38-21-26. A licensed applicator's license shall expire on the last day of February of the
18 second year following the year of issue unless it has been revoked or suspended prior thereto by
19 the secretary of agriculture for cause, as provided for in § 38-21-44.

20 Section 22. That § 38-21-33.1 be amended to read as follows:

21 38-21-33.1. It is a Class 2 misdemeanor for any person to act in the capacity of a licensed
22 pesticide dealer or advertise as a licensed pesticide dealer at any time without first having
23 obtained ~~an annual~~ a license from the Department of Agriculture ~~which~~ that shall expire on the
24 last day of February of the second year following the year of issue. In addition to any criminal

1 penalty, any person who violates this section is subject to a civil penalty not to exceed five
2 thousand dollars per violation.

3 Section 23. That § 38-21-33.5 be amended to read as follows:

4 38-21-33.5. Application for a license shall be accompanied by a fifty dollar ~~annual~~ license fee
5 and shall be on a form prescribed by the secretary of agriculture. ~~The annual license fee for any~~
6 ~~applicant who also holds a licensed applicator license shall be twenty-five dollars.~~

7 Section 24. That § 38-21-42 be amended to read as follows:

8 38-21-42. Any person holding a current valid license or certification may renew such license
9 or certification for the next ~~year~~ biennium without taking another examination unless the
10 secretary of agriculture determines that additional knowledge related to classifications for which
11 the applicant has applied makes a new examination necessary or if additional demonstration of
12 qualifications is determined necessary for a person who has had a license suspended or revoked
13 or has had one or more previous violations of this chapter.

14 Section 25. That § 38-21-43 be amended to read as follows:

15 38-21-43. If the application for renewal of any license provided for in this chapter is not filed
16 prior to March first in any year of expiration, a penalty of fifty dollars shall be assessed and added
17 to the original fee and shall be paid by the applicant before the renewal license is issued.

18 Section 26. That § 38-24B-1 be amended to read as follows:

19 38-24B-1. Terms, as used in this chapter, ~~unless the context otherwise requires~~, mean:

- 20 (1) "Annual plants," ornamental or vegetable plants which are commonly grown in
21 movable containers and transplanted to out of doors locations and which do not live
22 for more than one growing season;
- 23 (2) "Dealer," any person who is not a resident nurseryman:
- 24 (a) Who buys nursery stock for the purpose of reselling or reshipping;

- 1 (b) Who makes landscape plans using nursery stock and negotiates in the purchase
2 of nursery stock for his clients; or
- 3 (c) Who contracts to furnish and plant nursery stock;
- 4 (3) "Decorative plants," indoor plants which are commonly grown and sold in movable
5 containers, and which are not adapted for cultivation out of doors because of climatic
6 conditions and natural peculiarities of habit or growth and because of the purpose of
7 their cultivation;
- 8 (4) "Department," the State Department of Agriculture;
- 9 (5) "Nursery," any grounds or premises on which nursery stock is being grown,
10 fumigated, packed, displayed, or stored, if such stock is or will either be sold or
11 offered for sale or distribution;
- 12 (6) "Nurseryman," any person who owns, leases, manages, or is in charge of a nursery;
- 13 (7) "Nursery stock," trees, shrubs, or other plants having a persistent woody stem; all
14 herbaceous perennials; and parts of either of those which are capable of propagation,
15 except for seeds, true bulbs, rhizomes, corms, and tubers while in a dormant
16 condition;
- 17 (8) "Pest," any animal, plant, insect, ~~or~~ infectious transmissible or contagious disease, or
18 other organism which is or may be dangerous or detrimental to the plant industry of
19 the state;
- 20 (9) "Regulated pest," any pest which the secretary determines is sufficiently detrimental
21 to the plant industry of the state to warrant control or eradication measures;
- 22 (10) "Related plant products," seed, true bulbs, rhizomes, corms, roots, and tubers of
23 nursery stock while in a dormant condition and nonviable plant to include forced
24 blooming plants and Christmas trees;

- 1 (11) "Resident nurseryman," any nurseryman in this state who grows all or a portion of the
- 2 nursery stock that ~~he~~ the nurseryman sells or distributes;
- 3 (12) ~~"Restricted dealer," a dealer who limits his nursery stock to only roses or herbaceous~~
- 4 ~~perennials;~~
- 5 (13) "Secretary," the state secretary of agriculture;
- 6 (14) "Sod," grassy surface soil held together by matted roots of grass cultivors, mixtures,
- 7 or blends of grass cultivors and used in residential and commercial landscape;
- 8 (15) ~~"Special nurseryman," a resident nurseryman who grows only one species of nursery~~
- 9 ~~stock and does less than five hundred dollars in sales each year;~~
- 10 (16) "Viable," capable of germination or living and developing under normal growing
- 11 conditions into a plant which would be typical in height, spread, caliper, dimension,
- 12 condition, quality, and age for a plant of that species.

13 Section 27. That § 38-24B-7 be amended to read as follows:

14 38-24B-7. The Department of Agriculture may issue a certificate of inspection to any

15 nurseryman, operating as a resident nurseryman or dealer, whose nursery stock has been

16 officially inspected and found to be viable and free from pests. The ~~annual~~ biennial fee for the

17 inspection and certification is: one hundred fifty dollars plus four dollars for each acre over one

18 acre of inspected plants. A conservation district that plants less than thirty acres of nursery stock

19 in a year may obtain a certificate of inspection at the reduced fee of one hundred dollars.

20 ~~—(1)—Resident nurseryman: thirty dollars plus thirty cents for each acre of growing field;~~

21 ~~—(2)—Special nurseryman: ten dollars;~~

22 ~~—(3)—Dealer: thirty dollars; and~~

23 ~~—(4)—Restricted dealer: twenty dollars.~~

24 ~~—All fees collected pursuant to this section shall be placed in the general fund.~~

1 Section 28. That § 38-24B-9 be amended to read as follows:

2 38-24B-9. Any nurseryman whose location is outside the state may obtain a certificate of
3 inspection to sell nursery stock within the state by filing a certified copy of ~~his~~ the official
4 inspection certificate and paying a ~~thirty~~ one hundred fifty dollar fee to the secretary of
5 agriculture. The secretary may waive the payment of the fee if the applicant's state does not
6 require a fee by South Dakota applicants for a like certificate in that state.

7 Section 29. That § 38-24B-12 be amended to read as follows:

8 38-24B-12. Any grower or dealer of decorative plants, annual plants, sod, or related plant
9 products may apply to the department for a certificate of inspection. The Department of
10 Agriculture may issue a certificate of inspection to the person whose decorative plants, annual
11 plants, sod, or related plant products have been officially inspected and found free from pests.
12 The fee for inspection and certification is ~~thirty cents~~ two dollars plus ~~thirty cents~~ two
13 dollars for each acre of growing field and ~~thirty cents~~ two dollars for each one thousand square
14 feet of growing greenhouse.

15 Section 30. That chapter 38-24B be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Fees collected pursuant to this chapter shall be deposited with the state treasurer in a special
18 revenue fund known as the nursery fund. This fund shall consist of moneys from public and
19 private sources including legislative appropriations, federal grants, gifts, and the fees received
20 pursuant to this chapter. The fund shall be maintained separately and be administered by the
21 department in order to defray the expenses of all activities associated with administering the
22 nursery program. Expenditures from the fund shall be appropriated through the normal budget
23 process. Unexpended funds and interest shall remain in the fund until appropriated by the
24 Legislature.

1 Section 31. That § 39-14-40.1 be amended to read as follows:

2 39-14-40.1. No person who manufactures a commercial feed within the state, or whose name
3 appears on the label of a commercial feed as guarantor, may distribute a commercial feed in the
4 state without first obtaining a commercial feed license from the secretary on forms provided by
5 the secretary that identify the manufacturer's or guarantor's name, place of business, and location
6 of each manufacturing facility in the state and such other appropriate information necessary for
7 enforcement of this chapter. The fee for a new or renewal license is fifty dollars per in-state
8 location or manufacturer name and location listed on a commercial feed label, except that in the
9 case of in-state manufacturers who manufacture only customer formula feeds, no fee may be
10 collected. Each license expires on the thirty-first of December of ~~each~~ the year after the date of
11 issuance. Commercial feed license applications for renewal received after the thirty-first of
12 January of each year shall be assessed a late payment fee equal to the original license fee, which
13 shall be added to the original fee and shall be paid by the applicant before the renewal license is
14 issued.

15 Section 32. That § 39-14-43 be amended to read as follows:

16 39-14-43. An inspection fee established in rules promulgated by the secretary of agriculture
17 pursuant to chapter 1-26, but not to exceed twenty-four cents per ton, shall be paid on
18 commercial feeds distributed in this state by the person who distributes the commercial feed to
19 the consumer subject to the following:

- 20 (1) No fee need be paid on a commercial feed if the payment has been made by a previous
21 distributor;
- 22 (2) No fee need be paid on customer-formula feeds;
- 23 (3) No fee need be paid on commercial feeds used as ingredients for the manufacture of
24 commercial feeds provided the fee has been paid by a previous distributor. If the fee

1 has been paid, credit is given for the payment;

2 (4) In the case of a pet food which is distributed in the state only in packages of ten
3 pounds or less, ~~an annual~~ a biennial fee of fifty dollars per product shall be paid in lieu
4 of the inspection fee specified above;

5 (5) In the case of a specialty pet food which is distributed in the state only in packages of
6 ten pounds or less, ~~an annual~~ a biennial fee of twenty-five dollars per product shall be
7 paid in lieu of the inspection fee specified above; and

8 (6) The minimum inspection fee shall be ~~ten~~ twenty dollars per ~~six-month~~ twelve-month
9 period.

10 Section 33. That § 39-14-44 be amended to read as follows:

11 39-14-44. Any person who is liable for payment of an inspection fee shall:

12 (1) File, not later than the last day of January ~~and July~~ of each year, ~~a semi-annual~~ an
13 annual statement, setting forth the number of net tons of commercial feeds distributed
14 in this state during the preceding ~~six~~ twelve months. Upon filing such statement, the
15 person shall pay the inspection fee at the rate stated in § 39-14-43. Inspection fees
16 that are due and have not been remitted to the Department of Agriculture ~~within thirty~~
17 ~~days following the due date~~ by January thirty-first of each year shall have a late
18 payment fee of ten percent or ~~ten~~ twenty dollars, whichever is greater, added to the
19 amount due when payment is finally made. The assessment of this late payment fee
20 does not prevent the department from taking other actions as provided in this chapter;
21 and

22 (2) Keep such records as may be necessary or required by the secretary of agriculture,
23 pursuant to rules promulgated pursuant to chapter 1-26, to indicate accurately the
24 tonnage of commercial feed distributed in this state. The secretary may examine such

1 records to verify statements of tonnage.

2 Failure to make an accurate statement of tonnage or to pay the inspection fee or comply with
3 this section constitutes sufficient cause for cancellation of a commercial feed license or rejection
4 of a commercial feed license application.

5 Section 34. That § 39-18-8 be amended to read as follows:

6 39-18-8. Upon approval by the secretary of agriculture, a copy of the registration of an
7 animal remedy shall be forwarded to the applicant. All registrations are on ~~an annual~~ a biennial
8 basis, expiring the thirty-first day of December of the year after the date of registration. ~~An~~
9 ~~annual~~ A biennial registration fee of twenty-five dollars for each product shall be paid to the
10 secretary upon application for registration.

11 Section 35. That § 38-18-27 be amended to read as follows:

12 38-18-27. Any person may request to enter into a compliance agreement with the secretary
13 or that the secretary make additional inspections of bees, bee equipment, or honey houses. The
14 person requesting the agreement ~~or the~~ shall pay a fee of fifty dollars per compliance agreement.
15 If an inspection is conducted, the person requesting the inspection shall pay the secretary any
16 extra expense incidental to such inspection plus mileage and per diem for inspectors' expenses.

17 Section 36. That § 38-19-12 be amended to read as follows:

18 38-19-12. Each licensed distributor of commercial fertilizer shall file with the secretary of
19 agriculture on forms furnished by the secretary an annual statement for the period ending
20 December thirty-first setting forth the number of net tons of each grade of commercial fertilizer
21 distributed in this state during the reporting period. The report is due on or before the thirtieth
22 of January following the close of the reporting period and on the basis of ~~his~~ the statement each
23 licensed distributor of commercial fertilizer shall pay the inspection fee at the rate ~~stated in~~
24 pursuant to § 38-19-10. If more than one person is involved in the distribution of a commercial

1 fertilizer, the distributor who imports, manufactures, or produces the commercial fertilizer is
2 responsible for the inspection fee on products produced or brought into this state. The distributor
3 shall separately list the inspection fee on the invoice to the licensee. The last licensee shall retain
4 the invoices showing proof of inspection fees paid for three years and shall pay the inspection
5 fee on commercial fertilizer brought into this state or produced before July 1, 2001, unless the
6 distributor has reported and paid the fees. If the tonnage report is not filed and the payment of
7 inspection fee is not made within thirty days after the end of the period, a collection fee
8 amounting to ten percent (minimum ten dollars) of the amount shall be assessed against the
9 licensee and the amount of fees due constitutes a debt and becomes the basis of a judgment
10 against the licensee. The secretary may verify the records on which statements of tonnage are
11 based and each licensed distributor of commercial fertilizer shall grant the secretary permission
12 to verify the records on ~~his~~ the licensee's application for license and on each tonnage report. If
13 ~~more than one licensee is involved in a commercial fertilizer distribution chain, the last licensee~~
14 ~~who distributes commercial fertilizer to a nonlicensee is responsible for filing the tonnage report~~
15 ~~and paying the inspection fee.~~ The secretary may, ~~at his discretion,~~ revoke or refuse to renew the
16 license of any licensee failing to comply with this section. No information furnished under this
17 section may be disclosed by the secretary ~~or his agents~~ or anyone having access to tonnage
18 reports if the disclosure will in any way divulge any part of the operations of a licensee.

19 Section 37. That § 38-24B-14 be amended to read as follows:

20 38-24B-14. A certificate issued pursuant to the provisions of this chapter is in effect for a
21 period not to exceed ~~one year~~ two years and expires on December thirty-first of the year
22 following the date of issue.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

905E0521

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1126 - 01/31/2001

Introduced by: Representatives Duenwald, Abdallah, Duniphan, Monroe, Sebert, and Van
Etten and Senators Daugaard, Albers, Madden, and Vitter

1 FOR AN ACT ENTITLED, An Act to limit the application of implied consent in circumstances
2 involving an arrest for vehicular homicide or vehicular battery.

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

4 Section 1. That § 32-23-10 be amended to read as follows:

5 32-23-10. Any person who operates any vehicle in this state is considered to have given
6 consent to the withdrawal of blood or other bodily substance and chemical analysis of the
7 person's blood, breath, or other bodily substance to determine the amount of alcohol in the
8 person's blood and to determine the presence of marijuana or any controlled drug or substance.

9 The person shall be requested by the officer to submit to the withdrawal of blood or other
10 bodily substance for chemical analysis or chemical analysis of the person's breath and shall be
11 advised by the officer that:

12 (1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal
13 or chemical analysis may be required unless the person has been arrested for a third,
14 fourth, or subsequent violation of § 32-23-1, constituting a felony offense under

1 § 32-23-4 or 32-23-4.6 or has been arrested for vehicular homicide under § 22-16-41
2 or vehicular battery under § 22-16-42;

3 (2) If the person refuses to submit to the withdrawal or chemical analysis, the person's
4 driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the
5 person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation
6 order being issued; and

7 (3) The person has the right to have a chemical analysis performed by a technician of the
8 person's own choosing at the person's own expense, in addition to the test requested
9 by the officer.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

831E0127

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1127 - 02/01/2001

Introduced by: Representatives Duenwald, Bartling, Brown (Jarvis), Garnos, Juhnke, and Slaughter and Senators Drake, Brosz, de Hueck, Hutmacher, Koskan, McIntyre, Putnam, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to modify the procedure for the remittance of the 911
2 surcharge.

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

4 Section 1. That § 34-45-8 be amended to read as follows:

5 34-45-8. Any charge imposed pursuant to §§ 34-45-3 and 34-45-4 and the amounts required
6 to be collected are to be remitted to the governing body quarterly. The amount of the charge
7 collected in one calendar quarter by the local exchange access company shall be remitted to the
8 governing body no later than ~~sixty~~ thirty days after the close of the calendar quarter. On or
9 before the sixteenth day of each month following, a return for the preceding quarter shall be filed
10 with the governing body in such form as the governing body and local exchange access company
11 shall agree upon. The local exchange access company required to file the return shall deliver the
12 return together with a remittance of the amount of the charge payable, to the governing body.
13 The local exchange access company shall maintain a record of collections made for a period of
14 one year after the collection.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

544E0644

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1205 - 02/01/2001

Introduced by: Representatives Konold, Olson (Mel), and Solum and Senators Bogue,
Albers, Moore, Olson (Ed), and Vitter

1 FOR AN ACT ENTITLED, An Act to provide for the licensing of certain real estate
2 corporations and limited liability companies.

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

4 Section 1. That chapter 36-21A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 A real estate salesperson or broker associate employed by or otherwise associated with a
7 broker may form a business corporation or limited liability company under all the following
8 conditions:

- 9 (1) The business corporation or limited liability company does not engage in real estate
10 transactions as a third-party agent or in any other capacity requiring a license under
11 this chapter;
- 12 (2) The business corporation or limited liability company does not advertise or otherwise
13 hold itself out as a real estate brokerage company;
- 14 (3) The employing or associating broker is not relieved of any obligation to supervise the

1 employed or associated licensee or any other requirement of this chapter or the rules
2 adopted pursuant to this chapter;

3 (4) The employed or associated licensee is not relieved of any personal liability for any
4 licensed activities by interposing the corporate or limited liability form;

5 (5) The business corporation or limited liability company is owned solely by an individual
6 real estate salesperson or broker associate, or by that person and that person's spouse;
7 and

8 (6) The business corporation or limited liability company is approved by and registered
9 with the commission. The registration fee for an approved business corporation or
10 limited liability company shall be established by rule promulgated pursuant to chapter
11 1-26. The fee may not exceed one hundred dollars.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

841E0747

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1218 - 02/01/2001

Introduced by: Representatives Derby and Peterson (Bill) and Senator Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to prohibit directed suretyship.

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

3 Section 1. No state, county, or municipal employee, and no person acting or purporting to
4 act on behalf of such employee, or any state, county, or municipal agency, may, with respect to
5 any public building or construction contract which is about to be or which has been competitively
6 bid or negotiated, require the bidder to make application to or furnish financial data to, or to
7 obtain, or procure, any of the surety bonds, or surety bond components of wrap-up insurance,
8 that are specified in connection with such contract or by law from any particular insurance or
9 surety company or producer.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

680E0698

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1249** - 01/31/2001

Introduced by: Representatives Duenwald and Brown (Jarvis) and Senators Drake,
Diedrich (Elmer), Staggers, and Vitter

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions regarding the use of a vehicle
2 at certain intersections.

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

4 Section 1. That § 32-26-2 be amended to read as follows:

5 32-26-2. In crossing an intersection of highways or the intersection of a highway by a
6 railroad right-of-way, the driver of a vehicle shall at all times cause such vehicle to travel on the
7 right half of the highway unless such right half is obstructed or impassable. However, this section
8 does not apply to a vehicle passing another vehicle at an intersection of a state highway with a
9 township road or improved section line unless the intersection is marked as a no-passing zone.

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

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

175E0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 1 - 01/19/2001

Introduced by: Senators Madden and Ham and Representatives McCoy and Slaughter at
the request of the Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to require written informed consent before genetic testing.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Genetic information," information derived from a genetic test about a gene, gene
5 product, or inherited characteristic;

6 (2) "Genetic test," a test of human DNA, RNA, chromosomes, or genes performed in
7 order to identify the presence or absence of an inherited variation, alteration, or
8 mutation which is associated with predisposition to disease, illness, impairment, or
9 other disorder. Genetic test does not mean a routine physical measurement; a
10 chemical, blood, or urine analysis; a test for drugs or HIV infection; any test
11 commonly accepted in clinical practice; or any test performed due to the presence of
12 signs, symptoms, or other manifestations of a disease, illness, impairment, or other
13 disorder;

14 (3) "Predictive genetic test," a genetic test performed for the purpose of predicting the

1 future probability that the person tested will develop a genetically related disease or
2 disability.

3 Section 2. No person may order or perform a predictive genetic test without first obtaining
4 the written, informed consent of the person to be tested. For purposes of this section, written,
5 informed consent consists of a signed writing executed by the person to be tested or the legally
6 authorized representative of the person to be tested that includes, at a minimum, all of the
7 following:

- 8 (1) The nature and purpose of the predictive genetic test;
- 9 (2) The effectiveness and limitations of the predictive genetic test;
- 10 (3) The implications of taking the predictive genetic test, including, the medical risks and
11 benefits;
- 12 (4) The future uses of the sample taken from the person tested in order to conduct the
13 predictive genetic test and the information obtained from the predictive genetic test;
- 14 (5) The meaning of the predictive genetic test results and the procedure for providing
15 notice of the results to the person tested; and
- 16 (6) A listing of who will have access to the sample taken from the person tested in order
17 to conduct the predictive genetic test and the information obtained from the predictive
18 genetic test, and the person's right to confidential treatment of the sample and the
19 information.

20 Section 3. If a person to be tested or the person's legally authorized representative signs a
21 copy of the informed consent form developed pursuant to section 2 of this Act, the person
22 obtaining the informed consent shall give the person to be tested a copy of the signed informed
23 consent form and shall include the original signed informed consent form in the medical record
24 of the person tested.

1 Section 4. Nothing in this Act alters the ability to perform genetic tests done in pursuance
2 of a lawful criminal investigation or court order.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

247E0029

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 2 - 02/01/2001

Introduced by: Senators Madden and Ham and Representatives McCoy and Slaughter at
the request of Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to prohibit employers from obtaining, seeking, or using
2 genetic information.

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

4 Section 1. That chapter 60-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 It is an unlawful employment practice for an employer to seek to obtain, to obtain, or to use
7 genetic information, as defined in section 2 of this Act, of an employee or a prospective
8 employee to distinguish between or discriminate against employees or prospective employees or
9 restrict any right or benefit otherwise due or available to an employee or a prospective employee.
10 However, it is not an unlawful employment practice for an employer to seek to obtain, to obtain,
11 or to use genetic information if:

12 (1) The employer is a law enforcement agency conducting a criminal investigation; or

13 (2) The employer relies on the test results from genetic information obtained by law
14 enforcement through a criminal investigation, the employer legally acquires the test

1 results, the employer keeps the test results confidential except as otherwise required
2 by law, and the employer uses the test results for the limited purpose of taking
3 disciplinary action against the employee.

4 Any employee or prospective employee claiming to be aggrieved by this unlawful employment
5 practice may bring a civil suit for damages in circuit court. The court may award reasonable
6 attorney fees and costs in addition to any judgment awarded to the employee or prospective
7 employee.

8 Section 2. That chapter 60-2 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 For the purposes of this Act, genetic information is the information about an individual or
11 family obtained from a genetic test or an individual's deoxyribonucleic acid (DNA) sample.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0331

SENATE GOVERNMENT OPERATIONS AND AUDIT COMMITTEE ENGROSSED NO. **SB 50** - 01/25/2001

Introduced by: The Committee on Government Operations and Audit at the request of the
Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the state's accounting
2 systems and the financial statements prepared by the Bureau of Finance and Management.

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

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

5 4-4-4. ~~The following types of funds and account group entities shall be used by the state and~~
6 ~~local governments except higher education.~~

7 ~~—Governmental Funds~~

8 ~~—(1)—"General fund," to account for all financial resources except those required to be~~
9 ~~accounted for in another fund.~~

10 ~~—(2)—"Special revenue funds," to account for the proceeds of specific revenue sources (other~~
11 ~~than special assessments, expendable trusts, or for major capital projects) that are~~
12 ~~legally restricted to expenditure for specified purposes.~~

13 ~~—(3)—"Capital projects funds," to account for financial resources to be used for the~~
14 ~~acquisition or construction of major capital facilities (other than those financed by~~

1 ~~proprietary funds, special assessment funds, and trust funds).~~

2 ~~— (4) — "Debt service funds," to account for the accumulation of resources for, and the~~
3 ~~payment of, general long-term debt principal and interest.~~

4 ~~— Proprietary Funds~~

5 ~~— (5) — "Enterprise funds," to account for operations that are financed and operated in a~~
6 ~~manner similar to private business enterprises—where the intent of the governing body~~
7 ~~is that the costs (expenses, including depreciation) of providing goods or services to~~
8 ~~the general public on a continuing basis be financed or recovered primarily through~~
9 ~~user charges or where the governing body has decided that periodic determination of~~
10 ~~revenues earned, expenses incurred, or net income is appropriate for capital~~
11 ~~maintenance, public policy, management control, accountability, or other purposes.~~

12 ~~— (6) — "Internal service funds," to account for the financing of goods or services provided by~~
13 ~~one department or agency to other departments or agencies of the governmental unit,~~
14 ~~or to other governmental units, on a cost-reimbursement basis.~~

15 ~~— Fiduciary Funds~~

16 ~~— (7) — "Trust and agency funds," to account for assets held by a governmental unit in a~~
17 ~~trustee capacity or as an agent for individuals, private organizations, other~~
18 ~~governmental units, and other funds. These include expendable trust funds,~~
19 ~~nonexpendable trust funds, pension trust funds, and agency funds.~~

20 ~~— Account Groups~~

21 ~~— (8) — "General fixed assets," to account for all fixed assets except those accounted for in~~
22 ~~proprietary funds or trust funds.~~

23 ~~— (9) — "General long-term obligation," to account for the unmatured principal of bonds,~~
24 ~~warrants, notes, or other forms of noncurrent or long-term general obligation~~

1 ~~indebtedness that is not a specific liability of any proprietary fund, special assessment~~
 2 ~~fund, or trust fund. Any accounting system used by any state agency or any component~~
 3 ~~unit of state government shall be designed to meet the financial accounting and~~
 4 ~~reporting requirements of generally accepted accounting principles.~~

5 Section 2. That § 4-4-4.1 be repealed.

6 ~~4-4-4.1. Institutions of higher education shall use the following types of funds:~~

7 ~~Current Funds~~

8 ~~(1) "Unrestricted current funds," to account for all resources expended for short-term~~
 9 ~~operating purposes which have no purpose stipulated by the donor or other external~~
 10 ~~agency;~~

11 ~~(2) "Restricted current funds," to account for all resources expended for short-term~~
 12 ~~operating purposes which are limited by the donor or other external agency to specified~~
 13 ~~purposes, programs, departments, or schools;~~

14 ~~Loan Funds~~

15 ~~(3) "Loan funds," to account for the resources available for loans to students, faculty, and~~
 16 ~~staff;~~

17 ~~Endowment and Similar Funds~~

18 ~~(4) "Endowment funds," to account for funds for which the terms of the gift instrument~~
 19 ~~creating the fund stipulated that the principal of the fund is not expendable;~~

20 ~~(5) "Term endowment funds," to account for those funds that are like endowment funds~~
 21 ~~except that all or part of the principal may be used after a stated period of time or upon~~
 22 ~~the occurrence of a certain event;~~

23 ~~(6) "Quasi-endowment funds," to account for those funds that the governing board of the~~
 24 ~~institution, rather than a donor or other external agency, determined to retain and~~

1 invest;

2 ~~— Annuity and Life Income Funds~~

3 ~~— (7) "Annuity funds," to account for those funds acquired by an institution under an~~
4 ~~agreement that makes money or other property available to the institution on condition~~
5 ~~that it bind itself to pay stipulated amounts periodically to the donor or other~~
6 ~~designated individual until the time specified in the agreement for the payments to~~
7 ~~terminate;~~

8 ~~— (8) "Life income funds," to account for those funds acquired by an institution under an~~
9 ~~agreement that makes money or other property available to the institution on condition~~
10 ~~that it bind itself to pay the income earned by the donated assets periodically to the~~
11 ~~donor or other designated individual, usually for the lifetime of the income beneficiary;~~

12 ~~— Agency Funds~~

13 ~~— (9) "Agency funds," to account for funds held by the institution as custodian or fiscal agent~~
14 ~~for individual students, faculty, staff members, and organizations;~~

15 ~~— Plant Funds~~

16 ~~— (10) "Unexpended plant funds," to account for unexpended resources derived from various~~
17 ~~sources to finance the acquisition of long-lived plant assets and their associated~~
18 ~~liabilities;~~

19 ~~— (11) "Funds for renewals and replacements," to account for the renewal and replacement~~
20 ~~of plant fund assets as distinguished from additions and improvements to plant;~~

21 ~~— (12) "Funds for retirement of indebtedness," to account for the accumulation of resources~~
22 ~~for interest and principal payments and other debt service charges, including~~
23 ~~contributions for sinking funds, relating to plant fund indebtedness;~~

24 ~~— (13) "Investment in plant," to account for all long-lived assets in the service of the~~

1 ~~institution and all construction in progress, as well as all associated liabilities except~~
2 ~~for long-lived assets held as investments in endowment and similar funds, or~~
3 ~~construction in progress carried in the unexpended plant funds and funds for renewals~~
4 ~~and replacements subgroups until completion of the project.~~

5 ~~— In addition to these fund groups, institutions of higher education may use such additional fund~~
6 ~~groups as may be necessary to report their fiscal condition in conformity with generally accepted~~
7 ~~accounting principles.~~

8 ~~— All endowments, gifts, and bequests made directly to any state institution of higher education,~~
9 ~~and the income therefrom, shall belong to and be used only by that institution. Direct~~
10 ~~endowments, gifts, and bequests, including those received indirectly by foundations affiliated with~~
11 ~~an institution, may not be used to reduce its state appropriation. Nothing contained in this section~~
12 ~~may require the continuation of programs or program levels achieved as the result of those~~
13 ~~endowments, gifts, and bequests, nor may it apply to state appropriated funds.~~

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

15 4-4-6. The Bureau of Finance and Management shall annually prepare financial statements for
16 the State of South Dakota. The financial statements shall ~~include all funds and account groups of~~
17 ~~the state and shall~~ be prepared in accordance with generally accepted accounting principles.

18 Section 4. That chapter 13-52 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 All endowments, gifts, and bequests made directly to any state institution of higher education,
21 and the income therefrom, shall belong to and be used only by that institution. Direct
22 endowments, gifts, and bequests, including those received indirectly by foundations affiliated with
23 an institution, may not be used to reduce its state appropriation. Nothing contained in this section
24 may require the continuation of programs or program levels achieved as the result of those

1 endowments, gifts, and bequests, nor may it apply to state appropriated funds.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

670E0381

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 88** - 01/25/2001

Introduced by: Senators Olson (Ed), Duxbury, and Whiting and Representatives Monroe, Davis, Garnos, Solum, and Van Etten

1 FOR AN ACT ENTITLED, An Act to prohibit certain deceptive trade practices regarding
2 prescription discount cards.

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

4 Section 1. That § 37-24-6 be amended by adding thereto a NEW SUBDIVISION to read as
5 follows:

6 Sell, market, promote, advertise, or otherwise distribute any card or other purchasing
7 mechanism or device that is not insurance that purports to offer discounts or access to discounts
8 from pharmacies for prescription drug purchases if:

9 (a) The card or other purchasing mechanism or device does not expressly state in
10 bold and prominent type, prevalently placed, that discounts are not insurance;

11 (b) The discounts are not specifically authorized by a separate contract with each
12 pharmacy listed in conjunction with the card or other purchasing mechanism or
13 device; or

14 (c) The discount or access to discounts offered, or the range of discounts or access

1 to the range of discounts, is misleading, deceptive, or fraudulent, regardless of
2 the literal wording.

3 Section 2. The provisions of section 1 of this Act do not apply to a customer discount or
4 membership card issued by a store or buying club for use in that store or buying club.