

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0196

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 37 - 01/17/2002

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to modify the permissible exclusions for life insurance
2 policies.

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

4 Section 1. That § 58-15-45 be amended to read as follows:

5 58-15-45. No policy of life insurance may be delivered or issued for delivery in this state if
6 it contains any provision which excludes or restricts liability for death caused in a certain
7 specified manner or occurring while the insured has a specified status. However, a policy may
8 contain provisions excluding or restricting coverage as specified in the policy in the event of
9 death under any one or more of the following circumstances:

10 (1) Death as a result, directly or indirectly, of war, declared or undeclared, or of action
11 by military forces, or of any act or hazard of such war or action, or of service in the
12 military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause
13 while a member of such military, naval, or air forces of any country at war, declared
14 or undeclared, or of any country engaged in such military action. However, this



1 exclusion is not enforceable unless the applicant is affirmatively advised at the time
2 of delivery of the policy that the policy in question contains war clause exclusions;

3 (2) Death as a result of aviation or any air travel or flight;

4 (3) Death as a result of a specified hazardous occupation or occupations;

5 (4) ~~Death while the insured is a resident outside continental United States and Canada;~~

6 or

7 ~~(5) Death within two years from the date of issue of the policy as a result of suicide, while~~
8 ~~sane or insane;~~

9 (5) Any other exclusion or restriction the director may adopt, by rule promulgated
10 pursuant to chapter 1-26, if the exclusion or restriction is in the best interest of the
11 insurance buying public.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0350 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 41 - 01/17/2002

Introduced by: The Committee on State Affairs at the request of the Investment Council

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the higher education
2 savings plan and to declare an emergency.

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

4 Section 1. That § 13-63-11 be amended to read as follows:

5 13-63-11. Account owners may withdraw all or part of the balance from an account ~~on sixty~~
6 ~~days' notice, or a shorter period~~ as may be authorized by the council, by policies, guidelines, or
7 procedures, or under rules promulgated by the council pursuant to chapter 1-26. ~~These rules~~
8 ~~shall include provisions that will generally enable the council or program manager to determine~~
9 ~~if a withdrawal is a nonqualified withdrawal. The rules may require one or more of the following:~~

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

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



1 Revenue Code and related regulations;

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

6 Section 2. That § 13-63-18 be amended to read as follows:

7 13-63-18. No contributor to, account owner of, or designated beneficiary of, any account
8 may, directly or indirectly, direct the investment of any contributions to an account or the
9 earnings from the account, except to the extent permitted under section 529 of the Internal
10 Revenue Code and related regulations.

11 The council, as trustee, may offer participants a choice of several investment options, some
12 of which may require investment counseling prior to participation. Any investment vehicle
13 offered by the council shall be in accordance with policies of the council adopted pursuant to this
14 chapter and shall be consistent with the investments of a prudent person with similar objectives
15 and shall further be separate from, and not commingled with, other investment programs of the
16 council.

17 Section 3. That § 13-63-21 be amended to read as follows:

18 13-63-21. The council shall adopt policies, guidelines, procedures, or rules pursuant to
19 chapter 1-26 to prevent contributions on behalf of a designated beneficiary in excess of ~~those~~
20 ~~necessary to pay the qualified higher education expenses of the designated beneficiaries and to~~
21 ~~satisfy the safe harbor requirements~~ the maximum amounts permitted under section 529 of the
22 Internal Revenue Code and related regulations.

23 Section 4. That § 4-5-26 be amended to read as follows:

24 4-5-26. Money made available for investment may be invested in the following classes of

1 securities and investments and, except as provided by § 3-12-117, chapter 3-13, the South
2 Dakota Cement Plant retirement fund, chapter 13-63, and the permanent trust fund containing
3 the net proceeds from the sale of state cement enterprises, not otherwise:

- 4 (1) Direct and indirect obligations of the United States government;
- 5 (2) Agencies and instrumentalities of the United States government;
- 6 (3) Direct obligations of the State of South Dakota and any of its political subdivisions;
- 7 (4) Obligations consisting of notes, bonds, debentures, and certificates which are direct
8 obligations of a solvent corporation or trust existing under the laws of the United
9 States or any state thereof, if such investments are rated in the four highest
10 classifications established by at least two standard rating services; or
- 11 (5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan
12 associations, building and loan associations, and bankers' acceptances;
- 13 (6) In addition to the investments authorized by subdivisions (1) to (5) of this section,
14 inclusive, the investment council may also allocate a sum certain of state public funds
15 for investment in the accounts and certificates of South Dakota banks and
16 associations. This sum shall initially be offered to South Dakota banks and
17 associations, and if not initially fully subscribed, the investment officer shall
18 immediately reoffer the unsubscribed sum to other qualified public depositories
19 defined by subdivision 4-6A-1(7).

20 Section 5. That ARSD 6:01:06:01 be amended to read as follows:

21 6:01:06:01. Definitions. Words and phrases defined in SDCL chapter 13-63 have the same
22 meaning when used in this chapter. Terms used in this chapter mean:

- 23 (1) "Cash," currency, bills, and coin in circulation, or converting a negotiable instrument to
24 cash by endorsing and presenting to a financial institution for deposit. An automatic transfer,

1 cashier's check, certified check, money order, payroll deposit, traveler's check, personal check,
2 and wire transfer are cash;

3 (2) "Investment direction," specifying or attempting to specify the particular financial
4 instruments or ownership interests either individually, or within a fund family or other group of
5 financial instruments or ownership interests held as an investment group, into which the
6 contributions or earnings are invested. Investment direction does not mean selecting an initial
7 type of investment program if more than one program is offered;

8 (3) "IRC," section 529 of the Internal Revenue Code as amended on ~~August 1, 2001~~
9 January 16, 2002;

10 (4) "Program manager," any financial institution selected by the council to act as the
11 depository and manager for the higher education savings plan.

12 Section 6. That ARSD 6:01:06:04 be repealed.

13 ~~6:01:06:04. Withdrawals--Reporting of nonqualified withdrawals--Penalties. An account~~
14 ~~owner may withdraw funds from an account on 30 days notice. The designated beneficiary of~~
15 ~~an account does not have any authority to withdraw funds from an account unless the account~~
16 ~~is structured to give the designated beneficiary such right of withdrawal upon matriculation or~~
17 ~~upon incurring qualified higher education expenses.~~

18 ~~— (1) Withdrawals. Types of withdrawals include:~~

19 ~~— (a) Qualified withdrawals. In order to make a qualified withdrawal, the account holder~~
20 ~~or the account holder's designee must complete a certification, on a form provided by the~~
21 ~~program manager, declaring that the funds will be used for the purposes set forth in subdivision~~
22 ~~SDCL 13-63-1(13). The form shall include a statement advising the designated beneficiary and~~
23 ~~account owner to report, in accordance with IRC, refunds received from a higher education~~
24 ~~institution. In addition to the certification, a withdrawal is deemed qualified only if:~~

1 ~~—————(i)————— The financial institution is provided with a copy of an invoice from the~~
2 ~~higher education institution or other supporting material; and~~

3 ~~—————(ii) The distribution is made only by check payable jointly to the designated~~
4 ~~beneficiary and a higher education institution as designated by the account owner, or the higher~~
5 ~~education institution only, or except as expressly permitted by IRC;~~

6 ~~—————(b) Withdrawal based on death, disability, or scholarship. A withdrawal may be made~~
7 ~~as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation~~
8 ~~is provided. Written substantiation must be from a party other than the designated beneficiary~~
9 ~~or the account owner that can independently confirm the circumstances of the withdrawal. For~~
10 ~~a scholarship, the withdrawal may not exceed the amount of the scholarship;~~

11 ~~—————(c) Nonqualified or unsubstantiated withdrawals. Any penalty that exceeds zero percent~~
12 ~~would be considered more than de minimis based on IRC, therefore the council has determined~~
13 ~~that no penalty will be imposed pursuant to SDCL 13-63-15; and~~

14 ~~——(2) Substantiation procedures. Before treating any withdrawal as qualified, the program~~
15 ~~manager shall confirm that substantiation is provided for the amount of a withdrawal that the~~
16 ~~account owner or designated beneficiary asserts is qualified; that the substantiation complies with~~
17 ~~IRC, and, in the case of a withdrawal to pay qualified higher education expenses, that the~~
18 ~~substantiated expenditures are of a nature and in amounts that can be treated as qualified higher~~
19 ~~education expenses. If the program manager determines that substantiation is inadequate, it shall~~
20 ~~notify the account owner and defer making any distribution with respect to an inadequately~~
21 ~~substantiated request until proper substantiation is provided or the account owner instructs the~~
22 ~~financial institution to make the requested distribution.~~

23 Section 7. Whereas, this Act is necessary for the support of the state government and its
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0349

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 50 - 01/17/2002

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to regulate the practice of accountancy.

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

3 Section 1. That sections 36-20A-1 to 36-20A-36, inclusive, be repealed.

4 Section 2. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Terms as used in this chapter mean:

7 (1) "Board," the South Dakota Board of Accountancy established pursuant to this chapter
8 or its predecessor;

9 (2) "Certificate," a certificate as a certified public accountant issued pursuant to this
10 chapter or corresponding provisions of prior law, or a corresponding certificate as
11 certified public accountant issued after examination under the law of any other state;

12 (3) "Client," a person or entity that agrees with a licensee to receive any professional
13 service other than an employer-employee relationship;

14 (4) "CPA firm" and "PA firm," a sole proprietorship, a corporation, a partnership, or any



1 other form of organization permitted by law issued a permit under this chapter;

2 (5) "Compilation," providing a service to be performed in accordance with Statements on
3 Standards for Accounting and Review Services (SSARS) that is presenting in the
4 form of financial statements, information that is the representation of management
5 (owners) without undertaking to express any assurance on the statements;

6 (6) "Domestic," referring to a jurisdiction of a state;

7 (7) "Foreign," referring to a jurisdiction outside of the United States;

8 (8) "License," a certificate issued pursuant to this chapter, a permit issued pursuant to this
9 chapter, or a registration pursuant to this chapter; or in each case, a certificate,
10 license, or permit issued under corresponding provisions of prior law;

11 (9) "Licensee," the holder of a certificate issued pursuant to this chapter or of a license
12 issued under prior law, or of a permit issued pursuant to this chapter; or in each case,
13 a certificate, license, or permit issued under corresponding provisions of prior law;

14 (10) "Manager," manager of a limited liability company;

15 (11) "Member," a member of a limited liability company;

16 (12) "Peer review," a study, appraisal, or review of one or more aspects of the professional
17 work of a certificate holder or CPA firm that performs attest or compilation services,
18 by a qualified person or persons who hold certificates and who are not affiliated with
19 the certificate holder or CPA firm being reviewed;

20 (13) "Permit," a permit to practice public accountancy issued to a firm pursuant to this
21 chapter or corresponding provisions of prior law or under corresponding provisions
22 of the laws of other states;

23 (14) "Professional," arising out of or related to the specialized knowledge or skills
24 associated with CPAs or PAs;

- 1 (15) "Public accountant," a person holding a public accountant license issued pursuant to
2 provisions of prior law;
- 3 (16) "State," any state of the United States, the District of Columbia, Puerto Rico, the U.S.
4 Virgin Islands, and Guam;
- 5 (17) "Substantial equivalency," a determination by the board or its designee that the
6 education, examination, and experience requirements contained in the statutes and
7 administrative rules of another jurisdiction are comparable to, or exceed the
8 education, examination, and experience requirements contained in this chapter or that
9 an individual CPA's education, examination, and experience qualifications are
10 comparable to or exceed the education, examination, and experience requirements
11 contained in this chapter.

12 Section 3. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 For the purposes of this chapter, attest means providing the following financial statement
15 services:

- 16 (1) Any audit or other engagement to be performed in accordance with the Statements
17 on Auditing Standards (SAS);
- 18 (2) Any review of a financial statement to be performed in accordance with the
19 Statements on Standards for Accounting and Review Services (SSARS);
- 20 (3) Any examination of prospective financial information to be performed in accordance
21 with the Statements on Standards for Attestation Engagements (SSAE); and
- 22 (4) The issuance of any report prescribed by the Statements on Auditing Standards, the
23 Statements on Standards for Accounting and Review Services, or the Statements on
24 Standards for Attestation Engagements on any services to which those statements on

1 standards apply, indicating that the service was performed in accordance with
2 standards established by the American Institute of Certified Public Accountants.

3 The statements on standards specified in this definition shall be adopted by reference by the
4 board, by rule promulgated pursuant to chapter 1-26, and shall be those developed for general
5 application by recognized national accountancy organizations.

6 Section 4. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 For the purposes of this chapter, the term, report, if used with reference to financial
9 statements, means an opinion, report, or other form of language that states or implies assurance
10 as to the reliability of any financial statements or assertion. It also includes or is accompanied by
11 any statement or implication that the person or firm issuing it has special knowledge or
12 competence in accounting or auditing and that the service reported upon was performed under
13 standards for such services established by the American Institute of Certified Public Accountants.
14 Such a statement or implication of special knowledge or competence may arise from use by the
15 issuer of the report of names or titles indicating that the person or firm is an accountant or
16 auditor, or from the language of the report itself. The term, report, includes any form of language
17 which disclaims an opinion when such form of language is conventionally understood to imply
18 any positive assurance as to the reliability of the financial statements referred to or special
19 competence on the part of the person or firm issuing such language or both; and it includes any
20 other form of language that is conventionally understood to imply such assurance or such special
21 knowledge or competence or both.

22 Section 5. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 There is created the South Dakota Board of Accountancy, which has responsibility for the

1 administration and enforcement of this chapter. The board consists of six members, all of whom
2 shall be residents of this state. Five members shall be appointed by the Governor for four-year
3 terms. Four of the appointed members shall be holders of active certificates and three of these
4 shall be in the practice of public accountancy. One appointed member shall be a lay member who
5 is not a holder of a certificate under this chapter but shall have had professional or practical
6 experience in the use of accounting services and financial statements, so as to be qualified to
7 make judgments about the qualifications and conduct of persons and firms subject to regulation
8 under this chapter. The auditor general shall serve as an ex officio member. Any vacancy
9 occurring during a term shall be filled by appointment by the Governor for the unexpired term.
10 Upon the expiration of the member's term of office, a member shall continue to serve until a
11 successor is appointed and takes office. Any member of the board whose certificate is revoked
12 or suspended shall automatically cease to be a member of the board, and the Governor may
13 remove any member of the board for cause. No person who has served two successive complete
14 terms is eligible for reappointment, but appointment to fill an unexpired term is not considered
15 a complete term for this purpose.

16 Section 6. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The board shall elect annually from among its members a chair, vice chair, and secretary-
19 treasurer. A quorum for the transaction of board business shall consist of a majority of the
20 members. The board shall meet at such times and places as may be determined by the board. The
21 board shall have a seal which shall be judicially noticed. The board shall retain or arrange for the
22 retention of all applications and all documents under oath that are filed with the board and also
23 records of its proceedings, and it shall maintain a registry of the names and addresses of all active
24 licensees under this chapter. The board may maintain a registry of the names and addresses of

1 all other licensees. In any proceeding in court, whether civil or criminal, arising out of or founded
2 upon any provision of this chapter, copies of any records certified as true copies under the seal
3 of the board are admissible in evidence as tending to prove the contents of the records.

4 Section 7. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The board is within the Department of Commerce and Regulation and shall submit reports
7 of its activities in the form and at such times as required by the secretary of commerce and
8 regulation.

9 Section 8. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 All money coming into the custody of the board each calendar month shall be paid by the
12 board to the state treasurer on or before the tenth day of the next month. The state treasurer shall
13 credit the money to the South Dakota Board of Accountancy fund. The money in the South
14 Dakota Board of Accountancy fund is continuously appropriated to the board for the purpose
15 of paying the expense of administering and enforcing the provisions of this chapter. However,
16 the total expense incurred may not exceed the total money collected by the board under the
17 provisions of this chapter.

18 Section 9. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Each member of the board shall be paid an amount established by law for each day or portion
21 thereof spent in the discharge of the member's official duties and shall be reimbursed for the
22 member's expenses incurred in the discharge of the member's official duties in accordance with
23 the schedule adopted by the Board of Finance for state employees.

24 Section 10. That chapter 36-20A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The board may employ an executive director and such other personnel as it deems necessary
3 in its administration and enforcement of this chapter. The board may appoint committees or
4 persons to advise or assist it in such administration and enforcement. The board may retain legal
5 counsel to advise and assist it in addition to the advice and assistance provided by the attorney
6 general.

7 Section 11. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 In addition to any other power granted to the board, the board may take any action that is
10 necessary and proper to effectuate the purposes of this chapter, including:

- 11 (1) The power to sue and be sued in its official name as an agency of this state;
- 12 (2) To issue subpoenas to compel the attendance of witnesses and the production of
13 documents;
- 14 (3) To administer oaths;
- 15 (4) To take testimony and to cooperate with the appropriate authorities in other states in
16 investigation and enforcement concerning violations of this chapter and comparable
17 acts of other states; and
- 18 (5) To receive evidence, concerning all matters within the scope of this chapter.

19 In case of disobedience of a subpoena, the board may invoke the aid of any court in requiring
20 the attendance and testimony of witnesses and the production of documentary evidence.

21 Section 12. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The board, its members, and its agents are immune from personal liability for actions taken
24 in good faith in the discharge of the board's responsibilities, and the state shall hold the board,

1 its members, and its agents harmless from all costs, damages, and attorneys' fees arising from
2 claims and suits against them with respect to matters to which such immunity applies.

3 Section 13. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The board may promulgate rules, pursuant to chapter 1-26, governing its administration and
6 enforcement of this chapter and the conduct of licensees, including:

- 7 (1) Rules governing the board's meetings and the conduct of its business;
- 8 (2) Rules of procedure governing the conduct of investigations and hearings by the board;
- 9 (3) Rules specifying the fees, educational and experience qualifications required for the
10 issuance of certificates, the date for renewal of firm permits and certificates, and the
11 continuing professional education required for renewal of certificates;
- 12 (4) Rules of professional conduct to control the quality and integrity of the practice of
13 public accountancy by licensees, covering such areas as independence, integrity, and
14 objectivity; competence and technical and professional standards; responsibilities to
15 the public; and responsibilities to clients;
- 16 (5) Rules governing the manner and circumstances of use by holders of certificates who
17 do not practice public accountancy, as defined under this chapter, of the titles certified
18 public accountant and CPA;
- 19 (6) Rules specifying procedures and fees for registration of certificate holders who do not
20 practice public accountancy, as defined under this chapter;
- 21 (7) Rules governing the manner and circumstances of use by holders of licenses issued
22 under prior law who do not practice public accountancy, as defined under this
23 chapter, of the titles public accountant and PA;
- 24 (8) Rules specifying procedures and fees for registration of license holders who do not

- 1 practice public accountancy, as defined under this chapter;
- 2 (9) Rules regarding peer review pursuant to this chapter;
- 3 (10) Rules specifying peer review administrative fees;
- 4 (11) Rules specifying procedures and fees for required peer review documentation not filed
- 5 in a timely manner;
- 6 (12) Rules specifying fees for examination and reexamination and issuance of a certificate;
- 7 (13) Rules specifying procedures and fees for proctoring applicants from another
- 8 jurisdiction;
- 9 (14) Rules specifying the procedures and fees for initial issuance or renewal of a firm
- 10 permit;
- 11 (15) Rules governing the application and fees for a modification of a disciplinary action or
- 12 reissue of a certificate or firm permit;
- 13 (16) Rules governing the methods, eligibility, and requirements for applying for
- 14 examination and reexamination;
- 15 (17) Rules specifying procedures and fees for renewal of certificates and firm permits not
- 16 filed in a timely manner;
- 17 (18) Rules specifying procedures and fees for replacement of a certificate or permit;
- 18 (19) Rules specifying methods and requirements for conducting the examination;
- 19 (20) Rules specifying methods, eligibility, and requirements of applying for a certificate;
- 20 (21) Rules specifying procedures and fees for issuance of certificates and firm permits not
- 21 filed within the required period of time;
- 22 (22) Rules defining active and inactive status of both certificate and PA license holders
- 23 who are not practicing public accountancy; and
- 24 (23) Rules specifying procedures and fees on substantial equivalency.

1 Section 14. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The board shall grant a certificate to any applicant who meets the requirements of good
4 moral character, education, examination, and experience requirements and who pays the fees
5 prescribed in this chapter.

6 Section 15. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Good moral character for purposes of section 14 of this Act means lack of a history of
9 dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure
10 to satisfy this requirement only if there is a substantial connection between the lack of good
11 moral character of the applicant and the professional responsibilities of a licensee and if the
12 finding by the board or lack of good moral character is supported by clear and convincing
13 evidence. If an applicant is found to be unqualified for a certificate because of a lack of good
14 moral character, the board shall furnish the applicant a statement containing the findings of the
15 board, a complete record of the evidence upon which the determination was based, and a notice
16 of the applicant's right of appeal.

17 Section 16. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The education requirement for a certificate, which shall be met before one hundred days after
20 an applicant sits for the examination prescribed in this chapter, is at least one hundred fifty
21 semester hours of college education, including graduation from an accredited college or
22 university with a baccalaureate or a graduate degree in accounting, or the satisfactory completion
23 of a course of study which the board has determined to be substantially the equivalent of an
24 accounting degree, including related courses in other areas of business administration. Such

1 courses of study may be in a college or university, recognized by the board.

2 Section 17. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The examination required to be passed as a condition for the granting of a certificate shall
5 be held at least annually and shall test the applicant's knowledge of the subjects of accounting,
6 auditing, and such other related subjects as the board may specify by rule promulgated pursuant
7 to chapter 1-26. The time for holding such examination shall be determined by the board and may
8 be changed from time to time. The board shall prescribe, by rule promulgated pursuant to
9 chapter 1-26, the methods of applying for and conducting the examination, including methods
10 for grading and determining a passing grade required of an applicant for a certificate. However,
11 the board shall, to the extent possible, assure that the examination, grading of the examination,
12 and the passing grades are uniform with those applicable in other states. The board may make
13 use of any part of the Uniform Certified Public Accountant Examination and Advisory Grading
14 Service of the American Institute of Certified Public Accountants and may contract with third
15 parties to perform such administrative services with respect to the examination to assist it in
16 performing its duties.

17 Section 18. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 An applicant shall pass all parts of the examination provided for in this section to qualify for
20 a certificate. If at any sitting of the examination an applicant passes the number of parts specified
21 by the board, by rule promulgated pursuant to chapter 1-26, then the applicant shall be given
22 credit for those parts passed and need not sit for reexamination in those parts if:

23 (1) The applicant wrote all parts of the examination specified by the board, by rule
24 promulgated pursuant to chapter 1-26;

- 1 (2) The applicant attained a minimum grade specified by the board, by rule promulgated
2 pursuant to chapter 1-26, on each section not passed at that sitting;
- 3 (3) The applicant passes the remaining parts of the examination within a period of time
4 specified by the board, by rule promulgated pursuant to chapter 1-26, given after the
5 initial examination at which the first parts were passed;
- 6 (4) At each subsequent sitting at which the applicant seeks to pass any additional parts,
7 the applicant writes all parts as specified by the board, by rule promulgated pursuant
8 to chapter 1-26; and
- 9 (5) In order to receive credit for passing additional parts in any such subsequent sitting,
10 the applicant attains such grades on parts written but not passed on such sitting as
11 specified by the board, by rule promulgated pursuant to chapter 1-26.

12 Section 19. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 An applicant shall be given credit for any parts of an examination passed in another state if
15 such credit would have been given, under then applicable requirements, if the applicant had taken
16 the examination in this state. The board may in particular cases waive or defer any of the
17 foregoing requirements regarding the circumstances in which the various parts of the
18 examination shall be passed, upon a showing that, by reason of circumstances beyond the
19 applicant's control, the applicant was unable to meet such requirement.

20 Section 20. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 An applicant shall pass an examination covering the rules of ethics and professional conduct
23 promulgated by the board pursuant to chapter 1-26. The examination may be part of the uniform
24 CPA examination or may be a separate examination.

1 Section 21. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The board may charge, or provide for a third-party administering the examination to charge,
4 each applicant a fee, in an amount prescribed by the board, by rule promulgated pursuant to
5 chapter 1-26, for each section of the examination or reexamination taken by the applicant.

6 Section 22. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 An applicant for initial issuance of a certificate under this chapter shall show that the
9 applicant has acquired one year of experience. This experience shall include providing any type
10 of service or advice involving the use of accounting, attest, management advisory, financial
11 advisory, tax, or consulting skills, all of which were verified by a licensee, meeting requirements
12 prescribed by the board, by rule promulgated pursuant to chapter 1-26. Acceptable experience
13 may be gained through employment in government, industry, academia, or public practice. Any
14 person holding a valid certificate issued by this state prior to July 1, 2002, is deemed to have met
15 the requirements of this section.

16 Section 23. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 An individual who passes the examination as a South Dakota candidate may apply for a
19 certificate in accordance with requirements and by such date established by rule, promulgated
20 pursuant to chapter 1-26. The board shall grant or renew a certificate to any person who makes
21 application and demonstrates qualifications that are in accordance with the provisions of this
22 chapter eligibility under the substantial equivalency standard provided in this chapter.

23 Section 24. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A certificate shall be initially issued, and renewed, for a period of one year. However,
2 certificates shall expire on the renewal date as established by the board, by rule promulgated
3 pursuant to chapter 1-26. Applications for such certificates shall be made in such form, and in
4 the case of applications for renewal, between such dates, as the board shall specify by rule
5 promulgated pursuant to chapter 1-26. The board shall grant or deny any such application no
6 later than ninety days after the application is filed in proper form. If the applicant seeks the
7 opportunity to show that issuance or renewal of a certificate was mistakenly denied, or if the
8 board is not able to determine whether it should be granted or denied, the board may issue to the
9 applicant a provisional certificate, which shall expire ninety days after its issuance or when the
10 board determines whether to issue or renew the certificate for which application was made,
11 whichever occurs first.

12 The failure of an applicant to renew under this chapter does not deprive the applicant of the
13 right of renewal thereafter if the applicant is otherwise qualified.

14 Section 25. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Any holder of a certificate or registration shall relinquish such document to the board within
17 thirty days after such certificate or registration has been suspended or revoked.

18 Section 26. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The board shall issue a certificate to an applicant who does not qualify for reciprocity under
21 the substantial equivalency standard provided in this chapter but who holds a certificate, license,
22 or permit issued by another state upon a showing that:

23 (1) The applicant passed the examination required for issuance of the applicant's
24 certificate with grades that would have been passing grades at the time in this state;

- 1 (2) The applicant had four years of experience of the type described in this chapter or
2 meets equivalent requirements prescribed by the board, by rule promulgated pursuant
3 to chapter 1-26, after passing the examination upon which the applicant's certificate
4 was based and within the ten years immediately preceding the application; and
- 5 (3) The applicant has fulfilled the requirements of continuing professional education that
6 would have been applicable under subdivision (2) if the applicant's certificate, license,
7 or permit was issued more than four years prior to the application for issuance of an
8 initial certificate under this chapter.

9 Section 27. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A certificate holder licensed by another state, before establishing a principal place of business
12 in this state, shall request the issuance of a certificate from the board. The board shall issue a
13 certificate to any applicant who obtains from the board of the other state verification that such
14 applicant's qualifications are substantially equivalent to the CPA licensure requirements of this
15 chapter.

16 Section 28. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 For renewal of a certificate under this chapter, a licensee shall participate in a program of
19 learning designed to maintain professional competency. The program of learning shall comply
20 with rules, promulgated by the board pursuant to chapter 1-26. A licensee shall complete one
21 hundred twenty hours of continuing education in each three-year renewal period. The board may,
22 by rule promulgated pursuant to chapter 1-26, establish an exception to this requirement for
23 certificate holders who do not perform or offer to perform for the public one or more kinds of
24 services involving the use of accounting or auditing skills, including issuance of reports on

1 financial statements or of one or more kinds of management advisory, financial advisory, or
2 consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.
3 Any licensee granted such an exception by the board must place the word, inactive, adjacent to
4 their CPA title or PA title on any business card, letterhead, or any other document or device,
5 with the exception of their CPA certificate or PA license, on which their CPA or PA title
6 appears.

7 Section 29. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The board shall charge a fee for each application for initial issuance or renewal of a certificate
10 under this chapter in an amount prescribed by the board, by rule promulgated pursuant to chapter
11 1-26.

12 Section 30. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 An applicant for initial issuance or renewal of a certificate under this chapter shall in the
15 application, list any state in which the applicant has applied for or holds a certificate, license, or
16 permit and list any past denial, revocation, or suspension of a certificate, license, or permit. Each
17 holder of or applicant for a certificate under this chapter shall notify the board in writing, within
18 thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate,
19 license, or permit by another state, change of address or employment, or any conviction of a
20 felony.

21 Section 31. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The board shall issue a certificate to a holder of a substantially equivalent foreign designation
24 if the following conditions are satisfied:

- 1 (1) The foreign authority which granted the designation makes similar provision to allow
2 a person who holds a valid certificate issued by this state to obtain such foreign
3 authority's comparable designation;
- 4 (2) The foreign designation was duly issued by a foreign authority that regulates the
5 practice of public accountancy, based on educational and examination requirements
6 established by the foreign authority or by statute and the foreign designation has not
7 expired or been revoked or suspended;
- 8 (3) The applicant received the designation, based on educational and examination
9 standards substantially equivalent to those in effect in this state at the time the foreign
10 designation was granted, and the designation was issued upon the basis of
11 educational, examination, and experience requirements established by the foreign
12 authority or by law;
- 13 (4) The applicant passed a qualifying examination, with the examination grading and
14 passing grades being uniform with those applicable in other states, and an examination
15 acceptable to the board on the law, rules, and code of ethical conduct in effect in this
16 state; and
- 17 (5) The applicant received the designation based on educational and examination
18 standards substantially equivalent to those in effect in this state at the time the foreign
19 designation was granted; completed an experience requirement substantially
20 equivalent to the requirement provided in this chapter in the jurisdiction which granted
21 the foreign designation or has completed four years of professional experience in this
22 state; or meets equivalent requirements prescribed by the board, by rule promulgated
23 pursuant to chapter 1-26, within the ten years immediately preceding the application;
24 and passed a uniform qualifying examination consistent with national standards and

1 an examination on the laws, rules, and code of ethical conduct in effect in this state.

2 An applicant under this section shall list in the application all jurisdictions, foreign and
3 domestic, in which the applicant has applied for or holds a designation to practice public
4 accountancy, and each holder of a certificate issued under this section shall notify the board in
5 writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension
6 of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.
7 The board has the sole authority to interpret the application of the provisions of this section.

8 Section 32. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Any certificate holder who performs compilation services for the public other than through
11 a CPA firm shall undergo, no more frequently than once every three years, as a condition for
12 renewal of a certificate, a peer review conducted in such manner as the board shall specify by
13 rule, promulgated pursuant to chapter 1-26. The review shall include verification that the
14 certificate holder has met the competency requirements set out in professional standards for such
15 services.

16 Section 33. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The board shall grant or renew a permit to practice as a CPA firm or PA firm to an entity that
19 makes application and demonstrates its qualifications in accordance with this chapter or to a
20 CPA firm originally licensed in another state that establishes an office in this state. A firm with
21 multiple locations shall obtain a permit for each location. A firm must hold a permit issued under
22 this section in order to provide attest services as defined in this chapter or to use the title, CPAs,
23 CPA firm, PAs, or PA firm.

24 A permit shall be initially issued and renewed for periods of not more than one year.

1 However, a permit expires on the date as established by the board, by rule promulgated pursuant
2 to chapter 1-26 following issuance or renewal. An application for a permit shall be made in such
3 form, and in the case of an application for renewal, between such dates as the board may, by rule
4 promulgated pursuant to chapter 1-26, specify. If the applicant seeks the opportunity to show
5 that issuance or renewal of a permit was mistakenly denied or if the board is not able to
6 determine whether it should be granted or denied, the board may issue to the applicant a
7 provisional permit, which expires ninety days after its issuance, or when the board determines
8 whether to issue or renew the permit for which the application was made, whichever occurs first.

9 Section 34. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 An applicant for initial issuance or renewal of a permit to practice under this chapter shall
12 comply with the following:

13 (1) Notwithstanding any other provision of law, a majority of the owners of the firm, in
14 terms of financial interests and voting rights, are holders of a certificate and are
15 licensed in some state, and such owners whose principal place of business is in this
16 state and who perform professional services in this state hold a valid certificate issued
17 under this chapter or the corresponding provision of prior law or are public
18 accountants registered under this chapter. Firms may include nonlicensee owners.
19 However, such firms must be controlled by the majority vote of owners who are
20 holders of a certificate and who are licensed in some state, and such control may not
21 be relinquished by contract, such as through veto rights held by owners of less than
22 a majority of the owners. The firm and its ownership shall comply with rules
23 promulgated by the board pursuant to chapter 1-26. For firms of public accountants,
24 at least a majority of the owners of the firm must be holders of registrations under this

1 chapter;

2 (2) Any CPA or PA firm as defined in this chapter may include nonlicensee owners if the
3 firm designates a licensee of this state who is responsible for the proper registration
4 of the firm and identifies non-license owners to the board;

5 (3) All nonlicensee owners are active individual participants in the CPA or PA firm or an
6 affiliated entity;

7 (4) The firm complies with such other requirements as the board may establish by rule
8 promulgated pursuant to chapter 1-26;

9 (5) Any individual licensee who is responsible for supervising attest or compilation
10 services and signs or authorizes another individual to sign the accountant's report on
11 the financial statements on behalf of the firm shall meet the experience requirements
12 set out in the professional standards for such services; and

13 (6) Any individual licensee who signs or authorizes an individual to sign the accountant's
14 report on the financial statements on behalf of the firm shall meet the experience
15 requirement of this chapter.

16 An applicant for initial issuance or renewal of a permit to practice shall register each office
17 of the firm within this state with the board and show that all attest and compilation services
18 rendered in this state are under the charge of a person holding a valid certificate issued under this
19 chapter or the corresponding provision of prior law or some other state.

20 Section 35. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 An applicant for initial issuance or renewal of a permit under this chapter shall list in the
23 application any state in which the applicant has applied for or holds a permit as a CPA firm and
24 shall list any past denial, revocation, or suspension of a permit by any other state.

1 Section 36. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Each holder of or applicant for a permit under this chapter shall notify the board in writing,
4 within thirty days after its occurrence, of any change in the identity of any partner, officer,
5 shareholder, member, or manager whose principal place of business is in this state, any change
6 in the number or location of offices within this state, any change in the identity of the person in
7 charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any
8 other state.

9 Firms failing to comply with the provisions of this chapter due to changes in firm ownership
10 or personnel, after receiving or renewing a permit, shall take immediate corrective action to
11 return the firm to compliance. The board may grant a reasonable period of time for a firm to take
12 corrective action as specified by rule promulgated pursuant to chapter 1-26. Failure of the firm
13 to comply within a reasonable period as defined by the board shall result in the suspension or
14 revocation of the firm permit.

15 Section 37. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The board may, by rule promulgated pursuant to chapter 1-26, require, on either a uniform
18 or a random basis, as a condition of renewal of firm permits pursuant to this chapter, that an
19 applicant undergo peer review conducted in such manner and producing such satisfactory result
20 as the board may specify. However, any such requirement shall include reasonable provision for
21 compliance by means of an applicant furnishing evidence of a satisfactory peer review performed
22 for other purposes. Such review shall include a verification that individuals in the firm who are
23 responsible for supervising attest and compilation services and who sign or authorize someone
24 to sign the accountant's report on the financial statements on behalf of the firm, meet the

1 competency requirements set out in the professional standards for such services. Any rule
2 promulgated pursuant to this section shall:

3 (1) Include reasonable provision for compliance by an applicant showing that it has,
4 within the preceding three years, undergone a peer review that is a satisfactory
5 equivalent to peer review generally required pursuant to this section;

6 (2) Require, with respect to a peer review contemplated by subdivision (1), that it be
7 subject to oversight by an oversight body established or sanctioned by board rule,
8 promulgated pursuant to chapter 1-26, which body shall periodically report to the
9 board on the effectiveness of the review program under its charge, and provide to the
10 board a listing of firms that have participated in a peer review program that is
11 satisfactory to the board; and

12 (3) Require, with respect to peer review contemplated by subdivision (1), that any peer
13 review process be operated and any documents maintained in a manner designed to
14 preserve confidentiality, and that neither the board nor any third party, other than the
15 oversight body, may have access to documents furnished or generated in the course
16 of the review.

17 Pursuant to the peer review process, the board shall treat the reports of the reviewer and any
18 records submitted to the reviewer by the firm subject to review as confidential information. The
19 board may not disclose such information to any persons other than staff members, legal counsel,
20 and other persons retained by the board to assist it in fulfilling its responsibilities under this
21 chapter and the rules, promulgated by the board pursuant to chapter 1-26.

22 Section 38. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 The board shall charge a fee for each application for initial issuance or renewal of a permit

1 in an amount prescribed by the board, by rule promulgated pursuant to chapter 1-26.

2 Section 39. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Any person who, on the effective date of this Act, holds any license or permit as a public
5 accountant issued under prior law of this state may have the registration renewed upon
6 fulfillment of the continuing professional education requirements for renewal of certificates
7 provided in this chapter, and on the renewal cycle and payment of fees therein prescribed for
8 renewal of certificates. Any registration not so renewed expires three years after the effective
9 date of this Act. Firms of public accountants holding permits to practice issued under prior law
10 of this state may have their permits to practice renewed pursuant to the procedures, and subject
11 to the requirements for renewal of permits to practice for firms of certified public accountants,
12 provided in this chapter. So long as such public accountant licensees hold valid registrations and
13 permits to practice, they may perform attest and compilation services to the same extent as
14 holders of certificates, and other holders of permits, and in addition they may use the title, public
15 accountants and PA, but no other title. The holder of a registration issued under this section may
16 only perform attest services in a firm that holds a permit issued under this chapter.

17 Section 40. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 An application by a person or a firm not a resident of this state for a certificate or a firm
20 permit to practice shall constitute appointment of the secretary of state as the applicant's agent
21 upon whom process may be served in any action or proceeding against the applicant arising out
22 of any transaction or operation connected with or incidental to services performed by the
23 applicant while a licensee within this state.

24 Section 41. That chapter 36-20A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The board may, in accordance with chapter 1-26, revoke any certificate, license, or permit
3 issued pursuant to this chapter or corresponding provisions of prior law or revoke or limit
4 privileges under this chapter; suspend any such certificate, license, or permit, or refuse to renew
5 any such certificate, license, or permit for a period of not more than five years; reprimand,
6 censure, or limit the scope of practice of any licensee; impose an administrative fine not
7 exceeding one thousand dollars, or place any licensee on probation, all with or without terms,
8 conditions, and limitations, for any one or more of the following reasons:

- 9 (1) Fraud or deceit in obtaining a certificate or permit;
- 10 (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or
11 permit to engage in the practice of public accountancy in any other state for any
12 cause;
- 13 (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter
14 or registration under this chapter, or of a certificate, license or permit issued by
15 another state, to maintain compliance with the requirements for issuance or renewal
16 of such certificate, license, permit, or registration or to report changes to the board;
- 17 (4) Revocation or suspension of the right to practice before any state or federal agency;
- 18 (5) Dishonesty, fraud, or gross negligence in the performance of services as a licensee or
19 individual granted privileges under this chapter or in the filing or failure to file one's
20 own income tax returns;
- 21 (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant
22 to chapter 1-26, or violation of professional standards;
- 23 (7) Violation of any rule of professional conduct promulgated by the board pursuant to
24 chapter 1-26;

- 1 (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud,
2 under the laws of the United States, of this state, or of any other state if the acts
3 involved would have constituted a crime under the laws of this state;
- 4 (9) Performance of any fraudulent act while holding a certificate, license, or permit or
5 privilege issued under this chapter or prior law;
- 6 (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while
7 a licensee, or individual granted privileges under this chapter;
- 8 (11) Making any false or misleading statement or verification, in support of an application
9 for a certificate, registration, or permit filed by another; and
- 10 (12) Dishonesty or gross negligence in the performance of peer reviews.

11 In lieu of or in addition to any remedy specifically provided in this section, the board may
12 require of a licensee a peer review conducted in such manner as the board may specify or
13 satisfactory completion of such continuing professional education programs as the board may
14 specify, or both.

15 In any proceeding in which a remedy provided by this section is imposed, the board may also
16 require the respondent licensee to pay the costs of the proceeding.

17 Section 42. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The board may, upon receipt of a complaint or other information suggesting violations of this
20 chapter or of the rules of the board, conduct investigations to determine whether there is
21 probable cause to institute proceedings under chapter 1-26 or of this chapter against any person
22 or firm for such violation. However, no investigation under this section may be a prerequisite to
23 such proceedings in the event that a determination of probable cause can be made without
24 investigation. In aid of such investigations, the board or the chair thereof may issue subpoenas

1 to compel witnesses to testify and to produce evidence.

2 Section 43. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The board may designate a member, or any other person of appropriate competence, to serve
5 as investigating officer to conduct an investigation. Upon completion of an investigation, the
6 investigating officer shall file a report with the board. The board shall find probable cause or lack
7 of probable cause upon the basis of the report or shall return the report to the investigating
8 officer for further investigation. Unless there has been a determination of probable cause, the
9 report of the investigating officer, the complaint, if any, the testimony and documents submitted
10 in support of the complaint or gathered in the investigation, and the fact of pendency of the
11 investigation shall be treated as confidential information and may not be disclosed to any person
12 except law enforcement authorities and, to the extent deemed necessary in order to conduct the
13 investigation, the subject of the investigation, persons whose complaints are being investigated,
14 and witnesses questioned in the course of the investigation.

15 Section 44. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Upon a finding of probable cause, if the subject of the investigation is a licensee or an
18 individual with privileges under this chapter, the board shall proceed in accordance with chapter
19 1-26. If the subject of the investigation is not a licensee or an individual with privileges under this
20 chapter, the board shall take appropriate action under this chapter. Upon a finding of no probable
21 cause, the board shall close the matter and shall thereafter release information relating thereto
22 only with the consent of the person or firm under investigation.

23 Section 45. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 The board may review the publicly available professional work of licensees or an individual
2 with privileges under this chapter on a general and random basis, without any requirement of a
3 formal complaint or suspicion of impropriety on the part of any particular licensee. If, as a result
4 of such review, the board discovers grounds for a more specific investigation, the board may
5 proceed as prescribed under this chapter.

6 Section 46. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 If probable cause with respect to a violation by a licensee or an individual with privileges
9 granted under this chapter has been determined by the board, or upon receipt of notice of a
10 decision by the board of another state furnishing grounds for a determination of probable cause,
11 the board may issue a complaint setting forth appropriate charges and set a date for hearing
12 before the board on such charges. If a complaint is issued and a hearing date set, the board shall,
13 not less than thirty days prior to the date of the hearing, serve a copy of the complaint and notice
14 of the time and place of the hearing upon the licensee or an individual with privileges granted
15 under this chapter, together with a copy of the board's rules governing proceedings under this
16 section, either by personal delivery or by mailing a copy thereof by registered mail to the licensee
17 at the licensee's address, last known to the board. In the case of an individual exercising
18 privileges under this chapter, service shall be by certified or registered mail to the address last
19 known to the board, or pursuant to chapter 1-26.

20 Section 47. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 A licensee or an individual with privileges under this chapter against whom a complaint has
23 been issued under this section may, reasonably in advance of the hearing, examine and copy the
24 report of investigation, if any, and any documentary or testimonial evidence and summaries of

1 anticipated evidence in the board's possession relating to the subject matter of the complaint. The
2 board shall adopt rules, promulgated pursuant to chapter 1-26, governing proceedings under this
3 section to specify the manner in which such right may be exercised.

4 Section 48. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The respondent licensee or an individual with privileges granted under this chapter may
7 appear at the hearing in person or, in the case of a firm, through a partner, officer, director,
8 shareholder, member, or manager, and by counsel, examine witnesses and evidence presented
9 in support of the complaint, and present evidence and witnesses on the licensee's or an
10 individual's own behalf. The licensee or an individual granted privileges under this chapter is
11 entitled, on application to the board, to the issuance of subpoenas to compel the attendance of
12 witnesses and the production of documentary evidence.

13 Section 49. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The evidence supporting the complaint shall be presented by the investigating officer, by a
16 board member designated for that purpose, or by counsel. A board member who presents the
17 evidence, or who has conducted the investigation of the matter under this chapter, may not
18 participate in the board's decision of the matter.

19 The board shall be advised by counsel, who may be the same counsel who presents or assists
20 in presenting the evidence supporting the complaint.

21 A stenographic or electronic record may be made and filed with the board. A transcript need
22 not be prepared unless review is sought or the board determines that there is other good cause
23 for its preparation.

24 A recorded vote of a majority of all members of the board, other than members disqualified

1 by reason of this section, is required to sustain any charge and to impose any penalty with respect
2 thereto.

3 Section 50. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 If after service of a complaint and notice of hearing the respondent licensee fails to appear
6 at the hearing, the board may proceed to hear evidence against the licensee or an individual
7 granted privileges under this chapter and may enter an order as it deems warranted by the
8 evidence. Any order shall be final unless the licensee or an individual granted privileges under
9 this chapter petitions for review. However, within thirty days from the date of any such order,
10 upon a showing of good cause for the licensee's or an individual's failure to appear and defend,
11 the board may set aside the order and schedule a new hearing on the complaint, to be conducted
12 in accordance with the provisions of this section.

13 Section 51. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person or firm adversely affected by any order of the board entered after a hearing under
16 this chapter may obtain review thereof by filing a written petition for review with the circuit
17 court within thirty days after the entry of the order. The procedures for review and the scope of
18 the review shall be as specified in chapter 1-26.

19 Section 52. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 If the board renders a decision imposing discipline against a licensee or an individual granted
22 privileges under this chapter, the board shall notify any board of accountancy of any other state
23 in which the licensee also holds certificates, licenses, or permits of its decision, by mail, within
24 forty-five days of rendering the decision. The board may also furnish information relating to

1 proceedings resulting in disciplinary action to other public authorities and to private professional
2 organizations having a disciplinary interest in the licensee.

3 If a petition for review has been filed pursuant to this chapter, the notification and furnishing
4 of information provided for in this section shall await the resolution of such review and, if
5 resolution is in favor of the licensee or an individual granted privileges under this chapter, no
6 such notification or furnishing of information may be made.

7 Section 53. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 If the board has suspended or revoked a certificate, license, permit, or registration or revoked
10 or limited privileges under this chapter or refused to renew a certificate, license, permit, or
11 registration, the board may, upon application in writing by the person or firm affected and for
12 good cause shown, modify the suspension, or reissue the certificate, license, permit, or
13 registration or remove the limitation or revocation of privileges.

14 The board shall, by rule promulgated pursuant to chapter 1-26, specify the manner in which
15 such applications shall be made, the times within which they shall be made, and the circumstances
16 in which hearings will be held.

17 Section 54. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Before reissuing or terminating the suspension of a certificate, license, permit, or registration
20 under this section or of privileges under this chapter, and as a condition thereto, the board may
21 require the applicant to show successful completion of specified continuing professional
22 education. The board may make the reinstatement of a certificate, license, permit, or registration
23 or of privileges under this chapter conditional and subject to satisfactory completion of a peer
24 review conducted in such manner as the board may specify.

1 Section 55. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 No person other than a licensee may issue a report on financial statements of any person,
4 firm, organization, or governmental unit or offer to render or render any attest or compilation
5 service. This restriction does not prohibit any act of a public official or public employee in the
6 performance of that person's duties as such, or prohibit the performance by any nonlicensee of
7 other services involving the use of accounting skills, including the preparation of tax returns,
8 management advisory services, and the preparation of financial statements without the issuance
9 of reports thereon. A nonlicensee may prepare financial statements and issue nonattest
10 transmittals or information thereon which do not purport to be in compliance with the Statements
11 on Standards for Accounting and Review Services (SSARS).

12 A licensee performing attest or compilation services shall provide those services in
13 accordance with professional standards.

14 Section 56. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 A person who does not hold a valid certificate may not use or assume the title, certified
17 public accountant, the abbreviation, CPA, or any other title, designation, words, letters,
18 abbreviation, sign, card, or device tending to indicate that such person is a certified public
19 accountant.

20 No firm may provide attest services or assume or use the title, certified public accountants,
21 or the abbreviation, CPAs, or any other title, designation, words, letters, abbreviation, sign, card,
22 or device tending to indicate that such firm is a CPA firm unless:

- 23 (1) The firm holds a valid permit issued under this chapter; and
- 24 (2) Ownership of the firm is in accordance with this chapter and rules promulgated by the

1 board in accordance with chapter 1-26.

2 Section 57. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 No person who does not hold a valid license may use or assume the title, public accountant,
5 or the abbreviation, PA, or any other title, designation, words, letters, abbreviation, sign, card,
6 or device tending to indicate that such person is a public accountant.

7 No firm may provide attest services or assume or use the title, public accountants, or the
8 abbreviation, PAs, or any other title, designation, words, letters, abbreviation, sign, card, or
9 device tending to indicate that such firm is a PA firm unless:

- 10 (1) The firm holds a valid permit issued under this chapter; and
11 (2) Ownership of the firm is in accordance with this chapter and rules promulgated by the
12 board in accordance with chapter 1-26.

13 Section 58. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 No person or firm, not holding a valid certificate, permit, or registration issued under this
16 chapter, may assume or use the title, certified accountant, chartered accountant, enrolled
17 accountant, licensed accountant, registered accountant, accredited accountant, or any other title
18 or designation likely to be confused with the titles, certified public accountant or public
19 accountant, or use any of the abbreviations CA, LA, RA, AA, or similar abbreviation likely to
20 be confused with the abbreviations, CPA or PA. The title, Enrolled Agent or EA may only be
21 used by individuals so designated by the Internal Revenue Service.

22 No nonlicensee may use language in any statement relating to the financial affairs of a person
23 or entity which is conventionally used by licensees in reports on financial statements.

24 Section 59. That chapter 36-20A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No person or firm which does not hold a valid certificate, permit, or registration issued under
3 this chapter may assume or use any title or designation that includes the words, accountant,
4 auditor, or accounting, in connection with any other language, including the language of a report,
5 that implies that such person or firm holds such a certificate, permit, or registration or has special
6 competence as an accountant or auditor. However, this section does not prohibit any officer,
7 partner, member, manager, or employee of any firm or organization from affixing that person's
8 own signature to any statement in reference to the financial affairs of such firm or organization
9 with any wording designating the position, title, or office that the person holds therein nor
10 prohibit any act of a public official or employee in the performance of the persons duties as such.

11 Any person or firm who violates the provisions of this section is guilty of a Class 2
12 misdemeanor.

13 Section 60. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The provisions of this chapter do not apply to any person or firm holding a certification,
16 designation, degree, or license granted in a foreign country entitling the holder thereof to engage
17 in the practice of public accountancy or its equivalent in such country, whose activities in this
18 state are limited to the provision of professional services to persons or firms who are residents
19 of, governments of, or business entities of, the country in which the person holds such
20 entitlement, who performs no attest or compilation services and who issues no reports with
21 respect to the financial statements of any other persons, firms, or governmental units in this state,
22 and who does not use in this state any title or designation other than the one under which the
23 person practices in such country, followed by a translation of such title or designation into the
24 English language, if it is in a different language, and by the name of such country.

1 Section 61. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 No holder of a certificate issued under this chapter or a registration issued under this chapter
4 may perform attest services through any business form that does not hold a valid permit issued
5 under this chapter. This restriction does not prohibit any act of a public official or public
6 employee in the performance of that person's duties as such.

7 Section 62. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 No individual licensee may issue a report in standard form upon a compilation of financial
10 information through any form of business that does not hold a valid permit issued under this
11 chapter unless the report discloses the name of the business through which the individual is
12 issuing the report, and the individual:

- 13 (1) Signs the compilation report identifying the individual as a CPA or PA;
- 14 (2) Meets the competency requirement provided in applicable standards; and
- 15 (3) Undergoes no less frequently than once every three years, a peer review conducted
16 in such manner as the board shall, by rule promulgate in accordance with chapter 1-
17 26, specify. Such review shall include verification that the individual has met the
18 competency requirements set out in professional standards for such services.

19 Section 63. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Nothing in this chapter prohibits a practicing attorney or firm of attorneys from preparing or
22 presenting records or documents customarily prepared by an attorney or firm of attorneys in
23 connection with the attorney's professional work in the practice of law.

24 Section 64. That chapter 36-20A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 If, as a result of an investigation under this chapter or otherwise, the board believes that any
3 person or firm has engaged in, or is about to engage in any act or practice which constitutes or
4 will constitute a violation of this chapter, the board may make application to the appropriate
5 court for an order enjoining such act or practice, and upon a showing by the board that such
6 person or firm has engaged, or is about to engage, in any such act or practice, the court may
7 grant an injunction, restraining order, or other order as may be appropriate.

8 Section 65. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 If, by reason of an investigation under this chapter or otherwise, the board has reason to
11 believe that any person or firm has knowingly engaged in any act or practice that constitutes a
12 violation of this chapter, the board may bring its information to the attention of the attorney
13 general of any state or other appropriate law enforcement officer who may cause appropriate
14 criminal proceedings to be brought thereon.

15 Any person or firm who knowingly violates any provision of this chapter is guilty of a Class
16 1 misdemeanor.

17 Section 66. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 In any action brought under this chapter, evidence of the commission of a single act
20 prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or
21 conviction, respectively, without evidence of a general course of conduct.

22 Section 67. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 No action may be brought unless the plaintiff is the issuer or successor of the issuer of the

1 financial statements or other information examined, compiled, reviewed, certified, audited, or
2 otherwise reported or opined on by the defendant and engaged the defendant licensee to
3 examine, compile, review, certify, audit, or otherwise report or render an opinion on such
4 financial statements or to provide other services; or the defendant licensee or firm:

- 5 (1) Was aware at the time the engagement was undertaken that the financial statements
6 or other information were to be made available for use in connection with a specified
7 transaction by the plaintiff who was specifically identified to the defendant accountant;
- 8 (2) Was aware that the plaintiff intended to rely upon such financial statements or other
9 information in connection with the specified transaction; and
- 10 (3) Had direct contact and communication with the plaintiff and expressed by words or
11 conduct the defendant accountant's understanding of the reliance on such financial
12 statements or other information.

13 This section applies to all causes of action of the type specified herein filed on or after the
14 effective date. This section governs any action based on negligence brought against any
15 accountant or firm of accountants practicing in this state by any person or entity claiming to have
16 been injured as a result of financial statements or other information examined, compiled,
17 reviewed, certified, audited, or otherwise reported or opined on by the defendant accountant or
18 in the course of an engagement to provide other services.

19 Section 68. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 An individual whose principal place of business is not in this state having a valid certificate
22 or license as a certified public accountant from any state which the board has verified to be in
23 substantial equivalence with the licensure requirements of this chapter is presumed to have
24 qualifications substantially equivalent to this state's requirements and shall have all the privileges

1 of certificate holders and licensees of this chapter without the need to obtain a certificate or
2 permit under this chapter. However, such individuals shall notify the board of their intent to enter
3 the state under this provision completing procedures and paying fees specified by the board and
4 promulgated by rule pursuant to chapter 1-26.

5 Section 69. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 An individual whose principal place of business is not in this state having a valid certificate
8 or license as a certified public accountant from any state which the board or its designee has not
9 verified to be in substantial equivalence with the licensure requirements of this chapter shall be
10 presumed to have qualifications substantially equivalent to this state's requirements and shall
11 have all the privileges of certificate holders and licensees of this state without the need to obtain
12 a certificate or permit under this chapter. However, such individuals shall notify the board of
13 their intent to enter the state under this provision completing procedures and paying fees
14 specified by the board and promulgated by rule pursuant to chapter 1-26.

15 Section 70. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Any licensee of another state exercising the privilege afforded under this chapter hereby
18 consents, as a condition of the grant of this privilege, to the personal and subject matter
19 jurisdiction and disciplinary authority of the board, to comply with this chapter and the board's
20 rules, and to the appointment of the state board which issued their license as their agent upon
21 whom process may be served in any action or proceeding by this board against the licensee.

22 Section 71. That chapter 36-20A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 A licensee of this state offering or rendering services or using their CPA title in another state

1 is subject to disciplinary action in this state for an act committed in another state for which the
2 licensee would be subject to discipline for an act committed in the other state. Notwithstanding
3 the provisions in this chapter, the board shall investigate any complaint made by the board of
4 accountancy of another state.

5 Section 72. That § 47-13B-2 be amended to read as follows:

6 47-13B-2. The corporation shall be organized solely for the purpose of conducting the
7 practice of accountancy ~~only through persons qualified to practice accountancy in the State of~~
8 ~~South Dakota.~~

9 Section 73. That § 47-13B-5 be repealed.

10 ~~—47-13B-5. All shareholders of the corporation shall be persons duly licensed as a public~~
11 ~~accountant or as a certified public accountant by some state and who at all times own shares in~~
12 ~~their own right. They shall be individuals who, except for illness, accident, time spent in the~~
13 ~~armed services, on vacations, and on leaves of absence, not to exceed one year, are actively~~
14 ~~engaged in the practice of accountancy or as certified public accountants.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

519H0277

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 71** - 01/17/2002

Introduced by: Senator Koskan and Representatives Flowers and Bartling

1 FOR AN ACT ENTITLED, An Act to revise certain penalties concerning inspections, repairs,
2 and maintenance to certain vehicles.

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

4 Section 1. That § 49-28A-3 be amended to read as follows:

5 49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B,
6 chapter I, subchapter C, parts 171 to 180, inclusive, as amended through January 1, 2001, and
7 Title 49 of the Code of Federal Regulations, subtitle B, chapter III, subchapter B, parts 390 to
8 397, inclusive, as amended through January 1, 2001, with the following modifications:

9 (1) All references to interstate operations shall also include intrastate operations except
10 that drivers and motor carriers operating intrastate vehicles and combinations of
11 vehicles with three axles or less or with a gross vehicle weight rating of not more than
12 twenty-six thousand pounds which are not used to transport hazardous materials
13 requiring placarding under part 177, or designed to transport more than fifteen
14 passengers, including the driver, are not subject to parts 390-397;

15 (2) For the purposes of part 391.11(b)(1), a driver shall be at least twenty-one years old



1 if engaged in interstate commerce, or transporting hazardous material of a type or
2 quantity requiring placarding under part 177, or operating a vehicle designed to
3 transport more than fifteen passengers, including the driver. All other drivers shall be
4 at least sixteen years of age;

5 (3) Intrastate drivers are exempt from the physical requirements of part 391.41.

6 Any violation of parts 390 to 396, inclusive, except part 396.17(c), the motor carrier safety
7 requirements governing the qualifications of drivers, driving of motor vehicles, parts and
8 accessories necessary for safe operation, notification and reporting of accidents, assistance with
9 investigations and special studies, and hours of service of drivers, ~~inspection, repair, and~~
10 ~~maintenance~~ is a Class 2 misdemeanor. Any violation of part 396.17(c) is a petty offense. Any
11 violation of the hazardous materials regulations pertaining to general information, regulations
12 and definitions, hazardous materials tables, hazardous materials communication regulations, and
13 test and inspection marking requirements found in parts 171, 172, and 178 to 180, inclusive, is
14 a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to
15 packaging, prohibited shipments, loading and unloading, segregation and separation, retesting
16 and inspection of cargo tanks, and other carriage by regulations found in parts 173 to 180,
17 inclusive, or violation of the driving and parking rules in part 397, is a Class 1 misdemeanor.