

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0315

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1032 - 01/16/2001

Introduced by: The Committee on Judiciary at the request of the South Dakota
Commission on Child Support

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to child support.

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

3 Section 1. That § 25-7-6.2 be amended to read as follows:

4 25-7-6.2. The child support obligation shall be established in accordance with the **combined**
5 ~~monthly net income of both parents as provided in the~~ following schedule subject to such
6 revisions or deviations as may be permitted pursuant to §§ 25-7-6.1 to ~~25-7-6.17~~ 25-7-6.18,
7 inclusive. Except as provided in this chapter, the combined monthly net incomes of both parents
8 shall be used in determining the obligation and divided proportionately between the parents based
9 upon their respective net incomes. The noncustodial parent's proportionate share establishes the
10 amount of the child support order.

11 If the obligation using only the noncustodial parent's monthly net income is an obligation
12 within the emboldened areas of the schedule, that amount shall be compared to the noncustodial
13 parent's proportionate share using both parents' monthly net incomes. The lesser amount
14 establishes the noncustodial parent's child support order.

1	Combined						
2	Net						
3	Monthly	One	Two	Three	Four	Five	Six
4	Income	Child	Children	Children	Children	Children	Children
5	0-1,000	50	50	50	50	50	50
6	1,050	74	75	76	77	78	78
7	1,100	119	121	122	123	125	126
8	1,150	164	166	168	170	172	173
9	1,200	209	212	214	216	219	221
10	1,250	254	257	260	263	266	268
11	1,300	299	303	306	309	313	316
12	1,350	322	348	352	356	360	363
13	1,400	333	394	398	402	407	411
14	1,450	344	439	444	449	454	458
15	1,500	355	485	490	495	501	506
16	1,550	366	530	536	542	548	553
17	1,600	378	547	582	588	595	601
18	1,650	389	563	628	635	642	648
19	1,700	400	579	674	681	689	696
20	1,750	411	595	701	728	736	743
21	1,800	422	611	719	774	783	791
22	1,850	434	627	737	815	830	838
23	1,900	443	641	754	833	877	886
24	1,950	452	654	769	849	921	933
25	2,000	460	666	783	866	938	981
26	2,050	469	678	798	882	956	1,023
27	2,100	477	691	813	898	974	1,042
28	2,150	485	703	828	914	991	1,061

1	2,200	494	715	842	931	1,009	1,079
2	2,250	502	728	857	947	1,026	1,098
3	2,300	510	739	870	962	1,043	1,116
4	2,350	515	745	878	970	1,051	1,125
5	2,400	520	752	885	978	1,060	1,134
6	2,450	524	758	892	986	1,068	1,143
7	2,500	529	765	899	993	1,077	1,152
8	2,550	534	771	906	1,001	1,085	1,161
9	2,600	538	778	913	1,009	1,094	1,171
10	2,650	543	784	921	1,017	1,103	1,180
11	2,700	548	791	928	1,025	1,111	1,189
12	2,750	555	800	938	1,037	1,124	1,203
13	2,800	562	810	950	1,050	1,138	1,217
14	2,850	569	820	961	1,062	1,151	1,232
15	2,900	576	830	973	1,075	1,165	1,247
16	2,950	583	840	984	1,088	1,179	1,262
17	3,000	590	850	996	1,100	1,193	1,276
18	3,050	598	860	1,007	1,113	1,207	1,291
19	3,100	605	870	1,019	1,126	1,220	1,306
20	3,150	611	880	1,030	1,138	1,234	1,320
21	3,200	618	889	1,041	1,150	1,247	1,334
22	3,250	624	898	1,052	1,163	1,260	1,348
23	3,300	630	907	1,063	1,175	1,273	1,363
24	3,350	637	917	1,074	1,187	1,287	1,377
25	3,400	643	926	1,085	1,199	1,300	1,391
26	3,450	649	935	1,096	1,211	1,313	1,405
27	3,500	656	944	1,107	1,233	1,326	1,419
28	3,550	662	954	1,118	1,236	1,340	1,433
29	3,600	670	965	1,131	1,249	1,354	1,449

1	3,650	677	975	1,143	1,263	1,369	1,465
2	3,700	685	986	1,155	1,276	1,384	1,480
3	3,750	692	997	1,167	1,290	1,398	1,496
4	3,800	700	1,007	1,180	1,303	1,413	1,512
5	3,850	707	1,018	1,192	1,317	1,428	1,527
6	3,900	715	1,028	1,204	1,330	1,442	1,543
7	3,950	723	1,039	1,216	1,344	1,457	1,559
8	4,000	729	1,049	1,227	1,356	1,470	1,573
9	4,050	736	1,058	1,238	1,369	1,483	1,587
10	4,100	742	1,067	1,249	1,381	1,497	1,601
11	4,150	749	1,077	1,261	1,393	1,510	1,616
12	4,200	755	1,086	1,272	1,405	1,523	1,630
13	4,250	762	1,096	1,283	1,417	1,536	1,644
14	4,300	768	1,105	1,294	1,429	1,549	1,658
15	4,350	775	1,114	1,305	1,442	1,563	1,672
16	4,400	781	1,124	1,316	1,454	1,576	1,686
17	4,450	788	1,133	1,327	1,466	1,589	1,700
18	4,500	794	1,143	1,338	1,478	1,602	1,714
19	4,550	801	1,152	1,349	1,490	1,615	1,729
20	4,600	807	1,161	1,359	1,502	1,628	1,742
21	4,600	812	1,168	1,368	1,512	1,639	1,754
22	4,700	817	1,176	1,377	1,522	1,650	1,765
23	4,750	822	1,183	1,386	1,532	1,661	1,777
24	4,800	826	1,190	1,396	1,542	1,672	1,789
25	4,850	831	1,198	1,405	1,552	1,683	1,800
26	4,900	836	1,205	1,414	1,562	1,694	1,812
27	4,950	841	1,213	1,423	1,572	1,705	1,824
28	5,000	846	1,220	1,432	1,583	1,716	1,836
29	5,050	851	1,228	1,441	1,593	1,727	1,847

1	5,100	856	1,235	1,451	1,603	1,737	1,859
2	5,150	861	1,243	1,460	1,613	1,748	1,871
3	5,200	866	1,250	1,469	1,623	1,759	1,883
4	5,250	871	1,257	1,478	1,633	1,770	1,894
5	5,300	876	1,265	1,487	1,643	1,781	1,906
6	5,350	880	1,272	1,496	1,653	1,792	1,918
7	5,400	885	1,280	1,505	1,663	1,803	1,929
8	5,450	891	1,288	1,516	1,675	1,816	1,943
9	5,500	898	1,298	1,527	1,687	1,829	1,957
10	5,550	904	1,307	1,538	1,699	1,842	1,971
11	5,600	911	1,316	1,549	1,711	1,855	1,985
12	5,650	917	1,326	1,560	1,723	1,868	1,999
13	5,700	923	1,335	1,571	1,735	1,881	2,013
14	5,750	930	1,344	1,582	1,748	1,894	2,027
15	5,800	936	1,353	1,592	1,760	1,907	2,041
16	5,850	943	1,363	1,603	1,772	1,921	2,055
17	5,900	949	1,372	1,614	1,784	1,934	2,069
18	5,950	955	1,381	1,625	1,796	1,947	2,083
19	6,000	962	1,390	1,636	1,808	1,960	2,097
20	6,050	968	1,400	1,647	1,820	1,973	2,111
21	6,100	975	1,409	1,658	1,832	1,986	2,125
22	6,150	981	1,418	1,669	1,844	1,999	2,139
23	6,200	987	1,427	1,680	1,856	2,012	2,153
24	6,250	994	1,437	1,691	1,869	2,026	2,167
25	6,300	1,000	1,446	1,702	1,881	2,039	2,181
26	6,350	1,007	1,455	1,713	1,893	2,052	2,195
27	6,400	1,013	1,465	1,724	1,905	2,065	2,209
28	6,450	1,019	1,474	1,735	1,917	2,078	2,223
29	6,500	1,026	1,483	1,746	1,929	2,091	2,238

1	6,550	1,032	1,492	1,757	1,941	2,104	2,252
2	6,600	1,039	1,502	1,768	1,953	2,117	2,266
3	6,650	1,045	1,511	1,779	1,965	2,130	2,280
4	6,700	1,051	1,520	1,790	1,977	2,144	2,294
5	6,750	1,058	1,529	1,801	1,990	2,157	2,308
6	6,800	1,064	1,539	1,811	2,002	2,170	2,322
7	6,850	1,071	1,548	1,822	2,014	2,183	2,336
8	6,900	1,077	1,557	1,833	2,026	2,196	2,350
9	6,950	1,083	1,567	1,844	2,038	2,209	2,364
10	7,000	1,090	1,576	1,855	2,050	2,222	2,378
11	7,050	1,096	1,585	1,866	2,062	2,235	2,392
12	7,100	1,102	1,594	1,877	2,074	2,248	2,405
13	7,150	1,108	1,602	1,886	2,084	2,259	2,417
14	7,200	1,113	1,610	1,895	2,094	2,270	2,429
15	7,250	1,118	1,617	1,904	2,104	2,281	2,441
16	7,300	1,124	1,625	1,914	2,115	2,292	2,453
17	7,350	1,129	1,633	1,923	2,125	2,303	2,465
18	7,400	1,135	1,641	1,932	2,135	2,315	2,477
19	7,450	1,140	1,649	1,942	2,146	2,326	2,489
20	7,500	1,145	1,657	1,951	2,156	2,337	2,500
21	7,550	1,151	1,664	1,960	2,166	2,348	2,512
22	7,600	1,156	1,672	1,970	2,176	2,359	2,524
23	7,650	1,161	1,680	1,979	2,187	2,370	2,536
24	7,700	1,167	1,688	1,988	2,197	2,381	2,548
25	7,750	1,172	1,696	1,997	2,207	2,393	2,560
26	7,800	1,178	1,704	2,007	2,217	2,404	2,572
27	7,850	1,183	1,712	2,016	2,228	2,415	2,584
28	7,900	1,188	1,719	2,025	2,238	2,426	2,596
29	7,950	1,194	1,727	2,035	2,248	2,437	2,608

1	8,000	1,199	1,735	2,044	2,258	2,448	2,620
2	8,050	1,205	1,743	2,053	2,269	2,459	2,632
3	8,100	1,210	1,751	2,062	2,279	2,471	2,643
4	8,150	1,215	1,759	2,072	2,289	2,482	2,655
5	8,200	1,221	1,767	2,081	2,300	2,493	2,667
6	8,250	1,226	1,774	2,090	2,310	2,504	2,679
7	8,300	1,231	1,782	2,100	2,320	2,515	2,691
8	8,350	1,237	1,790	2,109	2,330	2,526	2,703
9	8,400	1,242	1,798	2,118	2,341	2,537	2,715
10	8,450	1,248	1,806	2,128	2,351	2,548	2,727
11	8,500	1,253	1,814	2,137	2,361	2,560	2,739
12	8,550	1,258	1,821	2,146	2,371	2,571	2,751
13	8,600	1,264	1,829	2,155	2,382	2,582	2,763
14	8,650	1,269	2,837	2,165	2,392	2,593	2,775
15	8,700	1,275	1,845	2,174	2,402	2,604	2,786
16	8,750	1,280	1,853	2,183	2,413	2,615	2,798
17	8,800	1,285	1,861	2,193	2,423	2,626	2,810
18	8,850	1,291	1,869	2,202	2,433	2,638	2,822
19	8,900	1,296	1,876	2,211	2,443	2,649	2,834
20	8,950	1,301	1,884	2,221	2,454	2,660	2,846
21	9,000	1,307	1,892	2,230	2,464	2,671	2,858
22	9,050	1,312	1,900	2,239	2,474	2,682	2,870
23	9,100	1,318	1,908	2,248	2,484	2,693	2,882
24	9,150	1,323	1,916	2,258	2,495	2,704	2,894
25	9,200	1,328	1,924	2,267	2,505	2,715	2,906
26	9,250	1,334	1,931	2,276	2,515	2,727	2,918
27	9,300	1,339	1,939	2,286	2,526	2,738	2,929
28	9,350	1,345	1,947	2,295	2,536	2,749	2,941
29	9,400	1,350	1,955	2,304	2,546	2,760	2,953

1	9,450	1,355	1,963	2,313	2,556	2,771	2,965
2	9,500	1,361	1,971	2,323	2,567	2,782	2,977
3	9,550	1,366	1,978	2,332	2,577	2,793	2,989
4	9,600	1,371	1,986	2,341	2,587	2,805	3,001
5	9,650	1,377	1,994	2,351	2,597	2,816	3,013
6	9,700	1,382	2,002	2,360	2,608	2,827	3,025
7	9,750	1,388	2,010	2,369	2,618	2,838	3,037
8	9,800	1,393	2,018	2,379	2,628	2,849	3,049
9	9,850	1,398	2,026	2,388	2,638	2,860	3,060
10	9,900	1,404	2,033	2,397	2,649	2,871	3,072
11	9,950	1,409	2,041	2,406	2,659	2,883	3,084
12	10,000	1,415	2,049	2,416	2,669	2,894	3,096

13 ~~—The child support obligation from the schedule shall be divided proportionately between the~~
14 ~~parents, based upon their respective net incomes. The share of the custodial parent is presumed~~
15 ~~to be spent directly for the benefit of the child. The share of the noncustodial parent establishes~~
16 ~~the amount of the child support order.~~

17 Monthly

18	<u>Net</u>	<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>
19	<u>Income</u>	<u>Child</u>	<u>Children</u>	<u>Children</u>	<u>Children</u>	<u>Children</u>	<u>Children</u>
20	<u>0-800</u>	<u>100</u>	<u>150</u>	<u>180</u>	<u>200</u>	<u>220</u>	<u>240</u>
21	<u>850</u>	<u>125</u>	<u>175</u>	<u>205</u>	<u>225</u>	<u>245</u>	<u>265</u>
22	<u>900</u>	<u>150</u>	<u>200</u>	<u>230</u>	<u>250</u>	<u>270</u>	<u>290</u>
23	<u>950</u>	<u>175</u>	<u>225</u>	<u>255</u>	<u>275</u>	<u>295</u>	<u>315</u>
24	<u>1,000</u>	<u>200</u>	<u>250</u>	<u>280</u>	<u>300</u>	<u>320</u>	<u>340</u>
25	<u>1,050</u>	<u>225</u>	<u>275</u>	<u>305</u>	<u>325</u>	<u>345</u>	<u>365</u>
26	<u>1,100</u>	<u>250</u>	<u>300</u>	<u>330</u>	<u>350</u>	<u>370</u>	<u>390</u>
27	<u>1,150</u>	<u>275</u>	<u>325</u>	<u>355</u>	<u>375</u>	<u>395</u>	<u>415</u>

1	<u>1,200</u>	<u>291</u>	<u>350</u>	<u>380</u>	<u>400</u>	<u>420</u>	<u>440</u>
2	<u>1,250</u>	<u>302</u>	<u>375</u>	<u>405</u>	<u>425</u>	<u>445</u>	<u>465</u>
3	<u>1,300</u>	<u>313</u>	<u>400</u>	<u>430</u>	<u>450</u>	<u>470</u>	<u>490</u>
4	<u>1,350</u>	<u>324</u>	<u>425</u>	<u>455</u>	<u>475</u>	<u>495</u>	<u>515</u>
5	<u>1,400</u>	<u>336</u>	<u>450</u>	<u>480</u>	<u>500</u>	<u>520</u>	<u>540</u>
6	<u>1,450</u>	<u>347</u>	<u>475</u>	<u>505</u>	<u>525</u>	<u>545</u>	<u>565</u>
7	<u>1,500</u>	<u>358</u>	<u>500</u>	<u>530</u>	<u>550</u>	<u>570</u>	<u>590</u>
8	<u>1,550</u>	<u>369</u>	<u>525</u>	<u>555</u>	<u>575</u>	<u>595</u>	<u>615</u>
9	<u>1,600</u>	<u>380</u>	<u>550</u>	<u>580</u>	<u>600</u>	<u>620</u>	<u>640</u>
10	<u>1,650</u>	<u>391</u>	<u>566</u>	<u>605</u>	<u>625</u>	<u>645</u>	<u>665</u>
11	<u>1,700</u>	<u>402</u>	<u>582</u>	<u>630</u>	<u>650</u>	<u>670</u>	<u>690</u>
12	<u>1,750</u>	<u>413</u>	<u>598</u>	<u>655</u>	<u>675</u>	<u>695</u>	<u>715</u>
13	<u>1,800</u>	<u>424</u>	<u>615</u>	<u>680</u>	<u>700</u>	<u>720</u>	<u>740</u>
14	<u>1,850</u>	<u>436</u>	<u>631</u>	<u>705</u>	<u>725</u>	<u>745</u>	<u>765</u>
15	<u>1,900</u>	<u>447</u>	<u>647</u>	<u>730</u>	<u>750</u>	<u>770</u>	<u>790</u>
16	<u>1,950</u>	<u>458</u>	<u>663</u>	<u>755</u>	<u>775</u>	<u>795</u>	<u>815</u>
17	<u>2,000</u>	<u>469</u>	<u>679</u>	<u>780</u>	<u>800</u>	<u>820</u>	<u>840</u>
18	<u>2,050</u>	<u>480</u>	<u>695</u>	<u>805</u>	<u>825</u>	<u>845</u>	<u>865</u>
19	<u>2,100</u>	<u>491</u>	<u>710</u>	<u>830</u>	<u>850</u>	<u>870</u>	<u>890</u>
20	<u>2,150</u>	<u>499</u>	<u>722</u>	<u>849</u>	<u>875</u>	<u>895</u>	<u>915</u>
21	<u>2,200</u>	<u>508</u>	<u>734</u>	<u>864</u>	<u>900</u>	<u>920</u>	<u>940</u>
22	<u>2,250</u>	<u>516</u>	<u>747</u>	<u>879</u>	<u>925</u>	<u>945</u>	<u>965</u>
23	<u>2,300</u>	<u>524</u>	<u>759</u>	<u>893</u>	<u>950</u>	<u>970</u>	<u>990</u>
24	<u>2,350</u>	<u>533</u>	<u>771</u>	<u>908</u>	<u>975</u>	<u>995</u>	<u>1,015</u>
25	<u>2,400</u>	<u>541</u>	<u>784</u>	<u>923</u>	<u>1,000</u>	<u>1,020</u>	<u>1,040</u>
26	<u>2,450</u>	<u>550</u>	<u>796</u>	<u>937</u>	<u>1,025</u>	<u>1,045</u>	<u>1,065</u>
27	<u>2,500</u>	<u>558</u>	<u>808</u>	<u>952</u>	<u>1,050</u>	<u>1,070</u>	<u>1,090</u>
28	<u>2,550</u>	<u>566</u>	<u>820</u>	<u>966</u>	<u>1,068</u>	<u>1,095</u>	<u>1,115</u>
29	<u>2,600</u>	<u>571</u>	<u>827</u>	<u>973</u>	<u>1,075</u>	<u>1,120</u>	<u>1,140</u>

1	<u>2,650</u>	<u>576</u>	<u>833</u>	<u>980</u>	<u>1,083</u>	<u>1,145</u>	<u>1,165</u>
2	<u>2,700</u>	<u>580</u>	<u>840</u>	<u>988</u>	<u>1,091</u>	<u>1,170</u>	<u>1,190</u>
3	<u>2,750</u>	<u>585</u>	<u>846</u>	<u>995</u>	<u>1,099</u>	<u>1,191</u>	<u>1,215</u>
4	<u>2,800</u>	<u>590</u>	<u>852</u>	<u>1,002</u>	<u>1,107</u>	<u>1,200</u>	<u>1,240</u>
5	<u>2,850</u>	<u>594</u>	<u>859</u>	<u>1,009</u>	<u>1,115</u>	<u>1,209</u>	<u>1,265</u>
6	<u>2,900</u>	<u>599</u>	<u>865</u>	<u>1,016</u>	<u>1,123</u>	<u>1,217</u>	<u>1,290</u>
7	<u>2,950</u>	<u>604</u>	<u>872</u>	<u>1,023</u>	<u>1,131</u>	<u>1,226</u>	<u>1,312</u>
8	<u>3,000</u>	<u>609</u>	<u>878</u>	<u>1,030</u>	<u>1,139</u>	<u>1,234</u>	<u>1,321</u>
9	<u>3,050</u>	<u>615</u>	<u>888</u>	<u>1,041</u>	<u>1,150</u>	<u>1,247</u>	<u>1,334</u>
10	<u>3,100</u>	<u>622</u>	<u>898</u>	<u>1,053</u>	<u>1,163</u>	<u>1,261</u>	<u>1,349</u>
11	<u>3,150</u>	<u>630</u>	<u>908</u>	<u>1,064</u>	<u>1,176</u>	<u>1,275</u>	<u>1,364</u>
12	<u>3,200</u>	<u>637</u>	<u>918</u>	<u>1,076</u>	<u>1,189</u>	<u>1,288</u>	<u>1,379</u>
13	<u>3,250</u>	<u>644</u>	<u>928</u>	<u>1,087</u>	<u>1,201</u>	<u>1,302</u>	<u>1,393</u>
14	<u>3,300</u>	<u>651</u>	<u>938</u>	<u>1,099</u>	<u>1,214</u>	<u>1,316</u>	<u>1,408</u>
15	<u>3,350</u>	<u>658</u>	<u>948</u>	<u>1,110</u>	<u>1,227</u>	<u>1,330</u>	<u>1,423</u>
16	<u>3,400</u>	<u>665</u>	<u>958</u>	<u>1,122</u>	<u>1,239</u>	<u>1,343</u>	<u>1,438</u>
17	<u>3,450</u>	<u>673</u>	<u>968</u>	<u>1,133</u>	<u>1,252</u>	<u>1,357</u>	<u>1,452</u>
18	<u>3,500</u>	<u>679</u>	<u>977</u>	<u>1,144</u>	<u>1,265</u>	<u>1,371</u>	<u>1,467</u>
19	<u>3,550</u>	<u>686</u>	<u>987</u>	<u>1,155</u>	<u>1,277</u>	<u>1,384</u>	<u>1,481</u>
20	<u>3,600</u>	<u>692</u>	<u>996</u>	<u>1,166</u>	<u>1,289</u>	<u>1,397</u>	<u>1,495</u>
21	<u>3,650</u>	<u>698</u>	<u>1,005</u>	<u>1,177</u>	<u>1,301</u>	<u>1,410</u>	<u>1,509</u>
22	<u>3,700</u>	<u>705</u>	<u>1,014</u>	<u>1,188</u>	<u>1,313</u>	<u>1,423</u>	<u>1,523</u>
23	<u>3,750</u>	<u>711</u>	<u>1,024</u>	<u>1,199</u>	<u>1,325</u>	<u>1,437</u>	<u>1,537</u>
24	<u>3,800</u>	<u>717</u>	<u>1,033</u>	<u>1,210</u>	<u>1,337</u>	<u>1,450</u>	<u>1,551</u>
25	<u>3,850</u>	<u>723</u>	<u>1,042</u>	<u>1,221</u>	<u>1,350</u>	<u>1,463</u>	<u>1,565</u>
26	<u>3,900</u>	<u>730</u>	<u>1,051</u>	<u>1,232</u>	<u>1,362</u>	<u>1,476</u>	<u>1,579</u>
27	<u>3,950</u>	<u>737</u>	<u>1,061</u>	<u>1,244</u>	<u>1,374</u>	<u>1,490</u>	<u>1,594</u>
28	<u>4,000</u>	<u>744</u>	<u>1,072</u>	<u>1,256</u>	<u>1,388</u>	<u>1,505</u>	<u>1,610</u>
29	<u>4,050</u>	<u>752</u>	<u>1,082</u>	<u>1,268</u>	<u>1,401</u>	<u>1,519</u>	<u>1,626</u>

1	<u>4,100</u>	<u>759</u>	<u>1,093</u>	<u>1,281</u>	<u>1,415</u>	<u>1,534</u>	<u>1,641</u>
2	<u>4,150</u>	<u>767</u>	<u>1,104</u>	<u>1,293</u>	<u>1,429</u>	<u>1,549</u>	<u>1,657</u>
3	<u>4,200</u>	<u>774</u>	<u>1,114</u>	<u>1,305</u>	<u>1,442</u>	<u>1,563</u>	<u>1,673</u>
4	<u>4,250</u>	<u>782</u>	<u>1,125</u>	<u>1,317</u>	<u>1,456</u>	<u>1,578</u>	<u>1,688</u>
5	<u>4,300</u>	<u>789</u>	<u>1,136</u>	<u>1,330</u>	<u>1,469</u>	<u>1,593</u>	<u>1,704</u>
6	<u>4,350</u>	<u>797</u>	<u>1,146</u>	<u>1,342</u>	<u>1,483</u>	<u>1,607</u>	<u>1,720</u>
7	<u>4,400</u>	<u>804</u>	<u>1,157</u>	<u>1,354</u>	<u>1,496</u>	<u>1,622</u>	<u>1,735</u>
8	<u>4,450</u>	<u>811</u>	<u>1,166</u>	<u>1,365</u>	<u>1,508</u>	<u>1,635</u>	<u>1,749</u>
9	<u>4,500</u>	<u>817</u>	<u>1,176</u>	<u>1,376</u>	<u>1,520</u>	<u>1,648</u>	<u>1,763</u>
10	<u>4,550</u>	<u>824</u>	<u>1,185</u>	<u>1,387</u>	<u>1,533</u>	<u>1,661</u>	<u>1,778</u>
11	<u>4,600</u>	<u>830</u>	<u>1,194</u>	<u>1,398</u>	<u>1,545</u>	<u>1,674</u>	<u>1,792</u>
12	<u>4,650</u>	<u>837</u>	<u>1,204</u>	<u>1,409</u>	<u>1,557</u>	<u>1,688</u>	<u>1,806</u>
13	<u>4,700</u>	<u>843</u>	<u>1,213</u>	<u>1,420</u>	<u>1,569</u>	<u>1,701</u>	<u>1,820</u>
14	<u>4,750</u>	<u>850</u>	<u>1,222</u>	<u>1,431</u>	<u>1,581</u>	<u>1,714</u>	<u>1,834</u>
15	<u>4,800</u>	<u>856</u>	<u>1,232</u>	<u>1,442</u>	<u>1,593</u>	<u>1,727</u>	<u>1,848</u>
16	<u>4,850</u>	<u>863</u>	<u>1,241</u>	<u>1,453</u>	<u>1,606</u>	<u>1,740</u>	<u>1,862</u>
17	<u>4,900</u>	<u>869</u>	<u>1,251</u>	<u>1,464</u>	<u>1,618</u>	<u>1,754</u>	<u>1,876</u>
18	<u>4,950</u>	<u>876</u>	<u>1,260</u>	<u>1,475</u>	<u>1,630</u>	<u>1,767</u>	<u>1,891</u>
19	<u>5,000</u>	<u>882</u>	<u>1,269</u>	<u>1,486</u>	<u>1,642</u>	<u>1,780</u>	<u>1,905</u>
20	<u>5,050</u>	<u>889</u>	<u>1,279</u>	<u>1,497</u>	<u>1,654</u>	<u>1,793</u>	<u>1,919</u>
21	<u>5,100</u>	<u>895</u>	<u>1,288</u>	<u>1,508</u>	<u>1,666</u>	<u>1,806</u>	<u>1,932</u>
22	<u>5,150</u>	<u>900</u>	<u>1,295</u>	<u>1,517</u>	<u>1,676</u>	<u>1,817</u>	<u>1,944</u>
23	<u>5,200</u>	<u>905</u>	<u>1,303</u>	<u>1,526</u>	<u>1,686</u>	<u>1,828</u>	<u>1,956</u>
24	<u>5,250</u>	<u>910</u>	<u>1,310</u>	<u>1,535</u>	<u>1,696</u>	<u>1,839</u>	<u>1,968</u>
25	<u>5,300</u>	<u>915</u>	<u>1,318</u>	<u>1,544</u>	<u>1,706</u>	<u>1,850</u>	<u>1,979</u>
26	<u>5,350</u>	<u>920</u>	<u>1,325</u>	<u>1,553</u>	<u>1,717</u>	<u>1,861</u>	<u>1,991</u>
27	<u>5,400</u>	<u>925</u>	<u>1,332</u>	<u>1,563</u>	<u>1,727</u>	<u>1,872</u>	<u>2,003</u>
28	<u>5,450</u>	<u>930</u>	<u>1,340</u>	<u>1,572</u>	<u>1,737</u>	<u>1,883</u>	<u>2,014</u>
29	<u>5,500</u>	<u>934</u>	<u>1,347</u>	<u>1,581</u>	<u>1,747</u>	<u>1,894</u>	<u>2,026</u>

1	<u>5,550</u>	<u>939</u>	<u>1,355</u>	<u>1,590</u>	<u>1,757</u>	<u>1,905</u>	<u>2,038</u>
2	<u>5,600</u>	<u>944</u>	<u>1,362</u>	<u>1,599</u>	<u>1,767</u>	<u>1,916</u>	<u>2,050</u>
3	<u>5,650</u>	<u>949</u>	<u>1,370</u>	<u>1,608</u>	<u>1,777</u>	<u>1,927</u>	<u>2,061</u>
4	<u>5,700</u>	<u>954</u>	<u>1,377</u>	<u>1,618</u>	<u>1,787</u>	<u>1,938</u>	<u>2,073</u>
5	<u>5,750</u>	<u>959</u>	<u>1,384</u>	<u>1,627</u>	<u>1,797</u>	<u>1,948</u>	<u>2,085</u>
6	<u>5,800</u>	<u>964</u>	<u>1,392</u>	<u>1,636</u>	<u>1,808</u>	<u>1,959</u>	<u>2,097</u>
7	<u>5,850</u>	<u>969</u>	<u>1,399</u>	<u>1,645</u>	<u>1,818</u>	<u>1,970</u>	<u>2,108</u>
8	<u>5,900</u>	<u>974</u>	<u>1,407</u>	<u>1,654</u>	<u>1,828</u>	<u>1,981</u>	<u>2,120</u>
9	<u>5,950</u>	<u>979</u>	<u>1,414</u>	<u>1,663</u>	<u>1,838</u>	<u>1,992</u>	<u>2,132</u>
10	<u>6,000</u>	<u>984</u>	<u>1,422</u>	<u>1,672</u>	<u>1,848</u>	<u>2,003</u>	<u>2,143</u>
11	<u>6,050</u>	<u>990</u>	<u>1,430</u>	<u>1,683</u>	<u>1,860</u>	<u>2,016</u>	<u>2,157</u>
12	<u>6,100</u>	<u>996</u>	<u>1,440</u>	<u>1,694</u>	<u>1,872</u>	<u>2,029</u>	<u>2,171</u>
13	<u>6,150</u>	<u>1,002</u>	<u>1,449</u>	<u>1,705</u>	<u>1,884</u>	<u>2,042</u>	<u>2,185</u>
14	<u>6,200</u>	<u>1,009</u>	<u>1,458</u>	<u>1,716</u>	<u>1,896</u>	<u>2,055</u>	<u>2,199</u>
15	<u>6,250</u>	<u>1,015</u>	<u>1,468</u>	<u>1,727</u>	<u>1,908</u>	<u>2,068</u>	<u>2,213</u>
16	<u>6,300</u>	<u>1,022</u>	<u>1,477</u>	<u>1,738</u>	<u>1,920</u>	<u>2,081</u>	<u>2,227</u>
17	<u>6,350</u>	<u>1,028</u>	<u>1,486</u>	<u>1,749</u>	<u>1,932</u>	<u>2,094</u>	<u>2,241</u>
18	<u>6,400</u>	<u>1,034</u>	<u>1,495</u>	<u>1,760</u>	<u>1,944</u>	<u>2,108</u>	<u>2,255</u>
19	<u>6,450</u>	<u>1,041</u>	<u>1,505</u>	<u>1,770</u>	<u>1,956</u>	<u>2,121</u>	<u>2,269</u>
20	<u>6,500</u>	<u>1,047</u>	<u>1,514</u>	<u>1,781</u>	<u>1,968</u>	<u>2,134</u>	<u>2,283</u>
21	<u>6,550</u>	<u>1,054</u>	<u>1,523</u>	<u>1,792</u>	<u>1,981</u>	<u>2,147</u>	<u>2,297</u>
22	<u>6,600</u>	<u>1,060</u>	<u>1,532</u>	<u>1,803</u>	<u>1,993</u>	<u>2,160</u>	<u>2,311</u>
23	<u>6,650</u>	<u>1,066</u>	<u>1,542</u>	<u>1,814</u>	<u>2,005</u>	<u>2,173</u>	<u>2,325</u>
24	<u>6,700</u>	<u>1,073</u>	<u>1,551</u>	<u>1,825</u>	<u>2,017</u>	<u>2,186</u>	<u>2,339</u>
25	<u>6,750</u>	<u>1,079</u>	<u>1,560</u>	<u>1,836</u>	<u>2,029</u>	<u>2,199</u>	<u>2,353</u>
26	<u>6,800</u>	<u>1,086</u>	<u>1,569</u>	<u>1,847</u>	<u>2,041</u>	<u>2,212</u>	<u>2,367</u>
27	<u>6,850</u>	<u>1,092</u>	<u>1,579</u>	<u>1,858</u>	<u>2,053</u>	<u>2,226</u>	<u>2,381</u>
28	<u>6,900</u>	<u>1,098</u>	<u>1,588</u>	<u>1,869</u>	<u>2,065</u>	<u>2,239</u>	<u>2,395</u>
29	<u>6,950</u>	<u>1,105</u>	<u>1,597</u>	<u>1,880</u>	<u>2,077</u>	<u>2,252</u>	<u>2,410</u>

1	<u>7,000</u>	<u>1,111</u>	<u>1,607</u>	<u>1,891</u>	<u>2,089</u>	<u>2,265</u>	<u>2,424</u>
2	<u>7,050</u>	<u>1,118</u>	<u>1,616</u>	<u>1,902</u>	<u>2,102</u>	<u>2,278</u>	<u>2,438</u>
3	<u>7,100</u>	<u>1,124</u>	<u>1,625</u>	<u>1,913</u>	<u>2,114</u>	<u>2,291</u>	<u>2,452</u>
4	<u>7,150</u>	<u>1,130</u>	<u>1,634</u>	<u>1,924</u>	<u>2,126</u>	<u>2,304</u>	<u>2,466</u>
5	<u>7,200</u>	<u>1,137</u>	<u>1,644</u>	<u>1,935</u>	<u>2,138</u>	<u>2,317</u>	<u>2,480</u>
6	<u>7,250</u>	<u>1,143</u>	<u>1,653</u>	<u>1,946</u>	<u>2,150</u>	<u>2,331</u>	<u>2,494</u>
7	<u>7,300</u>	<u>1,150</u>	<u>1,662</u>	<u>1,957</u>	<u>2,162</u>	<u>2,344</u>	<u>2,508</u>
8	<u>7,350</u>	<u>1,156</u>	<u>1,671</u>	<u>1,968</u>	<u>2,174</u>	<u>2,357</u>	<u>2,522</u>
9	<u>7,400</u>	<u>1,162</u>	<u>1,681</u>	<u>1,979</u>	<u>2,186</u>	<u>2,370</u>	<u>2,536</u>
10	<u>7,450</u>	<u>1,169</u>	<u>1,690</u>	<u>1,989</u>	<u>2,198</u>	<u>2,383</u>	<u>2,550</u>
11	<u>7,500</u>	<u>1,175</u>	<u>1,699</u>	<u>2,000</u>	<u>2,210</u>	<u>2,396</u>	<u>2,564</u>
12	<u>7,550</u>	<u>1,182</u>	<u>1,709</u>	<u>2,011</u>	<u>2,223</u>	<u>2,409</u>	<u>2,578</u>
13	<u>7,600</u>	<u>1,188</u>	<u>1,718</u>	<u>2,022</u>	<u>2,235</u>	<u>2,422</u>	<u>2,592</u>
14	<u>7,650</u>	<u>1,194</u>	<u>1,727</u>	<u>2,033</u>	<u>2,247</u>	<u>2,435</u>	<u>2,606</u>
15	<u>7,700</u>	<u>1,201</u>	<u>1,736</u>	<u>2,044</u>	<u>2,259</u>	<u>2,449</u>	<u>2,620</u>
16	<u>7,750</u>	<u>1,207</u>	<u>1,746</u>	<u>2,055</u>	<u>2,271</u>	<u>2,462</u>	<u>2,634</u>
17	<u>7,800</u>	<u>1,214</u>	<u>1,755</u>	<u>2,066</u>	<u>2,283</u>	<u>2,475</u>	<u>2,648</u>
18	<u>7,850</u>	<u>1,220</u>	<u>1,764</u>	<u>2,077</u>	<u>2,295</u>	<u>2,488</u>	<u>2,662</u>
19	<u>7,900</u>	<u>1,226</u>	<u>1,772</u>	<u>2,087</u>	<u>2,306</u>	<u>2,500</u>	<u>2,675</u>
20	<u>7,950</u>	<u>1,231</u>	<u>1,780</u>	<u>2,096</u>	<u>2,316</u>	<u>2,511</u>	<u>2,687</u>
21	<u>8,000</u>	<u>1,237</u>	<u>1,788</u>	<u>2,105</u>	<u>2,327</u>	<u>2,522</u>	<u>2,699</u>
22	<u>8,050</u>	<u>1,242</u>	<u>1,796</u>	<u>2,115</u>	<u>2,337</u>	<u>2,533</u>	<u>2,710</u>
23	<u>8,100</u>	<u>1,247</u>	<u>1,804</u>	<u>2,124</u>	<u>2,347</u>	<u>2,544</u>	<u>2,722</u>
24	<u>8,150</u>	<u>1,253</u>	<u>1,812</u>	<u>2,133</u>	<u>2,357</u>	<u>2,555</u>	<u>2,734</u>
25	<u>8,200</u>	<u>1,258</u>	<u>1,820</u>	<u>2,143</u>	<u>2,368</u>	<u>2,567</u>	<u>2,746</u>
26	<u>8,250</u>	<u>1,263</u>	<u>1,827</u>	<u>2,152</u>	<u>2,378</u>	<u>2,578</u>	<u>2,758</u>
27	<u>8,300</u>	<u>1,269</u>	<u>1,835</u>	<u>2,161</u>	<u>2,388</u>	<u>2,589</u>	<u>2,770</u>
28	<u>8,350</u>	<u>1,274</u>	<u>1,843</u>	<u>2,171</u>	<u>2,398</u>	<u>2,600</u>	<u>2,782</u>
29	<u>8,400</u>	<u>1,280</u>	<u>1,851</u>	<u>2,180</u>	<u>2,409</u>	<u>2,611</u>	<u>2,794</u>

1	<u>8,450</u>	<u>1,285</u>	<u>1,859</u>	<u>2,189</u>	<u>2,419</u>	<u>2,622</u>	<u>2,806</u>
2	<u>8,500</u>	<u>1,290</u>	<u>1,867</u>	<u>2,198</u>	<u>2,429</u>	<u>2,633</u>	<u>2,818</u>
3	<u>8,550</u>	<u>1,296</u>	<u>1,874</u>	<u>2,208</u>	<u>2,440</u>	<u>2,644</u>	<u>2,830</u>
4	<u>8,600</u>	<u>1,301</u>	<u>1,882</u>	<u>2,217</u>	<u>2,450</u>	<u>2,656</u>	<u>2,842</u>
5	<u>8,650</u>	<u>1,307</u>	<u>1,890</u>	<u>2,226</u>	<u>2,460</u>	<u>2,667</u>	<u>2,853</u>
6	<u>8,700</u>	<u>1,312</u>	<u>1,898</u>	<u>2,236</u>	<u>2,470</u>	<u>2,678</u>	<u>2,865</u>
7	<u>8,750</u>	<u>1,317</u>	<u>1,906</u>	<u>2,245</u>	<u>2,481</u>	<u>2,689</u>	<u>2,877</u>
8	<u>8,800</u>	<u>1,323</u>	<u>1,914</u>	<u>2,254</u>	<u>2,491</u>	<u>2,700</u>	<u>2,889</u>
9	<u>8,850</u>	<u>1,328</u>	<u>1,922</u>	<u>2,263</u>	<u>2,501</u>	<u>2,711</u>	<u>2,901</u>
10	<u>8,900</u>	<u>1,333</u>	<u>1,929</u>	<u>2,273</u>	<u>2,511</u>	<u>2,722</u>	<u>2,913</u>
11	<u>8,950</u>	<u>1,339</u>	<u>1,937</u>	<u>2,282</u>	<u>2,522</u>	<u>2,734</u>	<u>2,925</u>
12	<u>9,000</u>	<u>1,344</u>	<u>1,945</u>	<u>2,291</u>	<u>2,532</u>	<u>2,745</u>	<u>2,937</u>
13	<u>9,050</u>	<u>1,350</u>	<u>1,953</u>	<u>2,301</u>	<u>2,542</u>	<u>2,756</u>	<u>2,949</u>
14	<u>9,100</u>	<u>1,355</u>	<u>1,961</u>	<u>2,310</u>	<u>2,552</u>	<u>2,767</u>	<u>2,961</u>
15	<u>9,150</u>	<u>1,360</u>	<u>1,969</u>	<u>2,319</u>	<u>2,563</u>	<u>2,778</u>	<u>2,973</u>
16	<u>9,200</u>	<u>1,366</u>	<u>1,977</u>	<u>2,329</u>	<u>2,573</u>	<u>2,789</u>	<u>2,984</u>
17	<u>9,250</u>	<u>1,371</u>	<u>1,984</u>	<u>2,338</u>	<u>2,583</u>	<u>2,800</u>	<u>2,996</u>
18	<u>9,300</u>	<u>1,377</u>	<u>1,992</u>	<u>2,347</u>	<u>2,594</u>	<u>2,812</u>	<u>3,008</u>
19	<u>9,350</u>	<u>1,382</u>	<u>2,000</u>	<u>2,356</u>	<u>2,604</u>	<u>2,823</u>	<u>3,020</u>
20	<u>9,400</u>	<u>1,387</u>	<u>2,008</u>	<u>2,366</u>	<u>2,614</u>	<u>2,834</u>	<u>3,032</u>
21	<u>9,450</u>	<u>1,393</u>	<u>2,016</u>	<u>2,375</u>	<u>2,624</u>	<u>2,845</u>	<u>3,044</u>
22	<u>9,500</u>	<u>1,398</u>	<u>2,024</u>	<u>2,384</u>	<u>2,635</u>	<u>2,856</u>	<u>3,056</u>
23	<u>9,550</u>	<u>1,403</u>	<u>2,031</u>	<u>2,394</u>	<u>2,645</u>	<u>2,867</u>	<u>3,068</u>
24	<u>9,600</u>	<u>1,409</u>	<u>2,039</u>	<u>2,403</u>	<u>2,655</u>	<u>2,878</u>	<u>3,080</u>
25	<u>9,650</u>	<u>1,414</u>	<u>2,047</u>	<u>2,412</u>	<u>2,665</u>	<u>2,889</u>	<u>3,092</u>
26	<u>9,700</u>	<u>1,420</u>	<u>2,055</u>	<u>2,422</u>	<u>2,676</u>	<u>2,901</u>	<u>3,104</u>
27	<u>9,750</u>	<u>1,425</u>	<u>2,063</u>	<u>2,431</u>	<u>2,686</u>	<u>2,912</u>	<u>3,116</u>
28	<u>9,800</u>	<u>1,430</u>	<u>2,071</u>	<u>2,440</u>	<u>2,696</u>	<u>2,923</u>	<u>3,127</u>
29	<u>9,850</u>	<u>1,436</u>	<u>2,079</u>	<u>2,449</u>	<u>2,707</u>	<u>2,934</u>	<u>3,139</u>

1	<u>9,900</u>	<u>1,441</u>	<u>2,086</u>	<u>2,459</u>	<u>2,717</u>	<u>2,945</u>	<u>3,151</u>
2	<u>9,950</u>	<u>1,447</u>	<u>2,094</u>	<u>2,468</u>	<u>2,727</u>	<u>2,956</u>	<u>3,163</u>
3	<u>10,000</u>	<u>1,452</u>	<u>2,102</u>	<u>2,477</u>	<u>2,737</u>	<u>2,967</u>	<u>3,175</u>

4 The share of the custodial parent is presumed to be spent directly for the benefit of the child.

5 Section 2. That § 25-7-6.14 be amended to read as follows:

6 25-7-6.14. ~~Unless~~ As used in this section, basic visitation means a parenting plan whereby
7 one parent has physical custody and the other parent has visitation with the child of the parties.

8 In a basic visitation situation, unless the parties otherwise agree and the agreement is approved
9 by the court, the court may, if deemed appropriate under the circumstances, order an abatement
10 of not less than thirty- eight percent nor more than sixty-six percent of the child support if:

11 (1) A child spends ten or more days in a month with the obligor; and

12 (2) The ~~number of~~ days of visitation and the abatement, ~~percentage or~~ amount are
13 specified in the court order; ~~and~~

14 ~~—(3)—~~ ~~The visitation is actually exercised.~~

15 The court shall allow the abatement to the obligor in the month in which the visitation is
16 exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation.
17 It shall be presumed that the visitation is exercised. If the visitation exercised substantially
18 deviates from the visitation ordered, either party may file a petition for modification without
19 showing any other change in circumstances.

20 As used in this section, shared responsibility means a parenting plan whereby each parent
21 provides a suitable home for the child of the parties, the court order allows the child to spend at
22 least one hundred twenty days in a calendar year in each home, and the parents share the duties,
23 responsibilities, and expenses of parenting. In a shared responsibility situation, unless the parties
24 otherwise agree and the agreement is approved by the court, the court may, if deemed

1 appropriate under the circumstances, order a shared responsibility cross credit. The cross credit
2 shall be calculated by multiplying the combined child support obligation using both parents'
3 monthly net incomes by 1.5 to arrive at a shared custody child support obligation. The shared
4 custody child support obligation shall be apportioned to each parent according to his or her net
5 income. A child support obligation is computed for each parent by multiplying that parent's
6 portion of the shared custody child support obligation by the percentage of time the child spends
7 with the other parent. The respective child support obligations are offset, with the parent owing
8 more child support paying the difference between the two amounts. It shall be presumed that the
9 shared responsibility parenting plan is exercised. If the parenting plan exercised substantially
10 deviates from the parenting plan ordered, either party may file a petition for modification without
11 showing any other change in circumstances.

12 The court shall consider each case individually before granting either the basic visitation or
13 shared responsibility adjustment to insure that the adjustment does not place an undue hardship
14 on the custodial parent or have a substantial negative effect on the child's standard of living.

15 Section 3. That § 25-7-6.7 be amended to read as follows:

16 25-7-6.7. Deductions from monthly gross income shall be allowed as follows:

- 17 (1) Income taxes withheld figured on the basis of two dependent exemptions for a single
18 taxpayer paid monthly rather than actual amount withheld;
- 19 (2) Estimated income taxes payable, prorated monthly;
- 20 (3) FICA taxes withheld from wages or salary;
- 21 (4) Retirement fund amounts withheld or paid directly to an IRS qualified retirement plan,
22 in a reasonable amount, ~~but, in all cases, limited to the amounts deductible for federal~~
23 ~~income tax purposes;~~
- 24 (5) Actual business expenses of an employee, incurred for the benefit of his employer, not

1 reimbursed;

2 (6) Payments made on other support and maintenance orders.

3 Section 4. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If, at any time, unpaid child support arrearages exist, the court may order the support obligor
6 to pay towards the arrearages such sums as are ordered by the court, in addition to any other
7 remedies of the support obligee.

8 Section 5. That § 25-7-6.3 be amended to read as follows:

9 25-7-6.3. The monthly net income of each parent shall be determined by ~~his~~ the parent's gross
10 income less allowable deductions, as set forth herein. The monthly gross income of each parent
11 includes amounts received from the following sources:

12 (1) Compensation paid to an employee for personal services, whether salary, wages,
13 commissions, bonus, or otherwise designated;

14 (2) Self-employment income including gain, profit, or loss from a business, farm, or
15 profession;

16 (3) Periodic payments from pensions or retirement programs, including social security or
17 veteran's benefits, disability payments or insurance contracts;

18 (4) Interest, dividends, rentals, royalties, or other gain derived from investment of capital
19 assets;

20 (5) Gain or loss from the sale, trade, or conversion of capital assets;

21 (6) Unemployment insurance benefits; and

22 (7) Worker's compensation benefits;

23 (8) Benefits in lieu of compensation including military pay allowances.

24 If the income of the parents is derived from seasonal employment, or received in payments

1 other than regular, recurring payments, such income shall be annualized to determine a monthly
2 average income.

3 Section 6. That § 25-5-18.1 be amended to read as follows:

4 25-5-18.1. The parents of any child are under a legal duty to support their child in
5 accordance with the provisions of § 25-7-6.1, until the child attains the age of eighteen, or until
6 the child attains the age of nineteen if ~~he~~ the child is a full-time student in a secondary school.
7 If it is determined by the court that the child support obligation survives the death of the parent,
8 the amount due may be modified, revoked, or commuted to a lump sum payment by the court,
9 taking into consideration all factors deemed relevant, including the financial resources of the
10 child and the other parent and the needs of the decedent's family.

11 Section 7. That § 25-7-6.10 be amended to read as follows:

12 25-7-6.10. Deviation from the schedule in § 25-7-6.2 shall be considered if raised by either
13 party and made only upon the entry of specific findings based upon any of the following factors:

- 14 (1) The income of a subsequent spouse or contribution of a third party to the income or
15 expenses of that parent but only if the application of the schedule works a financial
16 hardship on either parent;
- 17 (2) Any financial condition of either parent which would make application of the schedule
18 inequitable;
- 19 (3) ~~Whether the federal income tax dependent deduction for such minor child is allocated~~
20 ~~to the benefit of the support obligor or the custodial parent~~ The federal income tax
21 consequences arising from claiming the child as a dependent;
- 22 (4) Any special needs of the child;
- 23 (5) ~~The effect of custody and visitation provisions including whether children share~~
24 ~~substantial amounts of time with each parent;~~

1 —(6) For agreements entered into prior to July 1, 1986, if it is established by clear and
2 convincing evidence, that debts or property were exchanged for child support and it
3 appears equitable to continue such arrangement;

4 ~~(7)~~(6) The effect of agreements between the parents regarding extra forms of support for the
5 direct benefit of the child;

6 ~~(8)~~(7) The obligation of either parent to provide for subsequent natural children or
7 stepchildren. However, an existing support order may not be modified solely for this
8 reason; or

9 ~~(9)~~(8) The voluntary act of either parent which reduces that parent's income.

10 Section 8. That § 25-7-6.13 be amended to read as follows:

11 25-7-6.13. All orders for support entered and in effect prior to July 1, ~~1997~~ 2001, may be
12 modified in accordance with this chapter without requiring a showing of a change in
13 circumstances from the entry of the order.

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

448E0567

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1154 - 02/12/2001

Introduced by: Representatives Adelstein, Abdallah, Brown (Richard), and Duniphan and
Senator Whiting

1 FOR AN ACT ENTITLED, An Act to clarify the application of certain driving privilege
2 penalties with regard to juvenile adjudications.

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

4 Section 1. That § 32-12-52.4 be amended to read as follows:

5 32-12-52.4. Upon a first conviction or a first adjudication of delinquency for violation, while
6 in a motor vehicle, of § 35-9-2, the court shall suspend the driver's license or driving privilege
7 of any driver of a vehicle who was under the age of twenty-one when the offense occurred, for
8 a period of six months.

9 Upon a second or subsequent conviction or a second or subsequent adjudication of
10 delinquency for a violation, while in a motor vehicle, of § 35-9-2, the court shall suspend the
11 driver's license or driving privilege of any driver of a vehicle who was under the age of
12 twenty-one when the offense occurred, for a period of one year. For any offense under this
13 section, the court may issue an order permitting the person to operate a motor vehicle for
14 purposes of the person's employment or attendance at school.

1 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified
2 Judicial System shall notify the Department of Commerce and Regulation of any conviction or
3 adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period
4 of suspension shall begin on the date the person's suspended driver's license is received by the
5 court or the Department of Commerce and Regulation. At the expiration of the period of
6 suspension, a person may make application to have the license reinstated and pay the license fee
7 as prescribed in § 32-12-47.1.

8 Section 2. That § 35-9-7 be amended to read as follows:

9 35-9-7. If the conviction or adjudication for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is
10 for a first offense, the court shall, in addition to any other penalty allowed by law, order the
11 ~~revocation~~ suspension of the defendant's driving privileges for a period not less than thirty days
12 and not to exceed one year. However, the court may issue an order permitting the person to
13 operate a motor vehicle for purposes of the person's employment or attendance at school or to
14 court-ordered counseling programs during the hours of the day and the days of the week set
15 forth in the order. The court may also restrict the privilege in such manner as it sees fit for a
16 period not to exceed one year.

17 If the conviction or adjudication for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is for a
18 second or subsequent offense, the court shall, in addition to any other penalty allowed by law,
19 order the ~~revocation~~ suspension of the defendant's driving privileges for a period not less than
20 sixty days and not to exceed one year.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

663E0609

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1177 - 02/05/2001

Introduced by: Representatives Slaughter, Bartling, Flowers, Hennies (Thomas), Jaspers, Madsen, and Sebert and Senators Diedrich (Larry), McCracken, and Moore

1 FOR AN ACT ENTITLED, An Act to revise when certain assessments have to be paid before
2 an assessment may be appealed.

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

4 Section 1. That § 10-59-9 be amended to read as follows:

5 10-59-9. Any taxpayer against whom a certificate of assessment is issued may request a
6 hearing before the secretary if the taxpayer believes that the assessment is based upon a mistake
7 of fact or an error of law. A request for hearing shall be made in writing within thirty days from
8 the date of the certificate of assessment and shall contain a statement indicating the portion of
9 the assessment being contested and the mistake of fact or error of law the taxpayer believes
10 resulted in an invalid assessment. Amended or additional statements of facts or errors of law may
11 be made not less than fourteen days prior to the hearing if the hearing examiner determines such
12 additional or amended statements are in the interest of justice and do not prejudice either party.
13 Hearings are conducted and appeals taken pursuant to the provisions of ~~chapter 1-26~~ chapters
14 1-26 and 1-26D. A copy of the hearing examiner's proposed decision, findings of fact and

1 conclusions of law shall be served on all parties when furnished to the secretary. ~~No~~ If the
2 secretary, pursuant to chapter 1-26D, accepts the final decision of the hearing examiner, no
3 appeal from a final decision of the secretary upon an assessment may be taken unless any amount
4 ordered paid by the secretary is paid or a bond filed to insure payment of such amount. However,
5 if the final decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision
6 of the hearing examiner regarding the amount due on the assessment, an appeal may be taken
7 without payment of the amount ordered to be paid and without filing of a bond. If the secretary's
8 decision is affirmed by the circuit court, no appeal may be taken unless any amount ordered to
9 be paid by the secretary is paid or a bond is filed to insure payment of such amount.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

655E0510

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1198 - 02/05/2001

Introduced by: Representative Duniphan and Senator Albers

1 FOR AN ACT ENTITLED, An Act to provide for a possessory lien on the contents of certain
2 towed vehicles.

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

4 Section 1. That § 32-30-18 be amended to read as follows:

5 32-30-18. The sheriff, law enforcement officer, or towing agency taking custody of any
6 vehicle under the provisions of §§ 32-30-12 to 32-30-17, inclusive, 32-30-19, and 32-36-4 ~~shall~~
7 ~~have~~ has a possessory lien on the vehicle and the contents of the vehicle for the reasonable costs
8 in taking custody and storing of the vehicle which may not exceed five hundred dollars. No
9 possessory lien attaches to the tools and implements which a person uses and keeps for the
10 purpose of carrying on his or her trade or business or to any clothing or food.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

463E0613

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1225 - 02/05/2001

Introduced by: Representatives Sebert, Derby, Michels, and Solum and Senators Albers
and Vitter

1 FOR AN ACT ENTITLED, An Act to clarify the courts in which garnishment proceedings may
2 be pursued.

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

4 Section 1. That § 21-18-1 be amended to read as follows:

5 21-18-1. In any action or small claims proceeding to recover damages founded upon
6 contract, express or implied, or ~~upon~~ pursuant to judgment or decree, any creditor ~~shall be~~ is
7 entitled to proceed by garnishment in any court having jurisdiction of the subject of the action,
8 against any person, as defined in § 15-7-1, including the state and any municipal or public
9 corporation, and including any corporation organized or authorized to be organized by or under
10 the laws of any state or of the United States, which has the power to sue or be sued who shall
11 be indebted to or have any property, real or personal, in ~~his~~ its possession or under ~~his~~ its control
12 belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner
13 prescribed in this chapter.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0241

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 20** - 02/13/2001

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to dispose of certain
2 structures located at the Agricultural Experiment Station Beef Nutrition and Dairy Units in
3 Brookings County, to construct cattle feed preparation and silage storage facilities at the
4 Beef Nutrition Unit, and to make an appropriation therefor.

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

6 Section 1. The Board of Regents may sell, exchange, or demolish building 1318, a metal-
7 sided, single-storied building, and buildings 1310, 1311, 1312, 1317, and 1320, silos, all of which
8 are located on the Agricultural Experiment Station Beef Nutrition Unit, in Brookings County.
9 The Board of Regents may sell, exchange, or demolish building 1107 and 1108, silos, all of
10 which are located on the Agricultural Experiment Station Dairy Unit, in Brookings County.

11 Section 2. The Board of Regents may contract to replace building 1318 with an appropriate
12 structure for preparation of cattle feeds and buildings 1310, 1311, 1312, 1317, and 1320 with
13 four concrete bunker silos and concrete aprons on the Agricultural Experiment Station Beef
14 Nutrition Unit, in Brookings County.

15 Section 3. There is hereby appropriated two hundred thousand dollars (\$200,000) of other

1 fund expenditure authority to South Dakota State University to accomplish the purposes of this
2 Act.

3 Section 4. Notwithstanding the provisions of §13-51-14, the Board of Regents may accept,
4 transfer, and expend any funds obtained for the purposes of this Act from federal sources, gifts,
5 contributions, or any other sources, including any revenue derived from the sale of the buildings
6 identified in section 1 of this Act.

7 Section 5. The design and construction of the replacement building and silos shall be under
8 the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.
9 The commissioner of the Bureau of Administration and the executive director of the Board of
10 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
11 authorized by this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

177E0658

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 165 - 02/13/2001

Introduced by: Senators Koskan, Diedtrich (Elmer), and Volesky and Representatives Lange, Hargens, Kloucek, and Smidt

1 FOR AN ACT ENTITLED, An Act to provide for incentives for development of certain
2 commercial small power production facilities.

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

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

6 Any commercial small power production facility, utilizing renewable resources, such as sun,
7 wind, geothermal, or biomass, that begins generating electricity after June 30, 2001, produces
8 ten megawatts or less of electricity as measured by nameplate rating, and is located within one
9 county and owned by a natural person, corporation, nonprofit or for profit business organization,
10 or tribal council (if the facility is located outside the boundaries of the reservation), irrigation
11 district, drainage district, or other political subdivision or agency of the state authorized by
12 statute to carry on the business of developing, transmitting, utilizing, or distributing electric
13 power is subject to the provisions of this Act for any new or expanded facility.

14 Section 2. Rural electric cooperatives developing commercial small power production

1 facilities utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject
2 to a gross receipts tax as defined in § 10-36-6.

3 Section 3. Terms used in this Act mean:

4 (1) "Department," the Department of Revenue;

5 (2) "New or expanded facility," a new commercial small power production facility as
6 defined in section 1 of this Act or realty improvement or addition to an existing
7 commercial small power production facility, the construction or installation of which
8 is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B;

9 (3) "Project," the installation or construction of the first ten megawatts of generation
10 capacity of a new or expanded facility;

11 (4) "Project cost," the amount paid in money for a project;

12 (5) "Secretary," the secretary of the Department of Revenue.

13 Section 4. Any person may apply for and obtain a refund or credit for contractors' excise
14 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
15 of a new or expanded facility that is a commercial small power production facility that is defined
16 in section 1 of this Act.

17 Section 5. The refund pertains only to project costs incurred and paid after July 1, 2001. The
18 refund pertains only to project costs that were incurred and paid within thirty-six months of the
19 approval of the application required by this Act. No refund may be made unless:

20 (1) The project costs exceed five hundred thousand dollars; and

21 (2) The person applying for the refund obtains a permit from the secretary as set forth in
22 section 7 of this Act.

23 Section 6. The amount of the tax refund shall be one hundred percent of the contractor's
24 excise taxes attributed to the project cost, excluding any associated transmission facilities.

1 Section 7. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
2 from the secretary at least thirty days prior to commencement of the project. The application for
3 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
4 be made and submitted for each project. Upon approval of the application, the secretary shall
5 issue a permit entitling the applicant to submit refund claims as provided by this Act. The permit
6 or refund claims are not assignable or transferable except as collateral or security pursuant to
7 chapter 57A-9.

8 Section 8. Any claim for refund shall be submitted on forms prescribed by the secretary and
9 shall be supported by such documentation as the secretary may require. The secretary may deny
10 any claim where the claimant has failed to provide information or documentation requested or
11 considered necessary by the secretary to determine the validity of the claim.

12 Section 9. Any claim for refund shall be submitted to the department on or before the last day
13 of the month following each quarterly period. The secretary shall determine the amount of the
14 tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance
15 with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department.

16 Section 10. The amounts withheld by the department in accordance with section 9 of this Act
17 shall be retained until the project has been completed and the claimant has met all the conditions
18 of this Act, at which time all sums retained shall be paid to claimant.

19 Section 11. If any claim has been fraudulently presented or supported as to any item in the
20 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be rejected
21 in its entirety and all sums previously refunded to the claimant shall constitute a debt to the state
22 and a lien in favor of the state upon all property and rights to property whether real or personal
23 belonging to the claimant and may be recovered in an action of debt.

24 Section 12. Any person aggrieved by the denial in whole or in part of a refund claimed under

1 this Act, may within thirty days after service of the notice of a denial by the secretary, demand
2 and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted
3 pursuant to chapter 1-26.

4 Section 13. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
5 procedures for filing refund claims and the requirements necessary to qualify for a refund.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

474E0470

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 179** - 02/13/2001

Introduced by: Senator de Hueck and Representative Monroe

1 FOR AN ACT ENTITLED, An Act to revise the appeal procedure concerning the factor used
2 for valuing agricultural and nonagricultural property.

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

4 Section 1. That § 10-13-37.2 be amended to read as follows:

5 10-13-37.2. Any person, firm, corporation, public or private, taxing district, or state
6 department interested, may appeal from the decision of the secretary of revenue in calculating
7 a factor for agricultural and nonagricultural valuations pursuant to § 10-13-37.1. The appeal ~~may~~
8 shall be made to the Office of Hearing Examiners or the circuit court ~~in the manner prescribed~~
9 ~~in chapter 10-11 for taking appeals from decisions of the county board of equalization pursuant~~
10 to chapters 1-26 and 1-26D.

11 Section 2. That § 10-13-37.1 be amended to read as follows:

12 10-13-37.1. For purposes of §§ 10-3-41, 10-12-31.1, and 10-13-37, the secretary of revenue
13 shall calculate a factor for each county for the agricultural and nonagricultural valuations. The
14 factor shall be calculated by using the sales of arms-length transactions and the assessments from
15 the preceding assessment year. The secretary shall take into consideration any reappraisals

1 completed by the director of equalization. If there are less than fifteen sales of either class, the
2 secretary shall use the preceding year's sales of that class with current assessments. In the case
3 of agricultural land, sales may also be bridged in from adjoining counties if there are less than
4 fifteen sales. The secretary of revenue shall calculate all factors pursuant to this section no later
5 than March first.

6 Section 3. That § 10-11-43 be amended to read as follows:

7 10-11-43. An appeal from the Office of Hearing Examiners to circuit court may be taken by
8 the parties to the appeal and interveners before the Office of Hearing Examiners. The appeal shall
9 be taken and conducted pursuant to the provisions of chapter 1-26.

10 The venue of the appeal shall be in the circuit court for the county in which the property
11 subject to the appeal is situated. The venue of appeals taken from 10-13-37.2 shall be in either
12 the county in which the property subject to the appeal is situated or to the circuit court for
13 Hughes County, as the appellant may elect.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

355E0789

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 225 - 02/13/2001

Introduced by: Senators Everist and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to insurance taxes, cash
2 surrender values of insurances policies, and the payment of insurance benefits.

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

4 Section 1. That § 10-44-2 be amended to read as follows:

5 10-44-2. Any company doing insurance business in this state shall pay a tax at the rates
6 specified in this section. The tax shall be paid to the Division of Insurance at the time the
7 company files its annual statement, or, if no annual statement is required, then before March first
8 of each year.

9 If, during the previous year, a company paid more than five thousand dollars in premium
10 taxes in this state, the company shall submit payments equal to one-quarter of the previous year's
11 premium taxes to the Division of Insurance on April thirtieth, July thirty-first, October
12 thirty-first, and January thirty-first. The quarterly payments shall be credited against the amount
13 due from the company at the time the company files its annual statement, or if no annual
14 statement is required, then on March first of each year. The director of the Division of Insurance
15 may waive the requirement in writing for quarterly payments or reduce the amount of deposit

1 if the director finds the requirement would impose an undue premium tax on a company because
2 of a significant decline in sales within the state. If the sum of the quarterly payments exceeds the
3 total taxes due, the director shall credit the overpayment against subsequent amounts due or, if
4 requested in writing at the time the company files its annual statement, refund the overpayment
5 to the company. If the overpayment cannot be credited, there is excess remaining after the credit
6 is taken on the annual statement, or the refund is not requested, the division may refund the
7 amount overpaid by May first of the following year. The rates are:

8 (1) On each domestic company, two and one-half percent of premiums and one and one-
9 fourth percent of the consideration for annuity contracts. However, the rate for life
10 insurance and annuities shall be computed as follows:

11 (a) Two and one-half percent of premiums for a life policy on the first one hundred
12 thousand dollars of annual premium, and eight one-hundredths of a percent for
13 that portion of the annual life premiums exceeding one hundred thousand
14 dollars; and

15 (b) One and one-fourth percent of the consideration for annuity contracts on the
16 first five hundred thousand dollars of consideration for annuity contracts, and
17 eight one-hundredths of a percent for that portion of the consideration on
18 annuity contracts exceeding five hundred thousand dollars.

19 The tax also applies to premiums for insurance written on individuals residing outside
20 this state or property located outside this state if no comparable tax is paid by the
21 direct writing company to any other appropriate taxing authority. However, the tax
22 applies only to premiums for insurance written after July 1, 1980, on individuals
23 residing outside of the United States;

24 (2) On each foreign company, ~~two~~ the rate shall be computed as follows:

1 (a) Two and one-half percent of premiums, and one. However, for that portion of
 2 the life insurance premiums exceeding one hundred thousand dollars annually,
 3 the rate shall be eight one-hundredths of a percent; and

4 (b) One and one-fourth percent of the consideration for annuity contracts on the
 5 first five hundred thousand dollars of consideration for annuity contracts, and
 6 eight one-hundredths of a percent for that portion of the consideration on
 7 annuity contracts exceeding five hundred thousand dollars;

8 (3) On each insurer not licensed or not authorized to do business in this state, ~~two~~ the
 9 rate shall be computed as follows:

10 (a) Two and one-half percent of premiums and one. However, for that portion of
 11 the life insurance premiums exceeding one hundred thousand dollars annually,
 12 the rate shall be eight one-hundredths of a percent; and one

13 (b) One and one-fourth percent of the consideration for annuity contracts on the
 14 first five hundred thousand dollars of consideration for annuity, and eight one-
 15 hundredths of a percent for that portion of the consideration on annuity
 16 contracts exceeding five hundred thousand dollars;

17 (4) Fourteen dollars for each insurance policy issued or renewed for workers'
 18 compensation coverage.

19 Revenue from subdivision (4) of this section shall be deposited in the insurance operating
 20 fund of the state treasury and is dedicated to the Department of Labor for purposes of
 21 automating the administration of the workers' compensation law and supporting the Workers'
 22 Compensation Advisory Council.

23 Section 2. That § 58-6-70 be amended to read as follows:

24 58-6-70. If any other state or foreign country imposes any taxes, licenses, and other fees, in

1 the aggregate, or fines, penalties, deposit requirements, or other material obligations,
2 prohibitions, or restrictions upon South Dakota insurers, or upon the agents or representatives
3 of such insurers, which are, pursuant to the laws of that other state or country, in excess of those
4 directly imposed upon similar insurers, or upon the agents or representatives of such insurers,
5 of that other state or country under the statutes of this state, then, so long as the laws of that
6 other state or country continue in force or are so applied, the director of the Division of
7 Insurance shall impose the same taxes, licenses, and other fees, in the aggregate, or fines,
8 penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of
9 whatever kind upon the insurers, or upon the agents or representatives of the insurers, of the
10 other state or country doing business or seeking to do business in South Dakota. Any tax,
11 license, or other fee or obligation imposed on South Dakota insurers or their agents or
12 representatives by any first or second class municipality, county, or other political subdivision
13 or agency of the other state or country is considered to be imposed by such state or country
14 within the meaning of this section. The time and period of payment of the retaliatory tax is the
15 same, in all cases, as that of the gross premiums tax provided for in § 10-44-2. No interest
16 charges or credits may be made or allowed for the use or loss of the use of funds due to any
17 difference in the time or period of payment used in this state and the time or period used in a
18 foreign state or country.

19 This provision does not apply to life policies where the total first year premium is equal to
20 or greater than one million dollars and to annuity contracts where the total first year
21 consideration is equal to or greater than one million dollars.

22 Section 3. That § 58-15-17 be amended to read as follows:

23 58-15-17. In the case of policies issued on or after the operative date specified in § 58-15-42,
24 the loan value referred to in § 58-15-15 shall be the cash surrender value at the end of the current

1 policy year as required by § 58-15-33. The policy shall reserve to the insurer the right to defer
2 the granting of a loan, other than for the payment of any premium to the insurer, for six months
3 after application therefor. For policies where the cash surrender value pursuant to § 58-15-33
4 is in excess of one million dollars, the loan value shall be equal to the portion of the cash
5 surrender value that can immediately be converted to cash, pursuant to the policyholder's
6 consent. The consent of the policyholder shall be on a form prescribed by the director in rules
7 promulgated pursuant to chapter 1-26.

8 Section 4. That § 58-15-26 be amended to read as follows:

9 58-15-26. There shall be a provision that when a policy ~~shall become~~ becomes a claim by the
10 death of the insured, settlement shall be made upon receipt of due proof of death and, at the
11 insurer's option, surrender of the policy ~~and/or or~~ or proof of the interest of the claimant, or both.
12 If an insurer shall specify a particular period prior to the expiration of which settlement shall be
13 made, such period ~~shall~~ may not exceed two months from the receipt of such proof. For policies
14 where the cash surrender value pursuant to § 58-15-33 is in excess of one million dollars at the
15 date of death, settlement may be made in cash or by distributing assets of the separate account
16 to the claimant with the consent of the policyholder. The consent of the policyholder shall be on
17 a form prescribed by the director in rules promulgated pursuant to chapter 1-26.

18 Section 5. That § 58-15-26.2 be amended to read as follows:

19 58-15-26.2. Interest payable pursuant to § 58-15-26.1 shall be computed from the date of
20 death of the insured until the date of payment and shall be at the rate of four percent per annum
21 or not less than the current rate of interest on death proceeds left on deposit with the insurer
22 under an interest settlement option, whichever rate is greater. For policies where the cash
23 surrender value pursuant to § 58-15-33 is in excess of one million dollars at the date of death,
24 and with the consent of the policyholder, the interest shall be computed commencing the latter

1 of sixty days succeeding the date of death of the insured or the date proof of death has been
2 received by the insurer in good order until the date of payment. The consent of the policyholder
3 shall be on a form prescribed by the director in rules promulgated pursuant to chapter 1-26.

4 Section 6. That § 58-15-33 be amended to read as follows:

5 58-15-33. Any cash surrender value available under the policy in the event of default in a
6 premium payment due on any policy anniversary, whether or not required by § 58-15-31 shall
7 be an amount not less than the excess, if any, of the present value on such anniversary, of the
8 future guaranteed benefits which would have been provided for by the policy, including any
9 existing paid-up additions, if there had been no default, over the sum of the then present value
10 of the adjusted premiums as defined in §§ 58-15-35 to 58-15-38, inclusive, and §§ 58-15-43.1
11 to 58-15-43.11, inclusive, corresponding to premiums which would have fallen due on and after
12 such anniversary, and the amount of any indebtedness to the insurer on the policy. Any cash
13 surrender value available within thirty days after any policy anniversary under any policy paid up
14 by completion of all premium payments or any policy continued under any paid-up nonforfeiture
15 benefit, whether or not required by § 58-15-31, shall be an amount not less than the present
16 value, on such anniversary, of the future guaranteed benefits provided for by the policy, including
17 any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

18 However, for any policy issued on or after the operative date of §§ 58-15-43.1 to
19 58-15-43.11, inclusive, which provides supplemental life insurance or annuity benefits at the
20 option of the insured and for an identifiable additional premium by rider or supplemental policy
21 provision, the cash surrender value referred to in the first paragraph of this section shall be an
22 amount not less than the sum of the cash surrender value as defined in that paragraph for an
23 otherwise similar policy issued at the same age without a rider or supplemental policy provision
24 and the cash surrender value as defined in that paragraph for a policy which provides only the

1 benefits otherwise provided by a rider or supplemental policy provision.

2 Further, for any family policy issued on or after the operative date of §§ 58-15-43.1 to
3 58-15-43.11, inclusive, which defines a primary insured and provides term insurance on the life
4 of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash
5 surrender value referred to in the first paragraph of this section shall be an amount not less than
6 the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy
7 issued at the same age without term insurance on the life of the spouse and the cash surrender
8 value as defined in that paragraph for a policy which provides only the benefits otherwise
9 provided by term insurance on the life of the spouse.

10 Any cash surrender value available within thirty days after any policy anniversary under any
11 policy paid-up by completion of all premium payments or any policy continued under any paid-up
12 nonforfeiture benefit, whether or not required by § 58-15-31, shall be an amount not less than
13 the present value, on such anniversary of the future guaranteed benefits provided for by the
14 policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on
15 the policy.

16 If the cash surrender value is in excess of one million dollars, the term, cash surrender value,
17 includes payment of assets to the policyholder as well as payment of cash with the consent of the
18 policyholder. The consent of the policyholder shall be on a form prescribed by the director in
19 rules promulgated pursuant to chapter 1-26.

20 Section 7. That § 58-15-46 be amended to read as follows:

21 58-15-46. A policy which contains any exclusion or restriction pursuant to § 58-15-45 shall
22 also provide that in the event of death under the circumstances to which any such exclusion or
23 restriction is applicable, the insurer will return all premiums received under the policy with
24 adjustment for indebtedness and dividend credits. If the policy is a variable policy, the insurer

- 1 shall only be required to return all premiums received under the policy with adjustment for
- 2 indebtedness and adjustment to reflect the investment experience of the separate account.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0768

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 226** - 02/13/2001

Introduced by: Senators Everist and Brown (Arnold) and Representatives Peterson (Bill)
and Eccarius

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority, to provide for the establishment of a corporation by the South
3 Dakota Building Authority for the purpose of raising funds for specified purposes, to provide
4 for transfer and sale at any one time or from time to time of a portion of or all future right,
5 title, and interest of the State of South Dakota to certain amounts payable to the state by
6 various tobacco companies under a master settlement agreement in exchange for the deposit
7 of the net proceeds of such sale into the state permanent tobacco settlement development
8 trust fund, and to establish certain funds.

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

10 Section 1. Terms used in this Act, mean:

- 11 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
12 organized and existing under chapter 5-12;
- 13 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
14 indebtedness, or other obligations issued, incurred, or otherwise created under the

1 authority of this Act and payable directly or indirectly out of or representing an
2 interest in tobacco settlement revenues or other rights under or with respect to the
3 master settlement agreement;

4 (3) "Corporation," the special purpose body corporate and politic established by the
5 authority by resolution as provided in section 3 of this Act;

6 (4) "Development programs," any program described in section 13 of this Act;

7 (5) "Master settlement agreement," the master settlement agreement entered into on
8 November 23, 1998, by attorneys general from the several states (including the State
9 of South Dakota) and various tobacco companies, as now or hereafter amended,
10 supplemented, or restated;

11 (6) "Master settlement escrow agent," the escrow agent under the master settlement
12 agreement;

13 (7) "Net proceeds of bonds," the original proceeds of bonds issued under this Act less any
14 amounts applied or to be applied to pay transaction and administrative expenses and
15 to fund any reserves deemed necessary or appropriate by the corporation, but does
16 not include any investment earnings realized thereon;

17 (8) "Net proceeds of sale of tobacco settlement revenues," the net proceeds of bonds plus
18 any residual interest in tobacco settlement revenues received or to be received by the
19 State of South Dakota from time to time as a result of any sale, conveyance, or other
20 transfer authorized in section 2 of this Act, but does not include any investment
21 earnings realized thereon;

22 (9) "Permanent tobacco settlement development trust fund," the State of South Dakota
23 permanent tobacco settlement development trust fund created by section 10 of this
24 Act;

1 (10) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
2 with noncollateralized direct obligations of any bank or savings institution, insurance
3 company, or bank or insurance holding company if the institution or holding company
4 is rated in the highest four classifications by at least one standard rating service and
5 any bond, note, or other obligation of any state or any agency, authority, or other
6 instrumentality of any state or political subdivision thereof if the bond, note, or other
7 obligation is rated in the four highest classifications established by at least one
8 standard rating service;

9 (11) "Residual interest in tobacco settlement revenues," any tobacco settlement revenues
10 not required to pay principal or interest on bonds or administrative or transaction
11 expenses of the corporation or authority or to fund reserves or other requirements
12 relating to bonds issued, incurred, or otherwise created under this Act;

13 (12) "Tobacco settlement residual fund," the tobacco settlement residual fund created by
14 section 11 of this Act;

15 (13) "Tobacco settlement revenues," all of the amounts now or hereafter payable to the
16 State of South Dakota under or in connection with the master settlement agreement;

17 (14) "Tobacco development interest fund" the fund created by section 12 of this Act.

18 Section 2. At any one time or from time to time, all or any portion of the right, title, and
19 interest of the State of South Dakota in, to, and under the master settlement agreement,
20 including the right to receive and collect tobacco settlement revenues, may be sold, conveyed,
21 or otherwise transferred by the state to the authority or to a corporation established by the
22 authority under this Act in exchange for the net proceeds of bonds and a right to the residual
23 interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the
24 permanent tobacco settlement development trust fund, and the residual interest in tobacco

1 settlement revenues shall be deposited to the tobacco settlement residual fund. Any sale,
2 conveyance, or other transfer authorized by this section shall be evidenced by an instrument or
3 agreement in writing signed on behalf of the state by the Governor. The Governor shall file a
4 certified copy of the instrument or agreement with the Legislature promptly upon execution and
5 delivery thereof. The instrument or agreement may include an irrevocable direction to the master
6 settlement escrow agent to pay all or a specified portion of amounts otherwise due to the State
7 of South Dakota under or in connection with the master settlement agreement, including, without
8 limitation, all or any portion of tobacco settlement revenues directly to or upon the order of the
9 authority or corporation, as the case may be, or to any escrow agent or any trustee under an
10 indenture or other agreement securing any bonds issued, incurred, or created under this Act. The
11 irrevocable direction to the master settlement escrow agent may include the direction to pay any
12 residual interest in tobacco settlement revenues initially to or upon the order of the authority or
13 corporation or to any escrow agent or any trustee under an indenture or other agreement
14 securing any bonds. Upon the filing of a certified copy of the instrument or agreement by the
15 Governor, the sale, conveyance, or other transfer of rights under or with respect to the master
16 settlement agreement, including the right to receive the tobacco settlement revenues, shall, for
17 all purposes, be a true sale and absolute conveyance of all right, title, and interest therein
18 described in accordance with the terms thereof, valid, binding, and enforceable in accordance
19 with the terms thereof and such instrument or agreements and any related instrument, agreement,
20 or other arrangement, including any pledge, grant of security interest, or other encumbrance
21 made by the corporation or the authority to secure any bonds issued, incurred, or created by the
22 corporation or the authority, are not subject to disavowal, disaffirmance, cancellation, or
23 avoidance by reason of insolvency of any party, lack of consideration, or any other fact,
24 occurrence, or rule of law. The procedures and requirements set forth in this section shall be the

1 sole procedures and requirements applicable to the sale of the state's rights under the master
2 settlement agreement, including the sale of tobacco settlement revenues, and it is not necessary
3 to satisfy or comply with any other existing law which would otherwise apply to the sale of
4 assets of the state or impose procedures or restrictions with respect thereto.

5 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The authority may establish by resolution a special purpose corporation which shall be body
8 corporate and politic and instrumentality of, but having a legal existence independent and
9 separate from, the State of South Dakota and the authority. The corporation shall be established
10 for the express limited public purposes set forth in this Act and no part of the net earnings of the
11 corporation shall inure to any private individual.

12 The corporation shall be governed by a board consisting of the members of the authority and
13 two additional persons appointed by the Governor, which two additional members shall be
14 independent from the state. The resolution establishing the corporation shall serve as the charter
15 of the corporation and may be amended from time to time by the authority, but the resolution
16 shall at all times provide that the power and the authority of the corporation shall be subject to
17 the terms, conditions, and limitations of this Act and any applicable covenants or agreements of
18 the corporation in any indenture or other agreement relating to any then outstanding bonds. The
19 corporation may enter into contracts regarding any matter connected with any corporate purpose
20 within the objects and purposes of this Act.

21 The authority and corporation may delegate by resolution to one or more officers or
22 employees of the authority or corporation such powers and duties as it may deem proper.

23 The corporation may issue bonds and secure repayment of the bonds with amounts payable
24 out of tobacco settlement revenues or any other property or funds of the corporation.

1 The corporation may pledge as security for any bonds any rights under the master settlement
2 agreement held by the corporation, including the right to receive or collect tobacco settlement
3 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
4 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
5 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
6 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
7 or agreement described in section 2 of this Act and signed on behalf of the state by the Governor.
8 Any such pledge made by the corporation shall be valid and binding from the time the pledge is
9 made. The property, revenues, moneys, and other funds so pledged and thereafter held or
10 received by or on behalf of the corporation shall immediately be subject to the lien of the pledge
11 without any physical delivery thereof or further act; and, subject only to the provisions of prior
12 pledges or agreements of the corporation, the lien of the pledge shall be valid and binding as
13 against the state and all parties having claims of any kind in tort, contract, or otherwise against
14 the corporation irrespective of whether such parties have notice thereof. No ordinance,
15 resolution, trust agreement, or other instrument by which such pledge is created need be filed or
16 recorded except in the records of the corporation.

17 In connection with the issuance of bonds or, at any time with respect to bonds, the
18 corporation may enter into arrangements to provide additional security and liquidity for bonds.
19 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
20 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
21 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
22 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
23 persons providing the arrangements, including from bond proceeds.

24 The resolution authorizing the issuance of bonds or the indenture or other agreement

1 approved by the resolution may provide that interest rates may vary from time to time depending
2 upon criteria established by the corporation, which may include, without limitation, a variation
3 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
4 price equal to their principal amount, and may provide for appointment of a national banking
5 association, bank, trust company, investment banking firm, or other financial institution to serve
6 as a remarketing agent in that connection. The indenture or other agreement with respect to
7 bonds may provide that alternative interest rates or provisions will apply during such times as
8 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
9 for bonds.

10 In connection with bonds under this Act or the investment of proceeds, bonds, or other funds
11 of the corporation, the corporation may enter into contracts that it determines necessary or
12 appropriate to permit it to manage payment or interest rate risk. These contracts may include,
13 but are not limited to, interest rate exchange agreements; contracts providing for payment or
14 receipt of funds based on levels of or changes in interest rates; contracts to exchange cash flows
15 or series of payments; and contracts incorporating interest rate caps, collars, floors, or locks.

16 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
17 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
18 moratorium law or statute as may, from time to time, be in effect and neither any public officer
19 nor any organization, entity, or other person shall authorize the corporation to be or become a
20 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
21 insolvency, or moratorium law or statute, as may, from time to time be in effect.

22 The corporation may not guarantee the debts of another.

23 The corporation may not be required to file any reports with the state other than those
24 required to be filed with the Legislature by authorities which issue bonds.

1 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
2 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
3 may be or become a lien, charge, or liability against the corporation or the property or funds of
4 the corporation.

5 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The purposes of the corporation established by the authority pursuant to this Act are:

- 8 (1) To purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
9 interest of the state in, to, and under the master settlement agreement, including,
10 without limitation, all right, title, and interest to receive or collect tobacco settlement
11 revenues;
- 12 (2) To raise funds through the issuance of bonds or other obligations or evidences of
13 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
14 securitization, factoring, or other conveyance of the rights described above in
15 subdivision (1) of this section for the purposes of establishing the permanent tobacco
16 settlement development trust fund and as otherwise described in this Act;
- 17 (3) To serve the Legislature by making reports concerning the foregoing;
- 18 (4) To sue and be sued and to prosecute and defend, at law or in equity, in any court
19 having jurisdiction of the subject matter and of the parties;
- 20 (5) To have and to use a corporate seal and to alter the same at pleasure;
- 21 (6) To maintain an office at such place or places as the authority by resolution may
22 designate;
- 23 (7) To receive funds transferred to it by the authority, the state, or others; and
- 24 (8) To do all things necessary and convenient to carry out the purposes of this chapter.

1 The corporation shall also be vested with the same power and authority, and shall be subject
2 to the same limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1,
3 5-12-4, 5-12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3,
4 5-12-27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and
5 authority shall be exercised with respect to and shall be limited to the purposes of the corporation
6 set forth in section 4 of this Act, the final maturity date of any bonds issued, incurred, or created
7 hereunder may not be in excess of forty years for the date of delivery thereof, and the
8 corporation may not engage in any unrelated activities. In addition, the corporation may invest
9 any of its funds in permitted investments.

10 Section 5. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No bond of the corporation issued, incurred, or created under this Act may be or become a
13 lien, charge, or liability against the State of South Dakota or the authority, nor against the
14 property or funds of the State of South Dakota or the authority within the meaning of the
15 Constitution or statutes of South Dakota. In no event may any of the funds deposited into the
16 permanent tobacco settlement development trust fund, the tobacco settlement interest fund, or
17 the tobacco settlement residual fund be pledged to secure payment of any bonds issued under the
18 authority of this Act.

19 Section 6. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred,
22 or created under this Act that the state will not limit or alter the rights and powers vested in the
23 corporation and the authority by this Act so as to impair the terms of any contract made by the
24 corporation or the authority with those holders or in any way impair the rights and remedies of

1 those holders until such bonds, together with interest thereon, interest on any unpaid installments
2 of interest, and all costs and expenses in connection with any action or proceedings by or on
3 behalf of those holders are fully met or discharged. In addition, the state pledges to and agrees
4 with the holders of bonds issued, incurred, or created under this Act that the state will not limit
5 or alter the basis on which tobacco settlement revenues that have been sold pursuant to this Act
6 are to be paid to the corporation or the authority so as to impair the terms of any such contract.
7 The corporation and authority each may include these pledges and agreements of the state in any
8 contract with the holders of bonds issued, incurred, or created under this Act.

9 Neither the State of South Dakota nor the authority is liable on bonds issued, incurred, or
10 created under this Act, those bonds may not be a debt of the state or the authority, and this Act
11 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
12 The bonds shall contain a statement to this effect on the face of the bonds.

13 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond issued, incurred, or created by the corporation under
16 this Act or for any act or failure to act of the corporation. The corporation may not be liable for
17 any obligation of the South Dakota Building Authority or for any act or failure to act by the
18 building authority.

19 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. The income of the authority and the corporation,
23 and all properties at any time owned by the authority and the corporation, are exempt from all
24 taxation in the State of South Dakota. In addition, the corporation is exempt from all filing,

1 reporting, and similar requirements otherwise applicable to nonprofit and other corporations.

2 For purposes of chapter 47-31A and any amendment thereto and substitution therefor, bonds,
3 notes, certificates, or other obligations issued, incurred or created by the corporation under this
4 Act shall be deemed to be securities issued by a public instrumentality of the State of South
5 Dakota.

6 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The corporation may employ attorneys, accountants, tobacco industry consultants, and
9 financial experts, managers, and such other employees and agents as may be necessary in its
10 judgment and to fix their compensation.

11 Section 10. The permanent tobacco settlement development trust fund is hereby established
12 in the state treasury as a special trust fund. That portion of the net proceeds of sale of tobacco
13 settlement revenues which is derived from the net proceeds of bonds shall be deposited in the
14 permanent tobacco settlement development trust fund. In addition, any residual interest in
15 tobacco settlement revenues shall, upon receipt by the state, be deposited in the tobacco
16 settlement residual fund. The principal of the permanent tobacco settlement development trust
17 fund may not be expended except for costs and expenses incurred in investing or otherwise
18 administering the permanent tobacco settlement development trust and its assets. The amounts
19 in the permanent tobacco settlement development trust fund shall be state public funds within the
20 meaning of chapter 4-4 and shall be invested in permitted investments and otherwise in
21 accordance with §§ 4-5-23 and 4-5-26. All investment earnings from the permanent tobacco
22 settlement development trust fund shall be transferred to and deposited in the tobacco
23 development interest fund on a period basis no less frequently than annually.

24 Section 11. The tobacco settlement residual fund is established in the state treasury. The

1 amounts received by the state pursuant to any residual interest in tobacco settlement revenues
2 shall, upon receipt, be transferred to and deposited in the tobacco settlement residual fund. The
3 amounts in the tobacco settlement residual fund shall be state public funds within the meaning
4 of chapter 4-4 and shall remain in such fund until appropriated by the Legislature. The amounts
5 in the tobacco settlement residual fund shall be invested in permitted investments or otherwise
6 in accordance with §§ 4-5-23 and 4-5-26.

7 Section 12. The tobacco development interest fund is established in the state treasury. The
8 amounts in the tobacco development interest fund shall be state public funds within the meaning
9 of chapter 4-4 and shall remain in the fund until appropriated by the Legislature. The amounts
10 in the tobacco development interest fund shall be invested in permitted investments or otherwise
11 in accordance with §§ 4-5-23 and 4-5-26.

12 If in order to obtain or preserve any exclusion of interest on bonds from gross income of the
13 holders thereof for purposes of federal income taxation, the corporation or authority enters into
14 any agreement or covenant with the holders of bonds (or the trustee or other fiduciary acting on
15 behalf of or for the benefit of holders of bonds) that imposes restrictions or conditions on the
16 investment, use, expenditure, or other application of the proceeds of bonds issued, incurred, or
17 created under this Act, including any investment earnings thereon (whether while on deposit in
18 the permanent tobacco settlement development trust fund, the tobacco development interest fund
19 or otherwise), then the state and each agency, authority, or other body politic of the state or
20 acting on behalf of the state, shall observe and fully honor each such agreement, covenant, or
21 other restriction or condition with respect to investment, use, expenditure, or application thereof.
22 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred, or
23 created under this Act that the state will not invest, use, expend, or otherwise apply such
24 proceeds of bonds and any other amounts so as to impair the terms of any such agreement or

1 covenant made by the corporation or authority with any such holders (or trustee or other
2 fiduciary) or in any way impair the exemption or exclusion of interest on any such bonds from
3 federal income taxation. The corporation and authority each may include these pledges and
4 agreements of the state in any contract with the holders of bonds issued, incurred, or created
5 under this Act.

6 Section 13. It is the intention of this Legislature that funds deposited in the tobacco
7 development interest fund and the tobacco settlement residual fund be expended pursuant to
8 separately enacted statutes which will implement development programs intended to provide for
9 the health, welfare, and prosperity of the State of South Dakota and its residents. Any such
10 development program shall be established by a separately enacted statute which makes express
11 reference to this Act and the terms and conditions of such program shall be specified in such
12 statute. Any such statute shall expressly incorporate any agreements, covenants, or restrictions
13 described or referred to in or by sections 6 and 12 of this Act and any investment, use,
14 expenditure, or other application of moneys described in section 12 of this Act shall be expressly
15 subject to and in full compliance with the agreements, covenants, restrictions, and conditions
16 imposed by the terms of section 12 of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0405 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 248 - 02/13/2001

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a higher education savings plan.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Account," an account established as prescribed in this Act;

5 (2) "Account owner," the person who, under this Act or rules promulgated by the council
6 pursuant to chapter 1-26, is entitled to select or change the designated beneficiary of
7 an account, to designate any person other than the designated beneficiary to whom
8 funds may be paid from the account, or to receive distributions from the account if no
9 such other person is designated;

10 (3) "Contribution," any payment directly allocated to an account for the benefit of a
11 designated beneficiary or used to pay late fees or administrative fees associated with
12 an account, and that portion of any rollover amount treated as a contribution under
13 section 529 of the Internal Revenue Code and related regulations;

14 (4) "Contributor," any person making a contribution to an account;

15 (5) "Council," the South Dakota Investment Council;

1 (6) "Designated beneficiary," except as provided in section 25 of this Act, the individual
2 designated at the time the account is opened as the individual whose higher education
3 expenses are expected to be paid from the account or, if this designated beneficiary
4 is replaced in accordance with section 12, 13, or 14 of this Act, the replacement
5 beneficiary;

6 (7) "Eligible education institution," an institution that is eligible to participate in any
7 financial assistance program authorized by Title IV of the Higher Education Act of
8 1965, as amended through January 1, 2001, and that is any of the following as
9 permitted by section 529 of the Internal Revenue Code and related regulations:

10 (a) An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79
11 stat. 1219; 20 United States code sections 1001 through 1150);

12 (b) An area vocational educational school as defined in section 521(3),
13 subparagraph (C) or (D) of the Carl D. Perkins Vocational Education Act (P.L.
14 98-524; 98 stat. 2435; 20 United States code sections 2301 through 2471);

15 (c) An institution accredited for private postsecondary education;

16 (8) "Financial institution," any bank, commercial bank, national bank, savings bank,
17 savings and loan association, credit union, an insurance company, brokerage firm, or
18 other similar entity that is authorized to do business in this state;

19 (9) "Member of the family," any of the following:

20 (a) A son or daughter of an individual or a descendant of the son or daughter of
21 the individual;

22 (b) A stepson or stepdaughter of an individual;

23 (c) A brother, sister, stepbrother, or stepsister of an individual. For purposes of
24 this subsection, the terms, brother and sister, include a brother or sister by the

- 1 half-blood;
- 2 (d) The father or mother of an individual or an ancestor of the father or mother of
- 3 an individual;
- 4 (e) A stepfather or stepmother of an individual;
- 5 (f) A son or daughter of an individual's brother or sister. For purposes of this
- 6 subsection, the terms, brother and sister, include a brother or sister by the half-
- 7 blood;
- 8 (g) A brother or sister of an individual's father or mother. For purposes of this
- 9 subsection, the terms, brother and sister, include a brother or sister by the half-
- 10 blood;
- 11 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law,
- 12 or sister-in-law of an individual;
- 13 (i) The spouse of an individual or the spouse of an individual described in this
- 14 subdivision;
- 15 (j) Any individual who meets the criteria to be a member of the family as described
- 16 in this subdivision as a result of legal adoption;
- 17 (k) Any other individual who is considered a member of the family under section
- 18 529 of the Internal Revenue Code and related regulations;
- 19 (10) "Nonqualified withdrawal," a withdrawal from an account other than one of the
- 20 following:
- 21 (a) A qualified withdrawal;
- 22 (b) A withdrawal made as the result of the death on disability of the designated
- 23 beneficiary of an account;
- 24 (c) Withdrawal that is made on the account of a scholarship, or the allowance or

1 payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code
2 and related regulations, and that is received by the designated beneficiary, but
3 only to the extent of the amount of this scholarship, allowance, or payment; or

4 (d) A rollover or change of designated beneficiary;

5 (11) "Person," as defined in the regulations to section 529 of the Internal Revenue Code;

6 (12) "Program," the higher education savings program established under this Act;

7 (13) "Qualified higher education expenses," tuition, fees, books, supplies, and equipment
8 required for enrollment or attendance and room and board of a designated beneficiary
9 at an eligible education institution, and any other expenses qualifying as qualified
10 higher education expenses under section 529 of the Internal Revenue Code and
11 related regulations; provided that room and board expenses qualify only if the
12 beneficiary enrolls at least half time and only if the expenses do not exceed the
13 minimum room and board allowance determined in calculating costs of attendance for
14 federal financial aid programs;

15 (14) "Qualified withdrawal," a withdrawal from an account to pay the qualified higher
16 education expenses of the designated beneficiary of the account, but only if the
17 withdrawal is made in accordance with this Act;

18 (15) "Rollover," a disbursement or transfer from an account of a designated beneficiary
19 that is transferred to or deposited within sixty days into an account of another
20 individual who is a member of the family of the designated beneficiary, if the
21 transferee account was created under this Act or under a qualified state tuition
22 program maintained by another state in accordance with section 529 of the Internal
23 Revenue Code and related regulations.

24 Section 2. The council shall:

- 1 (1) Establish the program in the form of a trust to be declared by the council or in such
2 other form as the council may determine;
- 3 (2) Develop and implement the program in a manner consistent with this Act through the
4 adoption of rules, guidelines, and procedures;
- 5 (3) Retain professional services, if necessary, including accountants, auditors, consultants,
6 and other experts;
- 7 (4) Seek rulings and other guidance from the United States Department of the Treasury
8 and the Internal Revenue Service relating to the program;
- 9 (5) Make changes to the program required for the participants in the program to obtain
10 the federal income tax benefits or treatment provided by section 529 of the Internal
11 Revenue Code and related regulations;
- 12 (6) Interpret, in rules, policies, guidelines, and procedures, the provisions of this Act
13 broadly in light of its purpose and objectives;
- 14 (7) Charge, impose, and collect administrative fees and service charges in connection with
15 any agreement, contract, or transaction relating to the program;
- 16 (8) Select any financial institution or institutions to act as a depository and manager of
17 the program in accordance with this Act.

18 Section 3. The council may implement the program through the use of one or more financial
19 institutions to act as the depositories and managers. Under the program, persons may establish
20 accounts through the program at a depository. The council may solicit proposals from financial
21 institutions to act as the depositories and managers of the program. Financial institutions that
22 submit proposals must describe the financial instruments that will be held in accounts. Any
23 program depositories and managers selected by the council shall be selected from among bidding
24 financial institutions that demonstrate the most advantageous combination, both to potential

1 program participants and this state, of the following factors:

- 2 (1) Financial stability and integrity;
- 3 (2) The safety of the investment instruments being offered, taking into account any
4 insurance provided with respect to these instruments;
- 5 (3) The ability of the financial institution to track estimated costs of higher education as
6 calculated by the council;
- 7 (4) The ability of the financial institutions, directly or through a subcontract, to satisfy
8 record-keeping and reporting requirements;
- 9 (5) The financial institution's plan for promoting the program and the investment it is
10 willing to make to promote the program;
- 11 (6) The fees, if any, proposed to be charged to persons for maintaining accounts;
- 12 (7) The minimum initial deposit and minimum contributions that the financial institution
13 will require and the willingness of the financial institution to accept contributions
14 through payroll deduction plans and other deposit plans; and
- 15 (8) Any other benefits to this state or its residents included in the proposal, including an
16 account opening fee payable to the council by the account owner and an additional
17 fee from the financial institution for statewide program marketing by the council.

18 Section 4. The council shall enter into a contract with any financial institution engaged to
19 serve as a program manager and depository. The council may select more than one financial
20 institution if both of the following conditions exist:

- 21 (1) The United States Internal Revenue Service has provided guidance that giving a
22 contributor such a choice will not cause the program to fail to qualify for favorable
23 tax treatment under section 529 of the Internal Revenue Code and related regulations;
24 and

1 (2) The council concludes that the choice of financial institutions is in the best interest of
2 program beneficiaries and will not interfere with the promotion of the program.

3 Section 5. A program manager shall:

4 (1) Take all action required to keep the program in compliance with the requirements of
5 this Act, the rules promulgated by the council pursuant to chapter 1-26, and any
6 contract with the council to manage the program so that the program is treated as a
7 qualified state tuition plan under section 529 of the Internal Revenue Code and related
8 regulations;

9 (2) Keep adequate records of each account, keep each account segregated from each
10 other account and provide the council with the information necessary to prepare
11 statements required by sections 22, 23, and 24 of this Act or file these statements on
12 behalf of the council;

13 (3) Compile and total information contained in statements required to be prepared under
14 sections 22, 23, and 24 of this Act and provide these compilations to the council;

15 (4) Provide the council with this information to assist the council to determine compliance
16 with section 21 of this Act;

17 (5) Provide representatives of the council, including other contractors or other state
18 agencies, access to the books and records of the program manager to the extent
19 needed to determine compliance with the contract; and

20 (6) Hold all accounts in trust for the benefit of this state and the account owner.

21 Section 6. Any contract executed between the council and a financial institution pursuant to
22 this Act shall be for a term of at least three years and not more than seven years.

23 Section 7. If a contract executed between the council and a financial institution pursuant to
24 this Act is not renewed, all of the following conditions apply at the end of the term of the

1 nonrenewed contract:

- 2 (1) Accounts previously established and held in investment instruments at the financial
3 institution may not be terminated;
- 4 (2) Additional contributions may be made to the accounts; and
- 5 (3) No new accounts may be placed with that financial institution.

6 Section 8. The council may terminate a contract with a financial institution at any time for
7 good cause. If a contract is terminated, the council shall take custody of accounts held at that
8 financial institution and shall seek to promptly transfer the accounts to another financial
9 institution that is selected as a program manager and into investment instruments as similar to
10 the original investments as possible.

11 Section 9. The program shall be operated through the use of accounts. An account may be
12 opened by any person who desires to save to pay the qualified higher education expenses of an
13 individual by satisfying each of the following requirements:

- 14 (1) Completing an application in the form prescribed by the council. The application shall
15 include the following information:
 - 16 (a) The name, address, and social security number or employer identification
17 number of the contributor;
 - 18 (b) The name, address, and social security number or employer identification
19 number of the account owner if the account owner is not the contributor;
 - 20 (c) The name, address, and social security number of the designated beneficiary;
 - 21 (d) The certification relating to no excess contributions required by section 21 of
22 this Act; and
 - 23 (e) Any other information that the council may require;
- 24 (2) Paying the one-time application fee established by the council;

1 (3) Making the minimum contribution required by the council;

2 (4) Designating the type of account to be opened if more than one type of account is
3 offered.

4 Section 10. Any person may make contributions to an account after the account is opened.

5 Contributions to accounts may be made only in cash.

6 Section 11. Account owners may withdraw all or part of the balance from an account on
7 sixty days' notice, or a shorter period as may be authorized by the council, under rules
8 promulgated by the council pursuant to chapter 1-26. These rules shall include provisions that
9 will generally enable the council or program manager to determine if a withdrawal is a
10 nonqualified withdrawal. The rules may require one or more of the following:

11 (1) Account owners seeking to make a withdrawal other than a nonqualified withdrawal
12 shall provide certifications, copies of bills for qualified higher education expenses, or
13 other supporting material;

14 (2) Qualified withdrawals from an account shall be made only by a check payable jointly
15 to the designated beneficiary and a higher education institution as designated by the
16 account owner, except as expressly otherwise permitted by section 529 of the Internal
17 Revenue Code and related regulations;

18 (3) Withdrawals not meeting requirements established by the council shall be treated as
19 nonqualified withdrawals by the program manager, and if these withdrawals are not
20 nonqualified withdrawals, the account owner must seek refunds of penalties directly
21 from the council.

22 Section 12. An account owner may change the designated beneficiary of an account to an
23 individual who is a member of the family of the former designated beneficiary or to any other
24 individual in accordance with procedures established by the council by rules promulgated

1 pursuant to chapter 1-26.

2 Section 13. On the direction of an account owner, all or a portion of an account may be
3 transferred to another account of which the designated beneficiary is a member of the family of
4 the designated beneficiary of the transferee account, if the transferee account was created by this
5 Act or under a qualified state tuition program maintained by another state in accordance with
6 section 529 of the Internal Revenue Code and related regulations.

7 Section 14. Changes in designated beneficiaries and rollovers are not permitted if the changes
8 or rollovers would violate either of the following:

9 (1) Section 21 of this Act relating to excess contributions; or

10 (2) Section 18 of this Act relating to investment choice.

11 Section 15. In the case of any nonqualified withdrawal from an account, an amount equal to
12 ten percent of the portion of the proposed withdrawal that would constitute earnings as
13 determined in accordance with section 529 of the Internal Revenue Code and related regulations
14 shall be withheld as a penalty and paid to the council for use in operating and marketing the
15 program and for state student financial aid.

16 The council, by rule promulgated pursuant to chapter 1-26, shall increase the percentage of
17 the penalty or change the basis of this penalty if the council determines that the amount of the
18 penalty must be increased to constitute a penalty that is more than a de minimis penalty for
19 purposes of qualifying the program as a qualified state tuition program under section 529 of the
20 Internal Revenue Code and related regulations.

21 The council may decrease the percentage of the penalty if it determines that the penalty is
22 greater than is required to constitute a penalty that is more than a de minimis penalty for
23 purposes of qualifying the program as a qualified state tuition program under section 529 of the
24 Internal Revenue Code and related regulations.

1 Section 16. If an account owner makes a nonqualified withdrawal and no penalty amount is
2 withheld pursuant to section 15 of this Act or the amount withheld was less than the amount
3 required to be withheld under section 15 of this Act for nonqualified withdrawals, the account
4 owner shall pay the unpaid portion of the penalty to the council on or before April fifteenth of
5 the following calendar year.

6 Section 17. Each account shall be maintained separately from each other account under the
7 program. Separate records and accounting shall be maintained for each account for each
8 designated beneficiary.

9 Section 18. No contributor to, account owner of, or designated beneficiary of, any account
10 may direct the investment of any contributions to an account or the earnings from the account.

11 Section 19. If the council terminates the authority of a financial institution to hold accounts
12 and accounts must be moved from that financial institution to another financial institution, the
13 council shall select the financial institution and type of investment to which the balance of the
14 account is moved unless the Internal Revenue Service provides guidance stating that allowing
15 the account owner to select among several financial institutions that are then program managers
16 and depositories would not cause the program to cease to be a qualified state tuition plan.

17 Section 20. Neither an account owner nor a designated beneficiary may use an interest in an
18 account as security for a loan. Any pledge of an interest in an account is of no force and effect.

19 Section 21. The council shall adopt rules pursuant to chapter 1-26 to prevent contributions
20 on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher
21 education expenses of the designated beneficiaries and to satisfy the safe harbor requirements
22 under section 529 of the Internal Revenue Code and related regulations.

23 Section 22. If there is any distribution from an account to any person or for the benefit of any
24 person during a calendar year, the distribution shall be reported to the Internal Revenue Service

1 and the account owner or the designated beneficiary to the extent required by federal law.

2 Section 23. The financial institution shall provide statements to each account owner at least
3 once each year within thirty-one days after the twelve-month period to which they relate. The
4 statement shall identify the contributions made during a preceding twelve-month period, the total
5 contributions made through the end of the period, the value of the account as of the end of this
6 period, distribution made during this period, and any other matters that the council requires be
7 reported to the account owner.

8 Section 24. Statements and information returns relating to accounts shall be prepared and
9 filed to the extent required by federal or state tax law.

10 Section 25. A state or local government or organizations described in section 501(c)(3) of
11 the Internal Revenue Code and related regulations may open and become the account owner of
12 an account to fund scholarships for persons whose identity will be determined after an account
13 is opened. In this case, the requirement that a designated beneficiary be designated when an
14 account is opened does not apply and each person who receives an interest in the account as a
15 scholarship shall be treated as a designated beneficiary with respect to the interest.

16 Section 26. Any social security numbers, taxpayer identification numbers, addresses, or
17 telephone numbers of account holders and designated beneficiaries that come into the possession
18 of the council are confidential, are not public records, and may not be released by the council
19 except as required by federal law.

20 Section 27. Any student loan program, student grant program, or other financial assistance
21 program established or administered by this state or by a state supported educational institution
22 shall treat the balance in an account of which the student is a designated beneficiary as if it were
23 an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an
24 asset of the student for determining a student's or parent's income, assets, or financial need.

1 However, this section does not apply if any of the following conditions exist:

- 2 (1) Federal law requires all or a portion of the amount in an account to be taken into
3 account in a different manner;
- 4 (2) Federal benefits could be lost if all or a portion of the amount in an account is not
5 taken into account in a different manner; or
- 6 (3) A specific grant establishing a financial assistance program requires that all or a
7 portion of the amount in an account be taken into account.

8 Section 28. Nothing in this Act:

- 9 (1) Gives any designated beneficiary any rights or legal interest with respect to an account
10 unless the designated beneficiary is the account owner;
- 11 (2) Guarantees that a designated beneficiary will be admitted to an eligible education
12 institution or be allowed to continue enrollment at or graduate from an eligible
13 education institution after admission;
- 14 (3) Establishes state residency for an individual merely because the individual is a
15 designated beneficiary; or
- 16 (4) Guarantees that amounts saved pursuant to the program will be sufficient to cover the
17 qualified higher education expenses of a designated beneficiary.

18 Section 29. Nothing in this Act establishes any obligation of this state or any agency or
19 instrumentality of this state to guarantee for the benefit of any account owner, contributor to an
20 account, or designated beneficiary any of the following:

- 21 (1) The return of any amounts contributed to an account;
- 22 (2) The rate of interest or other return on any account;
- 23 (3) The payment of interest or other return on any account; or
- 24 (4) Tuition rates or the cost of related higher education expenditures.

1 Section 30. Every contract, application, deposit slip, or other similar document that may be
2 used in connection with a contribution to an account shall clearly indicate that the account is not
3 insured by this state and neither the principal deposited nor the investment return is guaranteed
4 by this state.

5 Section 31. The council shall submit an annual report to the speaker of the House of
6 Representatives, the president pro tem of the Senate, and the Governor by February first that
7 summarizes the council's findings and recommendations concerning the program established by
8 this Act.