



# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0190

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1060** - 02/07/2001

Introduced by: The Committee on Judiciary at the request of the Department of Game,  
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to revise the method for and the limitations on imposition  
2 of various civil damages for unlawfully taking wild animals.

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

4 Section 1. That § 41-1-5.1 be amended to read as follows:

5 41-1-5.1. Any person, other than a minor under the age of sixteen years, who willfully and  
6 unlawfully kills, destroys, takes, or possesses in this state any wild animal designated by this  
7 section;

8 (1) Without an applicable and valid big game or small game license; or

9 (2) At a time or place when and where taking or possession of such regulated wild animal  
10 is prohibited; or

11 (3) In excess of the legal limit of big game if exceeded by one or more; or

12 (4) In excess of the legal daily or possession limit of small game bird or fish if exceeded  
13 by two or more;

14 is liable to the state for civil damages, ~~which are,~~

1        The civil damages are five thousand dollars for each elk, mountain lion, or buffalo; ten  
2        thousand dollars for each mountain goat or mountain sheep; one thousand dollars for each deer,  
3        antelope, or bobcat; two hundred dollars for each turkey; two hundred dollars for each  
4        paddlefish; one hundred dollars for each species of small game bird; and fifty dollars for each fish  
5        for any species, other than paddlefish, with an established daily limit of less than twenty-five.

6        If a person has taken or is in possession of more than two times the lawful daily or possession  
7        limit of a regulated wild animal, such person is liable for twice the damages provided in this  
8        section.

9        However, the return uninjured of the ~~big-game~~ wild animal to the place where captured, or  
10       to such other place as the Department of Game, Fish and Parks may direct, constitutes a  
11       discharge of such damages. ~~However~~ Moreover, the provisions of this section do not apply to  
12       any person, who, after providing written notice received by the Department of Game, Fish and  
13       Parks, forty-eight hours in advance, takes reasonable actions to protect the person's land,  
14       livestock, or crops from serious and extraordinary damages caused by elk, deer, antelope, wild  
15       turkey, or mountain lion. Nothing in this section or any other provision of law prevents any  
16       person from taking any action necessary to protect the personal safety of that person or any other  
17       person who is in immediate danger of harm from a mountain lion or other animal specified in this  
18       section.

19       Section 2. That § 41-1-5.2 be amended to read as follows:

20       41-1-5.2. The liquidated damages provided for in this chapter and taxable costs may be  
21       collected by the Department of Game, Fish and Parks in a civil suit brought by it, in the name of  
22       the State of South Dakota, against the person claimed to be liable therefor. Conviction of a  
23       criminal offense for the same incident leading to the charges specified in §§ 41-1-5.1 ~~and~~  
24       ~~41-1-5.3 to 41-1-5.5, inclusive~~, is prima facie evidence of the defendant's civil liability. Failure

1 to obtain conviction on a criminal charge is not a bar to a separate civil action for such liquidated  
2 damages.

3 The department, collecting such liquidated damages and taxable costs, shall deposit them in  
4 the Department of Game, Fish and Parks fund. Any other public agency or department of the  
5 state, collecting liquidated damages and taxable costs, shall remit the moneys collected, less the  
6 agreed collection fee, to the state treasurer who shall deposit them in the Department of Game,  
7 Fish, and Parks fund.

8 The judgment and liquidated damages may be collected by an agent. Fees to agents  
9 authorized to collect on a judgment under this section may not exceed fifty percent of the total  
10 amount collected. With approval of the department, agreed collection fees may be deducted from  
11 the moneys collected when remitted or may be paid on warrants drawn by the state auditor on  
12 itemized vouchers approved by the secretary of game, fish and parks and submitted  
13 simultaneously with the moneys collected.

14 Section 3. That § 41-1-5.3 be repealed.

15 ~~41-1-5.3. Any person, other than a minor under the age of sixteen years, who willfully and~~  
16 ~~unlawfully kills, destroys, takes, or possesses any small game bird or wild turkey during a closed~~  
17 ~~season or without a license is liable to the state for civil damages of one hundred dollars for each~~  
18 ~~small game bird and two hundred dollars for each turkey. However, the provisions of this section~~  
19 ~~do not apply to any person, who, after providing written notice received by the Department of~~  
20 ~~Game, Fish and Parks, forty-eight hours in advance, takes reasonable actions to protect the~~  
21 ~~person's land or crops from serious and extraordinary damages caused by wild turkeys.~~

22 Section 4. That § 41-1-5.4 be repealed.

23 ~~41-1-5.4. Any person, other than a minor under the age of sixteen years, who willfully and~~  
24 ~~unlawfully kills, destroys, takes, or possesses five or more small game birds or two or more wild~~

1 turkeys in excess of the legal limit during an open season is liable to the state for civil damages  
2 of one hundred dollars per each small game bird and two hundred dollars for each turkey in  
3 excess of the legal limit. However, the provisions of this section do not apply to any person,  
4 who, after providing written notice received by the Department of Game, Fish and Parks, forty-  
5 eight hours in advance, takes reasonable actions to protect the person's land or crops from  
6 serious and extraordinary damages caused by wild turkeys.

7 Section 5. That § 41-1-5.5 be repealed.

8 ~~41-1-5.5. Any person, other than a minor under the age of sixteen years, who willfully and~~  
9 ~~unlawfully kills, destroys, takes or possesses five or more fish in excess of the daily or possession~~  
10 ~~limit for any species with a daily limit less than ten is liable to the state for civil damages of fifty~~  
11 ~~dollars per each fish in excess of the legal limit.~~

12 Section 6. That § 41-1-5.6 be amended to read as follows:

13 41-1-5.6. A statement generally outlining the civil liability provisions of §§ 41-1-5.1 to  
14 ~~41-1-5.5, inclusive,~~ shall be printed on the reverse of the citation given by an arresting officer at  
15 the time of the arrest to the person violating game and fish statutes. Acknowledgment of receipt  
16 of the information concerning civil liability by the defendant is to be noted specifically through  
17 a specific receipt form to draw attention to civil penalties.

18 No person who has been prosecuted for a criminal offense may be held liable for civil  
19 damages pursuant to §§ 41-1-5.1 to ~~41-1-5.5, inclusive,~~ and 41-1-5.2 arising from the same  
20 offense or incident if ~~he~~ the person has not received the warnings required in this section.

21 Section 7. That § 41-1-5.8 be repealed.

22 ~~41-1-5.8. If a person has taken or is in possession of more than two times the lawful daily~~  
23 ~~or possession limit of a regulated wild animal, the liquidated damages as determined and~~  
24 ~~provided for in §§ 41-1-5.1 and 41-1-5.3 to 41-1-5.5, inclusive, shall be doubled.~~

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0193      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. HB 1062 -**  
**02/06/2001**

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Game, Fish and Parks

1    FOR AN ACT ENTITLED, An Act to revise the requirement that holders of a license issued by  
2        the Department of Game, Fish and Parks exhibit the license or authorization on request and  
3        to require that certain persons also exhibit certain forms of identification to law enforcement  
4        officers.

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

6        Section 1. That § 41-6-63 be amended to read as follows:

7        41-6-63. ~~It shall be the duty of any~~ A licensee shall at any time upon request of any person  
8        ~~to exhibit his~~ the licensee's license or other form of license authorization issued by the  
9        Department of Game, Fish and Parks ~~department~~ pursuant to Titles 41 and 42. ~~A violation of~~  
10       During the required license exhibition and upon request by a conservation officer or other law  
11       enforcement officer, a licensee who is sixteen years of age or older who holds the other form of  
12       license authorization, shall exhibit and provide for inspection a driver's license, a state-issued  
13       identification card, or another form of valid identification for the purpose of verifying the identity  
14       of the licensee. Failure to exhibit the licensee's license or other form of license authorization

1 required by this section is a Class 2 misdemeanor.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

367E0176

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1075** - 02/07/2001

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

1 FOR AN ACT ENTITLED, An Act to modify certain procedures for grand jury returns.

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

3 Section 1. That § 23A-5-18 be amended to read as follows:

4 23A-5-18. A quorum of six grand jurors must be present before any evidence or testimony  
5 may be received or any other business conducted. An indictment may be found only ~~when~~ if there  
6 is probable cause to believe that an offense has been committed and that the defendant  
7 committed it. An indictment may be found only upon the concurrence of six or more jurors. The  
8 names of only those witnesses examined before the grand jury in relation to the particular  
9 indictment shall be listed on that indictment before it is ~~presented to~~ filed with the court. An  
10 indictment shall be returned by the grand jury to a circuit judge in open court, or, filed with the  
11 clerk of courts, endorsed a true bill.

12 If six grand jurors do not concur in finding an indictment against a defendant who is in  
13 custody but who has not had a preliminary hearing, the complaint or information and the certified  
14 record of the proceedings before the committing magistrate transmitted to them ~~must~~ shall be  
15 returned to the court, with an endorsement thereon, signed by the foreman, that the charge is



- 1 dismissed. The dismissal of the charge does not prevent its being again submitted to a grand jury
- 2 as often as a court may direct, but without such direction it cannot again be submitted.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

367E0180

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1077** - 02/07/2001

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

1 FOR AN ACT ENTITLED, An Act to permit the court to impose certain costs and fees as part  
2 of the disposition for a child adjudicated as a child in need of supervision.

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

4 Section 1. That § 26-8B-6 be amended to read as follows:

5 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall enter  
6 a decree of disposition according to the least restrictive alternative available in keeping with the  
7 best interests of the child. The decree shall contain one or more of the following alternatives:

8 (1) The court may place the child on probation or under protective supervision in the  
9 custody of one or both parents, guardian, custodian, relative, or another suitable  
10 person under conditions imposed by the court;

11 (2) The court may require as a condition of probation that the child report for assignment  
12 to a supervised work program, provided the child is not placed in a detention facility  
13 and is not deprived of the schooling that is appropriate to the child's age, needs, and  
14 specific rehabilitative goals. The supervised work program shall be of a constructive  
15 nature designed to promote rehabilitation, shall be appropriate to the age level and

1 physical ability of the child and shall be combined with counseling by a court services  
2 officer or other guidance personnel. The supervised work program assignment shall  
3 be made for a period of time consistent with the child's best interests, but may not  
4 exceed ninety days;

5 (3) If the court finds that the child has violated a valid court order, the court may place  
6 the child in a detention facility, for purposes of disposition if:

7 (a) The child is not deprived of the schooling that is appropriate for the child's age,  
8 needs, and specific rehabilitative goals;

9 (b) The child had a due process hearing before the order was issued;

10 (c) Before the issuance of such order, a local interagency team, authorized  
11 pursuant to § 27A-15-56 shall review the behavior of the child and the  
12 circumstances under which such child was brought before the court and made  
13 subject to such order; determine the reasons for the behavior that caused such  
14 child to be brought before the court and made subject to such order; determine  
15 that all dispositions, including treatment, other than placement in a detention  
16 facility or the Department of Corrections, have been exhausted or are clearly  
17 inappropriate; and submit to the court a written report stating the results of the  
18 review and determinations made;

19 (4) The court may require the child to pay for any damage done to property or for  
20 medical expenses under conditions set by the court if payment can be enforced  
21 without serious hardship or injustice to the child;

22 (5) The court may commit the child to the Department of Corrections for placement in  
23 a juvenile correctional facility, foster home, group home, group care center, or  
24 residential treatment center pursuant to chapter 26-11A. Prior to placement in a

1 juvenile correctional facility, an interagency team comprised of representatives from  
2 the Department of Human Services, Department of Social Services, Department of  
3 Education and Cultural Affairs, and the Department of Corrections shall make a  
4 written finding that placement at a Department of Corrections facility is the least  
5 restrictive placement commensurate with the best interests of the child. Subsequent  
6 placement in any other Department of Corrections facility may be authorized without  
7 an interagency review;

8 (6) The court may place a child in an alternative educational program;

9 (7) The court may order the child to be examined and treated at the Human Services  
10 Center;

11 (8) The court may impose a fine not to exceed five hundred dollars;

12 (9) The court may order the suspension or revocation of the child's driving privilege or  
13 restrict the privilege in such manner as it sees fit or as required by § 32-12-52.4;

14 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,  
15 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,  
16 or other party responsible for the child.

17 No adjudicated child in need of supervision may be incarcerated in a detention facility except  
18 as provided in subdivision (3) or (5) of this section.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

367E0178

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1079** - 02/07/2001

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

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

1 FOR AN ACT ENTITLED, An Act to determine the venue of the offense of underage  
2 possession or consumption of alcoholic beverages.

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

4 Section 1. That § 35-9-6 be amended to read as follows:

5 35-9-6. In any arrest, citation, or prosecution, ~~or adjudication~~ arising from a violation of  
6 § 35-9-2, if the person is apprehended for:

7 (1) The purchase or attempted purchase of alcoholic beverages, the ~~situs~~ venue is the  
8 locality where the purchase or attempted purchase occurred;

9 (2) The possession or consumption of alcoholic beverages, the ~~situs~~ venue is the locality  
10 where the person was apprehended or any other locality where the person possessed  
11 or consumed any portion of the alcoholic beverages.

12 Section 2. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 In any juvenile adjudication arising from a violation of § 35-9-2, if the person is apprehended

1 for:

2 (1) The purchase or attempted purchase of alcoholic beverages, the venue is the locality  
3 where the purchase or attempted purchase occurred or the juvenile's county of  
4 residence;

5 (2) The possession or consumption of alcoholic beverages, the venue is the locality where  
6 the juvenile was apprehended or any other locality where the juvenile possessed or  
7 consumed any portion of the alcoholic beverages or the juvenile's county of residence.

8 However, no transfer to the juvenile's county of residence may occur unless the state's  
9 attorney of the juvenile's county of residence affirmatively consents to the transfer.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

381E0694

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 175** - 02/07/2001

Introduced by: Senators Symens, Dennert, Diedrich (Larry), and Duxbury and  
Representatives Jaspers, Burg, Hanson (Gary), Juhnke, Lange, and  
Nachtigal

1 FOR AN ACT ENTITLED, An Act to exempt from sales tax certain contract services provided  
2 to agricultural producers by an agent of a parent company through a local contracting entity  
3 and certain employee services provided by an agricultural cooperative.

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

5 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 There are specifically exempted from the provisions of this chapter and from the computation  
8 of the tax imposed by it, the gross receipts from the sale of services rendered by a parent  
9 company to a local cooperative, if the local cooperative is a local contracting entity, for the  
10 purpose of paying for the services of an agent who meets with agricultural producers promoting,  
11 educating, and providing technical assistance and information on the parent company's products  
12 which are sold through a local contracting entity.

13 Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
14 follows:

1        There are specifically exempted from the provisions of this chapter and from the computation  
2 of the tax imposed by it, the gross receipts from employee services provided by an agricultural  
3 cooperative to a company, if the agricultural cooperative owns at least twenty-five percent of  
4 such company.



# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

464E0459            **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. SB 190 - 02/06/2001**

Introduced by: Senators Volesky, Koetzle, and Stagers and Representatives Lange,  
Bradford, Elliott, and Glenski

1    FOR AN ACT ENTITLED, An Act to provide for an early pheasant season for resident hunters.

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

3        Section 1. That chapter 41-6 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5        The Game, Fish and Parks Commission shall promulgate, pursuant to chapter 1-26, rules to  
6 establish an early pheasant hunting season for resident hunters only. The rules shall provide for  
7 shooting hours, daily bag limits, and possession limits. The early pheasant season shall be for  
8 three consecutive days.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0691

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 203** - 02/07/2001

Introduced by: Senators Bogue and Koskan and Representatives Smidt, Madsen, Michels,  
and Teupel

1 FOR AN ACT ENTITLED, An Act to clarify the responsibilities of foster parents in regard to  
2 foster children.

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

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

6 No foster parent is liable for the acts of his or her foster child. However, this section does  
7 not apply to any action based on agency or negligent entrustment of a motor vehicle. No costs  
8 or fees may be charged or assessed against a foster parent as a result of a foster child in their care  
9 being adjudicated under § 26-8B-6 or 26-8C-7.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

708E0621

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 209** - 02/07/2001

Introduced by: Senators Olson (Ed), Diedrich (Elmer), and Sutton (Dan) and  
Representatives Brown (Richard), Derby, Flowers, Jaspers, and Sebert

1 FOR AN ACT ENTITLED, An Act to permit certain businesses to remit sales and use tax after  
2 the machinery is under production.

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

4 Section 1. That § 10-45-27 be amended to read as follows:

5 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts  
6 are subject to sales tax in this state during the periods specified by this section shall make a return  
7 and remittance to the Department of Revenue on forms prescribed and furnished by the  
8 department in the following manner:

9 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the  
10 return and remit the tax on or before the twentieth day of the month following each  
11 monthly period;

12 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the  
13 return and remit the tax on or before the last day of the month following each  
14 two-month period;

1 (3) Any person whose tax liability is one thousand dollars or more annually and who  
2 remits the tax by electronic transfer to the state, shall file the return by electronic  
3 means on or before the twenty-third day of the month following each monthly period  
4 and remit the tax on or before the second to the last day of the month following each  
5 monthly period.

6 The secretary of revenue may grant an extension of not more than five days for filing a return  
7 and remittance. However, the secretary of revenue may grant an extension for remitting the tax  
8 to a qualified business as provided in sections 2 to 10, inclusive, of this Act for six months.

9 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return  
10 or remittance is not made on time.

11 Section 2. Terms used in this Act mean:

- 12 (1) "Department," the Department of Revenue;
- 13 (2) "Business," a business that has purchased and is installing tangible personal property  
14 in the form of equipment or machinery for direct use in a manufacturing, fabricating,  
15 or processing business, which is subject to sales or use tax pursuant to chapter 10-45  
16 or 10-46;
- 17 (3) "Project," the purchase and installation of equipment or machinery;
- 18 (4) "Project cost," the amount paid in money for a project;
- 19 (5) "Secretary," the secretary of the Department of Revenue.

20 Section 3. Any manufacturing, fabricating, or processing business may apply for and obtain  
21 an extension for remitting the sales and use tax imposed and due under the provisions of chapter  
22 10-45 or 10-46 for equipment or machinery that will be for direct use in a manufacturing,  
23 fabricating, or processing business. The extension shall end after six months.

24 Section 4. The extension pertains only to equipment and machinery purchased and installed

1 after July 1, 2001. No extension may be made unless:

2 (1) The project cost exceeds twenty thousand dollars; and

3 (2) The business applying for the extension obtains a permit from the secretary as set  
4 forth in section 6 of this Act.

5 Section 5. The amount of the tax extension shall apply to one hundred percent of the  
6 equipment and machinery costs and installation fees.

7 Section 6. Any business desiring an extension pursuant to this Act shall apply for a permit  
8 from the secretary at least thirty days prior to commencement of the project. The application for  
9 a permit shall be submitted on a form prescribed by the secretary. A separate application shall  
10 be made and submitted for each project. Upon approval of the application, the secretary shall  
11 issue a permit entitling the applicant to an extension as provided by this Act. The permit or  
12 extension is not assignable or transferable.

13 Section 7. Any extension shall be submitted on forms prescribed by the secretary and shall  
14 be supported by such documentation as the secretary may require. The secretary may deny any  
15 extension where the business has failed to provide information or documentation requested or  
16 considered necessary by the secretary to determine the validity of the extension.

17 Section 8. If any extension has been fraudulently presented or supported as to any item in the  
18 claim, or if the business fails to meet all the conditions of this Act, then the business may be  
19 rejected in its entirety and any tax due from the business shall constitute a debt to the state and  
20 a lien in favor of the state upon all property and rights to property whether real or personal  
21 belonging to the business and may be recovered in an action of debt.

22 Section 9. Any business aggrieved by the denial in whole or in part of a extension requested  
23 under this Act, may within thirty days after service of the notice of a denial by the secretary,  
24 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be

1 conducted pursuant to chapter 1-26.

2 Section 10. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the

3 procedures for filing extensions and the requirements necessary to qualify for an extension.