

Senate Daily Reader

Friday, February 01, 2002

Bills Included				
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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0194

SENATE ENGROSSED NO. **HB 1038** - 01/30/2002

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

1 FOR AN ACT ENTITLED, An Act to authorize certain law enforcement vehicles to exceed
2 speed limits without the use of an audible siren, air horn, or flashing emergency lights under
3 certain conditions.

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

5 Section 1. That § 32-31-4 be amended to read as follows:

6 32-31-4. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to
7 any authorized emergency vehicle responding to an emergency call if the driver sounds an audible
8 siren or air horn, or both, and displays flashing, oscillating, or rotating beams of red light or
9 combinations of red, blue, or white light visible one hundred eighty degrees to the front of the
10 vehicle. The lights shall be capable of warning the public of the presence of an emergency vehicle
11 under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17,
12 inclusive, does not apply to any authorized emergency ~~vehicles~~ vehicle operated by any law
13 enforcement ~~officers~~ officer who ~~are~~ is measuring the speed of other vehicles by use of the
14 emergency vehicle speedometer, or while any law enforcement officer is in pursuit of an actual
15 or suspected violator of the law. This section applies only to South Dakota certified law



1 enforcement officers. Moreover, the driver of an ambulance who has been certified pursuant to
2 § 34-11-6 may operate the emergency vehicle in excess of the speed limit without audible signals
3 while operating outside the city limits of a municipality.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

732H0274

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1125** - 01/24/2002

Introduced by: Representatives Bartling, Brown (Richard), Duniphan, Flowers, Fryslie, Hennies (Thomas), Konold, Madsen, McCoy, Michels, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Pummel, and Smidt and Senators Hutmacher, Albers, Diedtrich (Elmer), Everist, McIntyre, Moore, Olson (Ed), Putnam, Reedy, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to adjust the salary schedule for county sheriffs.

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

3 Section 1. That § 7-12-15 be amended to read as follows:

4 7-12-15. The ~~salary payable to a sheriff shall be established by each board of county~~
5 ~~commissioners, by resolution, but may not be less than specified in~~ board of county
6 commissioners shall establish, by resolution, the salary payable to the sheriff. The salary payable
7 may not be less than the following schedule based upon the most recent decennial federal census
8 of population of counties.

9	County Population	Salary Schedule
10	Below 9,999 <u>10,000</u>	\$26,299 <u>28,799</u>
11	10,000-16,999 <u>10,000-14,999</u>	28,917 <u>31,417</u>
12	17,000-29,999 <u>15,000-24,999</u>	30,017 <u>32,517</u>
13	30,000-49,999 <u>25,000-69,999</u>	34,217 <u>36,717</u>



1	50,000 <u>70,000</u> and over	37,590 <u>40,090</u>
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2 The board of county commissioners may not decrease the salary of the sheriff during ~~the term~~
 3 consecutive terms of office of the sheriff. Any sheriff having responsibility for managing a full-
 4 time jail shall receive an additional ten percent added to the base salary listed in this section.

5 Section 2. Section 1 of this Act is effective on January 1, 2003.

6 Section 3. That § 7-12-15 be amended to read as follows:

7 7-12-15. ~~The salary payable to a sheriff shall be established by each board of county~~
 8 ~~commissioners, by resolution, but may not be less than specified in~~ board of county
 9 commissioners shall establish, by resolution, the salary payable to the sheriff. The salary payable
 10 may not be less than the following schedule based upon the most recent decennial federal census
 11 of population of counties.

County Population	Salary Schedule
Below 9,999 <u>10,000</u>	\$26,299 <u>31,299</u>
10,000-16,999 <u>10,000-14,999</u>	28,917 <u>33,917</u>
17,000-29,999 <u>15,000-24,999</u>	30,017 <u>35,017</u>
30,000-49,999 <u>25,000-69,999</u>	34,217 <u>39,217</u>
50,000 <u>70,000</u> and over	37,590 <u>42,590</u>

18 The board of county commissioners may not decrease the salary of the sheriff during ~~the term~~
 19 consecutive terms of office of the sheriff. Any sheriff having responsibility for managing a full-
 20 time jail shall receive an additional ten percent added to the base salary listed in this section.

21 Section 4. Section 3 of this Act is effective on January 1, 2004.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

843H0415

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1221** - 01/30/2002

Introduced by: Representatives Hargens, Bartling, Burg, Elliott, Hennies (Don), Hennies (Thomas), Holbeck, Jensen, Lange, Lintz, Madsen, Olson (Mel), Peterson (Jim), Pitts, Rhoden, Sigdestad, and Van Gerpen and Senators Duxbury, Daugaard, Dennert, Koskan, Putnam, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the date for filing certain certificates of
2 nomination.

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

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is
6 not nominated by a primary election may be nominated by filing with the secretary of state or
7 county auditor as prescribed by § 12-6-4, not prior to January first at eight a.m. and not later
8 than the ~~third~~ first Tuesday in June at five p.m. prior to the election, a certificate of nomination
9 which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by
10 registered mail by the ~~third~~ first Tuesday in June at five p.m. prior to the election, it is timely
11 submitted. The certificate shall specify that an independent candidate for nonjudicial public office
12 shall designate the name of any national political party, or political party organized pursuant to
13 chapter 12-5, with which the candidate has an affiliation. If no affiliation exists, the candidate



1 shall be designated by the term, no party. It shall be signed by registered voters within the district
2 or political subdivision in and for which the officers are to be elected. The number of signatures
3 required may not be less than one percent of the total combined vote cast for Governor at the
4 last certified gubernatorial election within the district or political subdivision. An independent
5 candidate for Governor shall certify the candidate's selection for lieutenant governor to the
6 secretary of state prior to circulation of the candidate's nominating petition. The candidate and
7 the candidate's selection for lieutenant governor or vice president shall sign the certification
8 before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26
9 prescribing the forms for the certificate of nomination and the certification for lieutenant
10 governor.

11 Section 2. That § 3-4-6 be amended to read as follows:

12 3-4-6. Appointments to state offices shall be made in writing and shall continue for the
13 remainder of the unexpired term of office. Unless otherwise provided by law, all other
14 appointments shall be made in writing and shall continue until the next general election and until
15 a successor is elected and qualified. A vacancy must occur prior to ~~June~~ May first in an
16 even-numbered year, other than in a year when the term of office would normally expire, for the
17 office to be filled by election for the remainder of the unexpired term. Any person elected to an
18 office that was previously vacant shall take office in the year following the election on the day
19 of that year when a full term for that office would normally commence.

20 Appointments to state offices shall be filed with the secretary of state. Appointments to
21 county offices shall be filed in the office of the county auditor and entered in the minutes of the
22 commissioners' proceedings.

23 Section 3. That § 7-7-1.9 be amended to read as follows:

24 7-7-1.9. An officer shall be nominated and elected at the next general election to the

1 combined office provided for in § 7-7-1.8. If the election submitted pursuant to § 7-7-1.5 is held
2 at a primary election, each candidate for the vacant officer shall run as an independent candidate
3 as provided in chapter 12-7, except that the petition filing deadline shall be the first Tuesday in
4 August. The officer shall be voted upon by the voters of the counties that have resolved to
5 combine ~~such~~ the office. Such officer shall hold office for a term of four years commencing on
6 the first Monday of January following ~~his~~ the officer's election.

7 Section 4. That § 7-8-9 be amended to read as follows:

8 7-8-9. ~~Commissioners~~ Any commissioner to be elected at the next general election following
9 a redistricting of the county under § 7-8-6 or 7-8-7 shall be nominated by petition ~~in accordance~~
10 ~~with the provisions of this code as to nominations of~~ pursuant to the provisions for nominating
11 independent candidates for public office by petition. However, the filing deadline shall be the first
12 Tuesday in August.

13 Section 5. That § 23-3-43.1 be amended to read as follows:

14 23-3-43.1. Any candidate for election to the office of county sheriff shall file with the county
15 auditor by the first Tuesday of April of the election year a certification issued by the commission
16 that such person meets the qualifications provided in § 23-3-43. However, any such candidate
17 appointed to fill a vacancy by a party central committee pursuant to § 12-6-56 or who files an
18 independent nominating petition shall file ~~such~~ a certification of qualification by the ~~second~~ first
19 Tuesday of ~~August~~ June. A sheriff appointed to fill a vacancy by the county commission shall
20 file with the county auditor ~~such~~ a certification of qualification within thirty days of ~~such~~ the
21 appointment. Failure to file ~~such~~ a certification shall prevent the candidate's name from being
22 placed on the ballot.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

753H0412 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 94 - 01/29/2002

Introduced by: Senators Madden, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Duxbury, Everist, Greenfield, Ham, Hutmacher, Koskan, Moore, Olson (Ed), Putnam, Staggers, Sutton (Dan), and Vitter and Representatives Napoli, Adelstein, Bartling, Brown (Richard), Duenwald, Hargens, Hennies (Don), Hennies (Thomas), Lange, McCaulley, Monroe, Olson (Mel), Pederson (Gordon), Peterson (Bill), and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to permit the posting or display of the United States flag
2 and giving the pledge of allegiance.

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

4 Section 1. That chapter 13-24 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The United States flag may be posted or displayed in any public school classroom, public
7 school building, or at any public school event. The pledge of allegiance to the flag of the United
8 States or the national anthem may be given during any school day.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

537H0127

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 95 - 01/30/2002

Introduced by: Senators Bogue, de Hueck, Koskan, and Staggers and Representatives
Duenwald, Bartling, Fryslie, Jaspers, Jensen, Klaudt, Lintz, and Monroe

1 FOR AN ACT ENTITLED, An Act to revise the total amount of revenue payable to counties
2 from taxes on real property.

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

4 Section 1. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any county may decrease the total amount of revenue payable from taxes on real property
7 below the maximum limit allowed by § 10-13-35 in any year. The decrease may not affect the
8 amount of revenue payable that may be raised in accordance with sections 2 and 3 of this Act.

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

11 For taxes payable in the year 2003 and each year thereafter, the county auditor shall calculate
12 what the maximum amount of revenue payable the county may request based on growth and the
13 index factor pursuant to § 10-13-35. The calculation shall also show any accumulative percent
14 of the index factor not used by the county. This calculation shall exclude the levy pursuant to



1 § 10-13-36.

2 Section 3. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The county may increase the total amount of revenue payable from taxes on real property
5 in any year up to the maximum amount calculated in accordance with section 2 of this Act
6 utilizing any unused index factor from the prior three years. However, such an amount may not
7 exceed the prior three year index factor total or ten percent, whichever is less.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

772H0496

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 114** - 01/30/2002

Introduced by: Senators Greenfield, Apa, de Hueck, and Kleven and Representatives Van Gerpen and Klautt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to township meetings.

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

3 Section 1. That § 8-3-1.4 be amended to read as follows:

4 8-3-1.4. No township with a population of ~~six~~ twenty or ~~less~~ fewer resident voters is required
5 to publish a notice of the time and place of an annual meeting more than once in any publication.

6 Section 2. That § 8-3-3 be amended to read as follows:

7 8-3-3. Special meetings of the township electors may be held for the purpose of electing
8 township officers to fill vacancies that occur, or for the purpose of transacting any lawful
9 business ~~whenever the supervisors, township clerk, or any two of them~~ if the entire board of
10 supervisors files or if two members of the board of supervisors, together with at least twelve
11 other ~~freeholders~~ resident voters of the township, file in the office of the township clerk a written
12 statement that a special meeting is necessary for the interests of the township. However, special
13 meetings may be called in a township with a population of twenty or less resident voters by the
14 entire board of supervisors or by two members of the board of supervisors and four resident



1 voters of the township.

2 Section 3. That § 8-3-4 be amended to read as follows:

3 8-3-4. Every township clerk with whom such statement is filed as required in § 8-3-3 shall
4 record the same and immediately cause notice to be published in the same manner as provided
5 for the publication of notice of the annual township meeting. However, in a township with a
6 population of twenty or fewer resident voters, the notice of the time and place of any special
7 meeting need not be published more than once in any publication, shall be provided not less than
8 three days before the special meeting, and may be provided by first class mail in lieu of
9 publication.

10 Section 4. That § 8-3-19 be amended to read as follows:

11 8-3-19. ~~In case~~ If any township refuses or neglects to organize and elect officers at the time
12 fixed by law for holding the annual meeting, twelve ~~freeholders~~ resident voters of the township
13 may call a meeting for such purpose by notice published in the same manner as provided for the
14 publication of notice of the annual township meeting, ~~which.~~ The notice shall set forth the time,
15 place, and object of ~~such the~~ the meeting; and the voters, when assembled by virtue of such notice,
16 shall possess all the powers conferred upon them at the annual township meeting.

17 Section 5. That § 8-3-20 be amended to read as follows:

18 8-3-20. ~~In case~~ If no such notice is given as provided in § 8-3-19 within thirty days after the
19 time for holding the annual meeting, the board of county commissioners shall, on the affidavit
20 of any ~~freeholder~~ resident voter of ~~such the~~ the township, filed in the office of the county auditor
21 setting forth the facts, proceed at any regular or special meeting of the board to appoint the
22 necessary township officers, ~~and the.~~ The persons so appointed shall hold their respective offices
23 until others are elected and qualified in their places, and shall have the powers and be subject to
24 the same duties as if they had been duly elected.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

445H0124

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 152** - 01/28/2002

Introduced by: Senators Sutton (Dan), Diedrich (Larry), Diedrich (Elmer), Greenfield, Hutmacher, McIntyre, Munson, Staggers, Symens, and Whiting and Representatives Monroe, Bartling, Broderick, Garnos, Heineman, Olson (Mel), Pederson (Gordon), Sebert, and Slaughter

1 FOR AN ACT ENTITLED, An Act to allow the offer of an individual health benefit plan
2 without certain mandates.

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

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 An insurer may offer an individual health benefit plan that does not meet the minimum
7 requirements of any or all of the following sections: §§ 58-17-1.1, 58-17-1.2, 58-17-30.5, 58-17-
8 62, 58-17-84.1, 58-17-98, and 58-17-107. The offer of rejection shall be contained in a separate
9 disclosure document approved by the director.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

571H0690

SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **SB 164** - 01/24/2002

Introduced by: Senator Diedtrich (Elmer) and Representative Frost

1 FOR AN ACT ENTITLED, An Act to require damage disclosure statements for certain large
2 boats.

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

4 Section 1. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Upon the sale, assignment, or transfer of a large boat, or if registering a large boat in South
7 Dakota which is titled in another state or jurisdiction, the seller, assignor, or transferor, or person
8 wishing to register in South Dakota a large boat which is titled in another state or jurisdiction
9 shall submit an accurately completed damage disclosure statement when applying for a certificate
10 of title pursuant to § 32-3A-20. The completed damage disclosure statement may be on the back
11 of the certificate of title or on a separate document that has been approved for use by the
12 department. No certificate of title may be issued by the department unless the damage disclosure
13 statement accompanies the application. It is a Class 1 misdemeanor to intentionally falsify any
14 information on the damage disclosure statement. No person is liable to a subsequent owner of
15 a large boat because a prior owner of the large boat failed to disclose that the large boat had



1 previously been damaged and repaired. This section applies to any large boat with damage in
2 excess of twenty-five percent of the retail value as determined by the Anderson Bugg Outboard
3 Services Blue Book or the National Automobile Dealers Association Marine Guide, in effect at
4 the time of the damage. If the large boat has incurred damages more than once, only those
5 damages which occurred at one time would be considered in determining whether the damages
6 exceeded twenty-five percent of the retail value as determined by the Anderson Bugg Outboard
7 Services Blue Book or the National Automobile Dealers Association Marine Guide, in effect at
8 the time of the damage.

9 Section 2. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For the purposes of the damage disclosure statement provided by section 1 of this Act,
12 damage is damage to the large boat caused by fire, vandalism, collision, weather, submersion in
13 water, or flood, and does not include normal wear and tear, glass damage, mechanical repairs,
14 or electrical repairs that have not been caused by fire, vandalism, collision, weather, submersion
15 in water, or flood.

16 Section 3. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The department shall retain each damage disclosure statement received. The statement shall
19 become part of the title history available to the public pursuant to § 32-3A-38.

20 Section 4. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The department shall promulgate rules, pursuant to chapter 1-26, to prescribe the format for
23 the damage disclosure statement provided by section 1 of this Act. An area for a damage
24 disclosure statement shall appear on the back of each certificate of title issued by the department.

1 The department may also approve separate documents on which a damage disclosure statement
2 may be submitted. The damage disclosure statement form shall indicate whether the large boat
3 has been damaged such that it cost more than twenty-five percent of the retail value as
4 determined by the Anderson Bugg Outboard Services Blue Book or the National Automobile
5 Dealers Association Marine Guide, in effect at the time of the damages to repair to its
6 predamaged condition and any other damage information the department deems appropriate. If
7 a separate document from the certificate of title contains the damage disclosure statement, the
8 document shall also require the following information: year, make, model, and hull identification
9 number of the large boat.

10 Section 5. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The dollar amount of damage to a large boat required to be disclosed pursuant to section 1
13 of this Act shall include the costs necessary to return the damaged large boat to its predamaged
14 condition. Such costs include parts, labor, paint, and hull work done on the damaged large boat.

15 Section 6. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any large boat that is required to be titled pursuant to this chapter and is sold or offered for
18 sale by a boat dealer as defined in § 32-3A-2 shall display a sticker, decal, or notice that discloses
19 damage to the large boat in accordance with the provisions of this Act, as determined by the
20 department in rules promulgated pursuant to chapter 1-26. The rules shall also prescribe the
21 format and construction of the sticker, decal, or notice.

22 Section 7. That chapter 32-3A be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Each certificate of title issued by the department shall contain the following phrase: South

1 Dakota state law requires the disclosure of damage on large boats. This information is available
2 upon written request from the Department of Revenue. Each certificate of title shall also contain
3 on its front a statement as to whether previous damage disclosure statements indicate the large
4 boat had been damaged at one time in excess of twenty-five percent of the retail value as
5 determined by the Anderson Bugg Outboard Services Blue Book or the National Automobile
6 Dealers Association Marine Guide, in effect at the time of the damages as provided by section
7 1 of this Act.

8 Section 8. That § 32-3A-38 be amended to read as follows:

9 32-3A-38. The department may upon written request and receipt of a five dollar fee furnish
10 a person a certified abstract of the title history which shall include any damage disclosure
11 statement of any boat registered under the provisions of this chapter. The abstract may include
12 all documents filed with the department to establish the title history of the boat. The fee shall be
13 deposited in the state motor vehicle fund. Governmental entities and their subdivisions are
14 exempt from this fee requirement.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

575H0681

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 167 - 01/28/2002

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

Introduced by: Senators Greenfield, Apa, Bogue, Diedrich (Larry), Drake, Koskan, and McCracken and Representatives Fryslie, Jensen, Juhnke, Klaudt, Koistinen, and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise the contractor's excise tax provisions for a
2 commercial power production facility.

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

4 Section 1. Any commercial power production facility, utilizing renewable resources, such as
5 sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and
6 produces more than ten megawatts of electricity as measured by nameplate rating, and is owned
7 by a natural person, corporation, nonprofit or for profit business organization, or tribal council
8 (if the facility is located outside the boundaries of the reservation), irrigation district, drainage
9 district, or other political subdivision or agency of the state authorized by statute to carry on the
10 business of developing, transmitting, utilizing, or distributing electric power is subject to the
11 provisions of this Act for any new or expanded facility.

12 Section 2. Rural electric cooperatives developing commercial power production facilities
13 utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject to a



1 gross receipts tax as defined in § 10-36-6.

2 Section 3. Terms used in this Act mean:

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

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

8 (3) "Project," the installation or construction of generation capacity of a new or expanded
9 facility, excluding any associated transmission facilities;

10 (4) "Project cost," the amount of money incurred and paid after July 1, 2002, for a
11 project;

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

13 Section 4. The tax imposed under chapters 10-46A and 10-46B on a new or expanded facility
14 shall be imposed as provided in chapters 10-46A and 10-46B, and remitted to the state by the
15 holder of the permit issued pursuant to section 6 of this Act.

16 Section 5. The owner shall file a tax return on or before December thirty-first of each year
17 reporting the project costs subject to tax under chapters 10-46A or 10-46B incurred during the
18 previous twelve months. The tax due from such return shall be paid in four equal annual
19 payments with the first payment due no later December thirty-first following the filing of the tax
20 return. Each subsequent annual payment shall be made no later than December thirty-first
21 following the last payment.

22 Section 6. Any person desiring to pay the contractor's excise tax pursuant to section 4 of this
23 Act shall apply for a permit from the secretary at least thirty days prior to commencement of the
24 project. The application for a permit shall be submitted on a form prescribed by the secretary.

1 A separate application shall be made and submitted for each project. Upon approval of the
2 application, the secretary shall issue a permit to the applicant. The permit is not assignable or
3 transferable except as collateral or security pursuant to chapter 57A-9.

4 Section 7. Any person aggrieved by the denial of a permit, may within thirty days after
5 service of the notice of a denial by the secretary, demand and is entitled to a hearing, upon
6 notice, before the secretary. The hearing shall be conducted pursuant to chapter 1-26.

7 Section 8. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 8 (1) Permitting, including the permit application;
- 9 (2) The filing of returns and payment of the tax;
- 10 (3) Determining the application of the tax and exemptions;
- 11 (4) Taxpayer and owner record-keeping requirements; and
- 12 (5) Determining auditing methods.

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

14 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
15 or fees imposed by this Act and chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
16 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and
17 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

18 Section 10. If the secretary of revenue finds that the assessment or collection of the tax
19 required to be paid under this Act is in jeopardy, the secretary may immediately make an
20 assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the
21 payment is not made, a lien may be filed on the owner's real and personal property located in the
22 state and a distress warrant issued.

23 Section 11. Each person subject to tax or responsible for payment of tax under this Act shall
24 keep records and books of all receipts and sales, together with invoices, bills of lading, copies

1 of bills of sale, and other pertinent papers and documents. Such books and records and other
2 papers and documents shall, at all times during business hours of the day, be subject to inspection
3 by the secretary of revenue or the secretary's duly authorized agents and employees to determine
4 the amount of tax due. Such books and records shall be preserved for a period of three years
5 unless the secretary of revenue, in writing, authorized their destruction or disposal at an earlier
6 date.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0719

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 183** - 01/30/2002

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

1 FOR AN ACT ENTITLED, An Act to prohibit misleading unsolicited commercial e-mails.

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

3 Section 1. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Terms used in this Act mean:

6 (1) "Assist the transmission," actions taken by a person to provide substantial assistance
7 or support that enables any person to formulate, compose, send, originate, initiate, or
8 transmit a commercial electronic mail message if the person providing the assistance
9 knows or consciously avoids knowing that the initiator of the commercial electronic
10 mail message is engaged, or intends to engage, in any practice that violates this
11 chapter;

12 (2) "Commercial electronic mail message," an electronic mail message sent for the
13 purpose of promoting real property, goods, or services for sale or lease. The term
14 does not mean an electronic mail message to which an interactive computer service
15 provider has attached an advertisement in exchange for free use of an electronic mail



1 account, if the sender has agreed to such an arrangement;

2 (3) "Electronic mail address," a destination, commonly expressed as a string of
3 characters, to which electronic mail may be sent or delivered;

4 (4) "Initiate the transmission," the action by the original sender of an electronic mail
5 message. The term does not refer to the action by any intervening interactive
6 computer service that may handle or retransmit the message, unless such intervening
7 interactive computer service assists in the transmission of an electronic mail message
8 if it knows, or consciously avoids knowing, that the person initiating the transmission
9 is engaged, or intends to engage, in any act or practice that violates this chapter;

10 (5) "Interactive computer service," any information service, system, or access software
11 provider that provides or enables computer access by multiple users to a computer
12 server, including specifically a service or system that provides access to the internet
13 and systems operated or services offered by libraries or educational institutions;

14 (6) "Internet domain name," a globally unique, hierarchical reference to an internet host
15 or service, assigned through centralized internet naming authorities, comprising a
16 series of character strings separated by periods, with the right-most string specifying
17 the top of the hierarchy;

18 (7) "Person," a natural person, corporation, partnership, or association.

19 Section 2. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 No person may initiate the transmission, conspire with another to initiate the transmission,
22 or assist the transmission, of a commercial electronic mail message from a computer located in
23 South Dakota or to an electronic mail address that the sender knows, or has reason to know, is
24 held by a South Dakota resident that:

- 1 (1) Uses a third party's internet domain name without permission of the third party, or
- 2 otherwise misrepresents or obscures any information in identifying the point of origin
- 3 or the transmission path of a commercial electronic mail message; or
- 4 (2) Contains false or misleading information in the subject line.

5 For purposes of this section, a person knows that the intended recipient of a commercial

6 electronic mail message is a South Dakota resident if that information is available, upon request,

7 from the registrant of the internet domain name contained in the recipient's electronic mail

8 address.

9 It is a violation of this Act to assist in the transmission of a commercial electronic mail

10 message, when the person providing the assistance knows, or consciously avoids knowing, that

11 the initiator of the commercial electronic mail message is engaged, or intends to engage, in any

12 act or practice that violates this chapter.

13 Section 3. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as

14 follows:

15 The Legislature finds that the practices covered by this Act are matters vitally affecting the

16 public interest for the purpose of protecting the public. A violation of this Act is not reasonable

17 in relation to the development and preservation of business and is an unfair or deceptive act in

18 trade or commerce and an unfair method of competition for the purpose of applying this chapter.

19 Section 4. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as

20 follows:

21 An interactive computer service may, upon its own initiative, block the receipt or

22 transmission through its service of any commercial electronic mail that it reasonably believes is,

23 or will be, sent in violation of this Act.

24 No interactive computer service is liable for any action voluntarily taken in good faith to

1 block the receipt or transmission through its service of any commercial electronic mail which it
2 reasonably believes is, or will be, sent in violation of this Act.

3 Section 5. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A recipient or a provider of internet access services may bring either or both of the following
6 actions:

7 (1) An action based on a violation of section 2 of this Act to enjoin such violation.

8 (2) An action to recover damages for such a violation in an amount equal to the greater
9 of:

10 (a) The amount of the actual monetary loss; or

11 (b) Five hundred dollars for each violation, not to exceed a total of ten thousand
12 dollars.

13 If the court finds that the defendant willfully, knowingly, or repeatedly violated section 2 of
14 this Act, the court may increase the amount of the award to an amount equal to not more than
15 three times the amount available under this section.

16 In any such action, the court may require an undertaking for the payment of the costs of such
17 action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

18 At the request of any party to an action brought pursuant to this section or any other
19 participant in such an action, the court may issue protective orders and conduct legal proceedings
20 in such a way as to protect the secrecy and security of the computer, computer network,
21 computer data, computer program, and computer software involved in order to prevent possible
22 recurrence of the same or a similar act by another person and to protect any trade secrets of any
23 such party or participant.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0720

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 184** - 01/30/2002

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

1 FOR AN ACT ENTITLED, An Act to protect the children of South Dakota against sexual
2 exploitation by criminalizing certain conduct involving children and the internet, to provide
3 for civil remedies, to require certain people to report suspected violations, and to revise
4 certain provisions regarding the unlawful use of computers.

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

6 Section 1. That § 22-22-22 be repealed.

7 ~~— 22-22-22. Prohibited sexual act, as used in §§ 22-22-23, 22-22-23.1, and 22-22-24 means,~~
8 ~~sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio,~~
9 ~~cunnilingus, or incest and any other sexual activity including nudity if such sexual activity is~~
10 ~~depicted for the purpose of sexual stimulation or gratification of any person who might view~~
11 ~~such depiction. Encouraging, aiding, abetting, or enticing any person to commit any such~~
12 ~~prohibited sexual act as provided in this section is a prohibited sexual act.~~

13 Section 2. That § 22-22-23 be repealed.

14 ~~— 22-22-23. Any person who causes or knowingly permits the photographing or filming of a~~
15 ~~minor under the age of sixteen years to engage in a prohibited sexual act or in the simulation of~~



1 ~~such act is guilty of a Class 4 felony. Any person who photographs or films a minor under the~~
2 ~~age of sixteen years engaging in a prohibited sexual act or in the simulation of such an act is~~
3 ~~guilty of a Class 4 felony.~~

4 Section 3. That § 22-22-23.1 be repealed.

5 ~~— 22-22-23.1. Any person who knowingly possesses any depiction fixed in any tangible~~
6 ~~medium of expression of a minor under the age of eighteen years engaging in a prohibited sexual~~
7 ~~act or in the simulation of such act or whose knowing possession encourages, aids, abets, or~~
8 ~~entices any person to commit a prohibited sexual act is guilty of a Class 6 felony.~~

9 ~~— For the purposes of this section, a depiction includes any depiction, representation, or~~
10 ~~description, however perceived, and any data compilation or set of commands intended for use~~
11 ~~to store, to retrieve, or to generate such depictions, representations, or descriptions by any~~
12 ~~electronic means.~~

13 ~~— For the purposes of this section, the term, tangible media of expression, includes, without~~
14 ~~limitation, printed materials, plastic media, photographs, film, and any electronic communications~~
15 ~~systems used to display depictions.~~

16 Section 4. That § 22-22-24 be amended to read as follows:

17 22-22-24. Any person who sells, or displays for sale, any book, magazine, pamphlet, slide,
18 photograph, ~~or~~ film, or electronic or digital media image depicting a minor ~~under the age of~~
19 ~~sixteen years~~ engaging in a prohibited sexual act, or engaging in an activity that involves nudity,
20 or in the simulation of any such act is guilty of a Class 6 felony.

21 Section 5. That § 22-19A-1 be amended to read as follows:

22 22-19A-1. Any person:

- 23 (1) Who willfully, maliciously, and repeatedly follows or harasses another person; ~~or~~
24 (2) Who makes a credible threat to another person with the intent to place that person in

1 reasonable fear of death or great bodily injury; or

2 (3) Who willfully, maliciously, and repeatedly harasses another person by means of any

3 verbal, electronic, digital media, mechanical, telegraphic, or written communication;

4 is guilty of the crime of stalking. Stalking is a Class 1 misdemeanor.

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

7 Terms used in this Act mean:

8 (1) "Adult," a person eighteen years of age or older;

9 (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited
10 sexual acts;

11 (3) "Child" or "minor," any person under the age of eighteen years;

12 (4) "Computer," an electronic, magnetic, optical, electrochemical, or other high-speed
13 data processing device performing logical, arithmetic, or storage functions and
14 includes any data storage facility or communications facility directly related to or
15 operating in conjunction with such device, including wireless communication devices
16 such as cellular phones. The term also includes any on-line service, internet service,
17 or internet bulletin board;

18 (5) "Deviate sexual intercourse," sexual conduct between persons not married to each
19 other consisting of contact between the penis and the anus, the mouth and the penis,
20 or the mouth and the vulva;

21 (6) "Digital media," any electronic storage device, including a floppy disk or other
22 magnetic storage device or any compact disc that has memory and the capacity to
23 store audio, video, or written materials;

24 (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual

1 depiction, exhibition, presentation, or representation, of whatever kind or form,
2 depicting nudity, sexual conduct, or sexual excitement if it:

- 3 (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
- 4 (b) Is patently offensive to prevailing standards in the adult community as a whole
5 with respect to what is suitable material for minors; and
- 6 (c) Taken as a whole, is without serious literary, artistic, political, or scientific
7 value for minors.

8 This term does not include a mother's breast-feeding of her baby;

9 (8) "Masochism," sexual gratification achieved by a person through, or the association
10 of sexual activity with, submission or subjection to physical pain, suffering,
11 humiliation, torture, or death;

12 (9) "Nudity," the showing or the simulated showing of the human male or female genitals,
13 pubic area, or buttocks with less than a fully opaque covering; or the showing of the
14 female breast with less than a fully opaque covering of any portion thereof below the
15 top of the nipple; or the depiction of covered male genitals in a discernibly turgid state
16 for the purpose of creating sexual excitement. This term does not include a mother's
17 breast-feeding of her baby irrespective of whether or not the nipple is covered during
18 or incidental to feeding;

19 (10) "Obscene," the status of material which:

- 20 (a) The average person, applying contemporary community standards, would find,
21 taken as a whole, appeals to the prurient interest;
- 22 (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and
- 23 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

24 This term does not include a mother's breast-feeding of her baby;

- 1 (11) "Person," includes individuals, children, firms, associations, joint ventures,
2 partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and
3 all other groups or combinations;
- 4 (12) "Sadism," sexual gratification achieved through, or the association of sexual activity
5 with, the infliction of physical pain, suffering, humiliation, torture, or death;
- 6 (13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition
7 of being fettered, bound, or otherwise physically restrained, for the purpose of
8 deriving sexual satisfaction, or satisfaction brought about as a result of sadistic
9 violence, from inflicting harm on another or receiving such harm oneself;
- 10 (14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ
11 of another or the anal or vaginal penetration of another by any other object. This term
12 does not include an act done for a bona fide medical purpose;
- 13 (15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an
14 animal involving the sex organ of the one and the mouth, anus, or vagina of the other;
- 15 (16) "Prohibited sexual act," actual or simulated sexual intercourse, deviate sexual
16 intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or
17 sadomasochistic abuse; actual or simulated exhibition of the genitals or the pubic or
18 rectal area in a lewd or lascivious manner; actual physical contact with a person's
19 clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female,
20 breast with the intent to arouse or gratify the sexual desire of either party; defecation
21 or urination for the purpose of creating sexual excitement in the viewer; or any act or
22 conduct which constitutes sexual battery or simulates that sexual battery is being or
23 will be committed. The term includes encouraging, aiding, abetting or enticing any
24 person to commit any such acts as provided in this subdivision. The term does not

- 1 include a mother's breast-feeding of her baby;
- 2 (17) "Sexual excitement," the condition of the human male or female genitals if in a state
3 of sexual stimulation or arousal;
- 4 (18) "Sexually oriented material," any book, article, magazine, publication, visual depiction
5 or written matter of any kind or any drawing, etching, painting, photograph, motion
6 picture film, or sound recording that depicts sexual activity, actual or simulated,
7 involving human beings or human beings and animals, that exhibits uncovered human
8 genitals or the pubic region in a lewd or lascivious manner, or that exhibits human
9 male genitals in a discernibly turgid state, even if completely and opaquely covered;
- 10 (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this
11 section that creates the appearance of such conduct and that exhibits any uncovered
12 portion of the breasts, genitals, or anus;
- 13 (20) "Visual depiction," any developed and undeveloped film, photograph, slide and
14 videotape, and any photocopy, drawing, printed or written material, and any data
15 stored on computer disk, digital media, or by electronic means that are capable of
16 conversion into a visual image.

17 Section 7. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A person is guilty of possessing, manufacturing, or distributing child pornography if the
20 person:

- 21 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the
22 simulation of such an act;
- 23 (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged
24 in a prohibited sexual act, or in the simulation of such an act; or

1 (3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of
2 a minor engaging in a prohibited sexual act, or in the simulation of such an act.

3 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or
4 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

5 A violation of this section is a Class 4 felony. If a person is convicted of a second or
6 subsequent violation of this section within fifteen years of the prior conviction, the violation is
7 a Class 3 felony. Further, the court shall order a mental examination of the person. The examiner
8 shall report to the court whether treatment of the person is indicated.

9 Section 8. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits
12 a minor to engage in an activity that:

- 13 (1) Is harmful to minors, or in the simulation of such an activity;
- 14 (2) Involves nudity, or in the simulation of such an activity; or
- 15 (3) Is obscene, or in the simulation of such an activity.

16 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or
17 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

18 A violation of this section is a Class 6 felony. If a person is convicted of a second or
19 subsequent violation of this section within fifteen years of the prior conviction, the violation a
20 Class 5 felony. Further, the court shall order a mental examination of the person. The examiner
21 shall report to the court whether treatment of the person is indicated.

22 Section 9. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Terms used in section 10 of this Act mean:

1

2 (1) "Minor," a person fifteen years of age or younger; and

3 (2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or
4 persuade a specific person by telephone, in person, by letter, by using a computer or
5 any other electronic means.

6 Section 10. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 A person is guilty of solicitation of a minor if the person eighteen years of age or older:

9 (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in
10 a prohibited sexual act; or

11 (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or
12 reproduces by other computerized means; or buys, sells, receives, exchanges or
13 disseminates, any notice, statement or advertisement of any minor's name, telephone
14 number, place of residence, physical characteristics or other descriptive or identifying
15 information for the purpose of soliciting a minor or someone the person reasonably
16 believes is a minor to engage in a prohibited sexual act.

17 The fact that an undercover operative or law enforcement officer was involved in the
18 detection and investigation of an offense under this section does not constitute a defense to a
19 prosecution under this section.

20 Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or
21 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

22 A violation of this section is a Class 6 felony. If a person is convicted of a second or
23 subsequent violation of this section within fifteen years of the prior conviction, the violation is
24 a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner

1 shall report to the court whether treatment of the person is indicated.

2 Section 11. That § 22-22-30 be amended to read as follows:

3 22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the
4 following crimes regardless of the date of the commission of the offense or the date of
5 conviction:

6 (1) Rape as set forth in § 22-22-1;

7 (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by
8 an adult and the adult is convicted of a felony;

9 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if
10 committed by an adult;

11 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;

12 (5) ~~Photographing a child in an obscene act as set forth in § 22-22-23~~ Possessing,
13 manufacturing, or distributing child pornography as set forth in section 7 of this Act;

14 (6) ~~Possession of child pornography as set forth in § 22-22-23.1~~ Sale of child
15 pornography as set forth in section 4 of this Act;

16 (7) ~~Sale of obscene pictures of a child as set forth in § 22-22-24~~ Sexual exploitation of
17 a minor as set forth in section 8 of this Act;

18 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;

19 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);

20 (10) Criminal pedophilia as set forth in § 22-22-30.1;

21 (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set
22 forth in § 22-24-1.2;

23 (12) Solicitation of a minor as set forth in section 10 of this Act;

24 (13) An attempt to commit any of the crimes listed in this section; or

1 ~~(13)~~(14) Any crime committed in a place other than this state which would constitute
2 a sex crime under this section if committed in this state.

3 Section 12. That § 23A-27-14.1 be amended to read as follows:

4 23A-27-14.1. Notwithstanding §§ 23A-27-14 and 23A-27-17, ~~a~~any person who has received
5 an order pursuant to § 23A-27-13 for a conviction of subdivision 22-22-1(1), subdivision
6 22-22-1(5) or § 22-22-7, or violations of sections 4, 7, 8, and 10 of this Act, who is licensed or
7 seeks to be licensed as a certified teacher may have his or her application refused or license
8 revoked as provided in § 13-42-10.

9 Section 13. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any person, not a citizen or resident of this state, whose actions or conduct constitute a
12 violation of this Act, and whose actions or conduct involve a child residing in this state, or
13 someone the person reasonably believes is a child residing in this state, is for the purpose of this
14 Act deemed to be transacting business in this state and by that act:

- 15 (1) Submits to the jurisdiction of the courts of this state in any civil proceeding
16 commenced under this Act; and
- 17 (2) Constitutes the secretary of state as agent for service of legal process in any civil
18 proceeding commenced under this Act; and consents that service of legal process shall
19 be made by serving a copy upon the secretary of state or by filing a copy in the
20 secretary of state's office, and that this service shall be sufficient service if, within one
21 day after service, notice of the service and a copy of the process are sent by registered
22 mail by plaintiff to the person at the person's last-known address and proof of such
23 mailing filed with the clerk of court within one day after mailing.

24 The service of legal process upon any person who is subject to the jurisdiction of the courts

1 of this state, as provided in this section, may also be made by personally serving the summons
2 upon the person outside this state with the same force and effect as though summons had been
3 personally served within this state. Such service shall be made in like manner as service within
4 this state. No order of court is required. An affidavit of the server shall be filed stating the time,
5 manner and place of service. The court may consider the affidavit, or any other competent
6 proofs, in determining whether service has been properly made.

7 Section 14. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any person, except a minor, who knowingly participates in any conduct proscribed by this
10 Act is liable for civil damages.

11 Section 15. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any of the following persons may bring an action for damages caused by another person's
14 conduct as proscribed by this Act:

- 15 (1) The child;
- 16 (2) A parent, legal guardian, or sibling of a victimized child;
- 17 (3) A medical facility, insurer, governmental entity, employer, or other entity that funds
18 a treatment program or employee assistance program for the child or that otherwise
19 expended money or provided services on behalf of the child;
- 20 (4) Any person injured as a result of the willful, reckless, or negligent actions of a person
21 who knowingly participated in conduct proscribed by this Act.

22 If the parent or guardian is named as a defendant in the action, the court shall appoint a
23 special guardian to bring the action on behalf of the child.

24 Section 16. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person entitled to bring an action under section 15 of this Act may seek damages from
3 any person, except a minor, who knowingly participated in the production or in the chain of
4 distribution of any visual depiction proscribed by this Act.

5 Section 17. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any person entitled to bring an action under section 15 of this Act may recover all of the
8 following damages:

- 9 (1) Economic damages, including the cost of treatment and rehabilitation, medical
10 expenses, loss of economic or educational potential, loss of productivity, absenteeism,
11 support expenses, accidents or injury, and any other pecuniary loss proximately
12 caused by the proscribed conduct;
- 13 (2) Noneconomic damages, including physical and emotional pain, suffering, physical
14 impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss
15 of companionship, services, and consortium, and other nonpecuniary losses
16 proximately caused by the proscribed conduct;
- 17 (3) Exemplary damages;
- 18 (4) Attorneys' fees; and
- 19 (5) Disbursements.

20 Section 18. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Two or more persons may join in one action under this Act as plaintiffs if their respective
23 actions have at least one common occurrence of proscribed conduct under this Act and if any
24 portion of the period of such conduct overlaps with the period for every other plaintiff. Two or

1 more persons may be joined in one action under this Act as defendants if those persons are liable
2 to at least one plaintiff.

3 Section 19. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any person against whom a judgment has been rendered under this Act is not eligible to
6 exempt any property, of whatever kind, from process to levy or process to execute on the
7 judgment. Any assets sought to satisfy a judgment under this Act that are named in a forfeiture
8 action or have been seized for forfeiture by any state or federal agency may not be used to satisfy
9 a judgment unless and until the assets have been released following the conclusion of the
10 forfeiture action or released by the agency that seized the assets.

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

13 Any action for damages under this Act shall be commenced within six years of the time the
14 plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The
15 knowledge of a parent, guardian, or custodian may not be imputed to the minor.

16 For a plaintiff, the statute of limitations under this section is tolled while any potential
17 plaintiff is incapacitated by minority.

18 Section 21. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 On motion by a governmental agency involved in an investigation or prosecution, any civil
21 action brought under this Act shall be stayed until the completion of the criminal investigation
22 or prosecution that gave rise to the motion for a stay of the action. The statute of limitations as
23 provided in section 20 of this Act shall be tolled for the time any such stay is in effect.

24 Section 22. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person who is convicted of an offense under this Act shall forfeit to the state the person's
3 interest in the following and no property right exists in them:

4 (1) Any photograph, film, videotape, book, digital media or visual depiction that has been
5 manufactured, distributed, purchased, possessed, acquired, or received in violation of
6 this Act;

7 (2) Any material, product, and equipment of any kind that is used or intended for use in
8 manufacturing, processing, publishing, selling, possessing, or distributing any visual
9 depiction proscribed by this Act;

10 (3) Any property that is used, or intended for use, as a container for property described
11 in subdivisions (1) and (2) of this section, including any computers and digital media;

12 (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or
13 conceal, or that is used, or intended for use, to transport, or in any manner facilitate
14 the transportation, sale, receipt, possession or concealment of any visual depiction
15 proscribed under this Act;

16 (5) Any book, record, and research, including microfilm, tape, and data that is used, or
17 intended for use, in violation of this Act;

18 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,
19 attempting to purchase, distributing, or attempting to acquire or distribute any visual
20 depiction proscribed by this Act;

21 (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful
22 sale or purchase, attempted sale or purchase, distribution, or attempted distribution
23 of any visual depiction proscribed by this Act.

24 Any property described in subdivision (1) of this section shall be deemed contraband and

1 shall be summarily forfeited to the state. Any other property seized and forfeited shall be used
2 to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and
3 above the amount necessary to reimburse for the investigation and prosecution shall be used to
4 satisfy any civil judgments. The secretary of the Department of Social Services shall promulgate
5 rules, pursuant to chapter 1-26, to implement the distribution of seized and forfeited assets.

6 Section 23. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any person working at or for an internet service provider or other electronic communication
9 service who has knowledge of or observes, within the scope of the person's professional capacity
10 or employment, a visual depiction that depicts a minor whom the person knows or reasonably
11 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the
12 simulation of prohibited sexual acts, shall report the depiction to his or her employer or
13 supervisor. The depiction shall then be reported to an appropriate law enforcement agency as
14 soon as reasonably possible. The provider need not report to law enforcement depictions
15 involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual
16 acts. This section may not be construed to require a provider to review all visual depictions
17 received by subscribers or handled by the provider within the provider's professional capacity or
18 employment.

19 It is unlawful for any owner or operator of a computer on-line service, internet service, or
20 local internet bulletin board service knowingly to permit a subscriber to utilize the service to
21 produce or reproduce visual depictions of prohibited sexual acts with a minor.

22 A violation of this section is a Class 1 misdemeanor. However, a violation of this section
23 does not constitute grounds for a civil action for damages against any person.

24 Section 24. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person working at or for a commercial film and photograph print processor who has
3 knowledge of or observes, within the scope of the processor's professional capacity or
4 employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts
5 a minor whom the processor knows or reasonably should know to be under the age of eighteen,
6 engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the
7 depiction to his or her employer or supervisor. The depiction shall then be reported to an
8 appropriate law enforcement agency as soon as reasonably possible. The processor need not
9 report to law enforcement depictions involving mere nudity of the minor, but shall report visual
10 depictions involving prohibited sexual acts. This section may not be construed to require a
11 processor to review all films, photographs, videotapes, negatives, or slides delivered to the
12 processor within the processor's professional capacity or employment.

13 It is unlawful for any owner or operator of a photography or film studio, photograph or film
14 developing service, photograph or film reproducing service, or video to film reproducing service
15 knowingly to permit any person to utilize photograph or film reproduction or development
16 services to produce or reproduce visual depictions of prohibited sexual acts with a minor.

17 A violation of this section is a Class 1 misdemeanor. However, a violation of this section
18 does not constitute grounds for a civil action for damages against any person.

19 Section 25. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any commercial computer repair technician who has knowledge of or observes, within the
22 scope of the technician's professional capacity or employment, a film, photograph, video tape,
23 negative, slide or other visual depiction of a minor whom the technician knows or reasonably
24 should know to be under the age of eighteen, engaged in prohibited sexual acts or in the

1 simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement
2 agency as soon as reasonably possible. The computer repair technician need not report to law
3 enforcement depictions involving mere nudity of the minor, but shall report visual depictions
4 involving prohibited sexual acts. This section may not be construed to require a computer repair
5 technician to review all data, disks, or tapes delivered to the computer repair technician within
6 the computer repair technician's professional capacity or employment.

7 A violation of this section is a Class 1 misdemeanor. However, a violation of this section
8 does not constitute grounds for a civil action for damages against any person.

9 Section 26. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 This Act does not apply to the performance of official duties by any law enforcement officer,
12 court employee, attorney, licensed physician, psychologist, social worker, or any person acting
13 at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide
14 treatment or professional education program.

15 Section 27. That § 43-43B-1 be amended to read as follows:

16 43-43B-1. A person is guilty of unlawful use of a computer system, software, or data if he
17 the person:

18 (1) Knowingly obtains the use of, ~~or~~ accesses or exceeds authorized access to, a
19 computer system, or any part thereof, without the consent of the owner;

20 (2) Knowingly ~~alters or destroys computer programs or data without the consent of the~~
21 ~~owner; or~~ obtains the use of, accesses, or exceeds authorized access to, a computer
22 system, or any part thereof, without the consent of the owner, and the access or use
23 includes access to confidential data or material;

24 (3) Knowingly ~~obtains use of, alters, accesses or destroys a computer system, or any part~~

1 ~~thereof, as part of a deception for the purpose of obtaining money, property or~~
 2 ~~services from the owner of a computer system or any third party; or copies or obtains~~
 3 ~~information from a computer system, or compromises any security controls for the~~
 4 ~~computer system, or uses or discloses to another, or attempts to use or disclose to~~
 5 ~~another, the numbers, codes, passwords, or other means of access to a computer~~
 6 ~~system without the consent of the owner;~~

7 (4) ~~Knowingly uses or discloses to another or attempts to use or disclose to another the~~
 8 ~~numbers, codes, passwords or other means of access to a computer, computer~~
 9 ~~program or computer system without the consent of the owner disrupts, denies, or~~
 10 ~~inhibits access to software or data without the consent of the owner;~~

11 (5) ~~Knowingly disrupts, denies, or inhibits access to a computer system, without consent~~
 12 ~~of the owner;~~

13 (6) ~~Knowingly modifies, changes, or alters software or data, without the consent of the~~
 14 ~~owner;~~

15 (7) ~~Knowingly obtains use of, alters, accesses, or exceeds authorized access to, destroys,~~
 16 ~~disables, or inhibits access to a computer system, as part of a deception for the~~
 17 ~~purpose of obtaining money, property, or services from the owner of a computer~~
 18 ~~system, or any third party;~~

19 (8) ~~Knowingly destroys or disables a computer system, without consent of the owner; or~~

20 (9) ~~Knowingly destroys or disables software or computer data, without consent of the~~
 21 ~~owner.~~

22 Section 28. That § 43-43B-2 be amended to read as follows:

23 43-43B-2. Terms used in this chapter, ~~unless the context requires otherwise,~~ mean:

24 (1) "Access," to instruct, communicate with, store data in, retrieve data from a ~~computer,~~

- 1 computer system ~~or computer network~~;
- 2 (2) "Computer," an internally programmed, general purpose digital device capable of
3 automatically accepting data, processing data and supplying the results of the
4 operation;
- 5 (3) ~~"Computer program Software,"~~ a series of coded instructions or statements in a form
6 acceptable to a computer system, which causes the computer system to process data
7 in order to achieve a certain result;
- 8 (4) "Computer system," ~~a set of related, connected devices, including a computer and~~
9 ~~other devices, including but not limited to~~ includes any computer, computer network,
10 other related device, data input and output and storage devices, and data
11 communications links, ~~and computer programs and data, that make the system capable~~
12 ~~of performing the special purpose data processing tasks for which it is specified;~~
- 13 (5) "Computer network," a set of related, connected network electronics and
14 communications links that allows any computer system to communicate with any
15 other computer system;
- 16 (5A) "Data," digitized information in any form that may be accessed by a computer system,
17 regardless of whether the information is in transmission or stored on a computer
18 system, diskette, compact diskette, cd-rom, tape, or in any other medium;
- 19 (6) "Destroy," to make unusable, render inoperable, render unable to accept or process
20 data, or supply results, render unable to perform data processing tasks or cause
21 computer networks to be unable to transfer data between computer systems for any
22 amount of time.

23 Section 29. That § 43-43B-3 be amended to read as follows:

24 43-43B-3. ~~A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~

1 ~~the value of the use, alteration, destruction, access or disclosure is one thousand dollars or less~~
2 ~~is guilty of~~ Violations of the provisions of § 43-43B-1 are punishable as follows:

3 (1) For a violation of subdivision (1), a Class 1 misdemeanor;

4 (2) For a violation of subdivision (2) or (3), a Class 6 felony;

5 (3) For a violation of subdivision (4), a Class 5 felony;

6 (4) For a violation of subdivision (5) or (6), a Class 4 felony;

7 (5) For a violation of subdivision (8) or (9), a Class 3 felony;

8 (6) For a violation of subdivision (7), a Class 2 felony.

9 Section 30. That § 43-43B-4 be repealed.

10 ~~—43-43B-4. A person convicted of a violation of subdivision 43-43B-1 (1), (2), or (4) where~~
11 ~~the value of the use, alteration, destruction, access or disclosure is more than one thousand~~
12 ~~dollars is guilty of a Class 6 felony.~~

13 Section 31. That § 43-43B-5 be repealed.

14 ~~—43-43B-5. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~
15 ~~the money, property or services obtained is one thousand dollars or less is guilty of a Class 1~~
16 ~~misdemeanor.~~

17 Section 32. That § 43-43B-6 be repealed.

18 ~~—43-43B-6. A person convicted of a violation of subdivision 43-43B-1 (3) where the value of~~
19 ~~the money, property or services obtained is more than one thousand dollars shall be guilty of a~~
20 ~~Class 4 felony.~~

21 Section 33. That § 22-22-25 be amended to read as follows:

22 22-22-25. Sections 22-22-23 and Section 22-22-24 shall and sections 7, 8, and 10 of this Act
23 do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing,
24 or making of films, photographs, or other materials involving only nudity, if such the materials

1 are made for and have a serious literary, artistic, educational, or scientific value.