

**Senate  
Daily Reader**

**Monday, February 04, 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

400H0334      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. HB 1042 -**  
**01/31/2002**

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

1    FOR AN ACT ENTITLED, An Act to authorize the Department of Game, Fish and Parks to  
2        revise the expiration date of certain hunting licenses.

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

4        Section 1. That § 41-6-13 be amended to read as follows:

5        41-6-13. A resident hunting license may be issued only to a resident sixteen years of age or  
6    older. However, the parent or guardian of a resident who is less than sixteen years of age and  
7    meets the age requirements of § 41-6-12 may apply for the license for such person. If a license  
8    is granted on the application, the license authorizes hunting by the person only if accompanied  
9    by a parent, guardian, or responsible adult and is valid ~~through December thirty-first of that year~~  
10   ~~or as limited and~~ for the license year as provided by the applicable license and rules promulgated  
11   by the Game, Fish and Parks Commission pursuant to chapter 1-26. The requirement to be  
12   accompanied by an adult ~~is waived upon reaching~~ no longer applies when the licensee attains  
13   sixteen years of age. A violation of this section is a Class 2 misdemeanor.

14        Section 2. That § 41-6-30 be amended to read as follows:



1 41-6-30. Except as provided in this section, it is a Class 2 misdemeanor for a nonresident to  
2 hunt, take, or kill jackrabbits, prairie dogs, gophers, ground squirrels, chipmunks, coyotes, red  
3 fox, grey fox, skunk, crow, porcupine, English house sparrow, European starling, unbanded  
4 undomesticated pigeon (rock dove), or marmot, without a nonresident predator/varmint license  
5 or in violation of the conditions of the license or the rules of the Game, Fish and Parks  
6 Commission.

7 A nonresident predator/varmint license, notwithstanding the provisions of § 41-6-24, allows  
8 a nonresident to take or kill jackrabbits, prairie dogs, gophers, ground squirrels, chipmunks,  
9 coyotes, red fox, grey fox, skunk, English house sparrow, European starling, unbanded  
10 undomesticated pigeon (rock dove), and within the lawful season, crow, porcupine, and marmot,  
11 except by means of aerial hunting or as prohibited by statute or rule.

12 However, if a nonresident possesses a nonresident small game license, a nonresident  
13 waterfowl license, a nonresident big game license, or a nonresident turkey license as provided  
14 in § 41-6-17, 41-6-18.1, 41-6-20, or 41-6-28, the nonresident need not acquire the nonresident  
15 predator/varmint license as provided in this section to hunt the species enumerated by this section  
16 in the manner and places permitted. A nonresident small game license, a nonresident waterfowl  
17 license, a nonresident big game license, or a nonresident turkey license is valid for hunting those  
18 animals permitted by the nonresident predator/varmint license from date of purchase until the end  
19 of the ~~calendar~~ license year as provided by rules promulgated by the Game, Fish and Parks  
20 Commission pursuant to chapter 1-26.

21 Section 3. That § 41-6-72 be amended to read as follows:

22 41-6-72. Licenses issued under this title ~~expire at the end of the last day of December of the~~  
23 ~~calendar year for which they were issued unless specified otherwise in this chapter or as limited~~  
24 ~~or~~ are valid for the license year as provided by the applicable license and rules promulgated by

1 the Game, Fish and Parks Commission in accordance with chapter 1-26. Waterfowl hunting  
2 licenses expire at the end of the last day of the hunting season for which the license was issued.

3 Section 4. That § 41-6-80 be amended to read as follows:

4 41-6-80. Except as provided in this section, it is a Class 2 misdemeanor for a resident to  
5 hunt, take, or kill jackrabbits, prairie dogs, gophers, ground squirrels, chipmunks, coyotes, red  
6 fox, grey fox, skunk, racoons, badgers, crow, procupine, brown headed cow birds, English house  
7 sparrow, European starling, unbanded undomesticated pigeon (rock dove), or marmot, without  
8 a resident predator/varmint license or in violation of the conditions of the license or the rules of  
9 the Game, Fish and Parks Commission. A resident predator/varmint license allows a resident to  
10 take or kill jackrabbits, prairie dogs, gophers, ground squirrels, chipmunks, coyotes, red fox,  
11 grey fox, skunk, racoons, badgers, brown headed cow birds, English house sparrow, European  
12 starling, unbanded undomesticated pigeon (rock dove), and within the lawful season, crow,  
13 porcupine, and marmot, except by means of aerial hunting or as prohibited by statute or rule. A  
14 resident of this state is not required to secure a predator/varmint license to hunt, take, or kill a  
15 predator/varmint on lands owned or operated by the resident.

16 However, if a resident possesses a resident small game license, a resident youth small game  
17 license, a resident big game license, a license to take fur-bearing animals, or a resident turkey  
18 license, the resident need not acquire the resident predator/varmint license as provided in this  
19 section to hunt the species enumerated by this section in the manner and places permitted. A  
20 resident small game license, a resident youth small game license, a resident big game license, a  
21 license to take fur-bearing animals, or a resident turkey license is valid for hunting those animals  
22 permitted by the resident predator/varmint license from date of purchase until the end of the  
23 calendar license year as provided by rules promulgated by the Game, Fish and Parks Commission  
24 pursuant to chapter 1-26.

# 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 <del>9,999</del> <u>10,000</u>	<del>\$26,299</del> <u>28,799</u>
11	<del>10,000-16,999</del> <u>10,000-14,999</u>	<del>28,917</del> <u>31,417</u>
12	<del>17,000-29,999</del> <u>15,000-24,999</u>	<del>30,017</del> <u>32,517</u>
13	<del>30,000-49,999</del> <u>25,000-69,999</u>	<del>34,217</del> <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.

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

484H0469

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1139** - 01/23/2002

Introduced by: Representatives Olson (Mel), Abdallah, Burg, Hargens, Hennies (Thomas), Madsen, Michels, Peterson (Bill), and Sebert and Senators Olson (Ed), Daugaard, de Hueck, Hutmacher, and Moore

1 FOR AN ACT ENTITLED, An Act to specify the elements of the crime of aggravated indecent  
2 exposure and to provide a penalty therefor.

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

4 Section 1. That chapter 22-24 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If any person, eighteen years of age or older, exposes his or her genitals in a public place  
7 under circumstances in which that person knows that his or her conduct is likely to annoy,  
8 offend, or alarm some other person, and that conduct is viewed by and does, in fact, annoy,  
9 offend, or alarm any child, thirteen years of age or younger, that person is guilty of the crime of  
10 aggravated indecent exposure. Aggravated indecent exposure is a Class 1 misdemeanor. A  
11 second or subsequent conviction for aggravated indecent exposure is a Class 6 felony.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

832H0629

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1203** - 01/25/2002

Introduced by: Representative McCaulley and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to revise the procedure for foreclosure by advertisement.

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

3 Section 1. That § 21-48-6 be amended to read as follows:

4 21-48-6. Notice that such mortgage will be foreclosed by sale of the mortgaged premises,  
5 or some part of them, ~~must~~ shall be given, by publishing the ~~same~~ notice at least once each week  
6 for four successive weeks in a legal newspaper of the county where the premises intended to be  
7 sold, or some of them, are situated, if there be one in the county, and if not, in the nearest  
8 newspaper in the state. Every notice ~~must~~ shall specify:

9 (1) The names of the mortgagor and mortgagee, and the assignee, if any;

10 (2) The date of the mortgage;

11 (3) The amount claimed to be due ~~thereon~~ on the mortgage at the date of the notice;

12 (4) A description of the mortgaged premises, conforming substantially to that contained  
13 in the mortgage;

14 (5) The time and place of sale;

15 (6) A description of the default;



1       (7)    That the mortgagor can apply for foreclosure by action pursuant to § 21-48-9;

2       (8)    The name and address of all persons claiming a lien, encumbrance, or other recorded  
3            ownership interest in the property.

4       Section 2. That § 21-48-9 be amended to read as follows:

5       21-48-9. ~~When~~ If the mortgagee or his the mortgagee's assignee has commenced foreclosure  
6 by advertisement, the mortgagor or his, the mortgagor's successor in interest, or any other  
7 person claiming a lien, encumbrance, or recorded ownership interest in the real property that is  
8 the subject of the foreclosure, may require the owner and holder of the mortgage to foreclose  
9 by action and for that purpose shall present to the court having jurisdiction thereof an application  
10 describing the mortgage and stating ~~his~~ the applicant's interest and stating ~~the fact that he desires~~  
11 why the mortgage should be foreclosed by action without necessity of stating any reasons, and  
12 upon such application the judge of such court shall, by an order to that effect, enjoin the  
13 mortgagee or ~~his~~ the mortgagee's assignee from foreclosing such mortgage by advertisement, and  
14 direct that all further proceedings for the foreclosure be had in the circuit court properly having  
15 jurisdiction of the subject matter; ~~and for.~~ For the purpose of carrying out the provisions of this  
16 section, service may be made upon the attorney or agent of the mortgagee or assignee.

17       Section 3. That chapter 21-48 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19       At least twenty-one days prior to the date set for sale, the foreclosing creditor shall serve a  
20 written copy of the notice of foreclosure sale on the mortgagor and any lien holder or  
21 encumbrancer whose interest in the property being foreclosed would be affected by the  
22 foreclosure.

23       Section 4. That § 21-48-23 be amended to read as follows:

24       21-48-23. A record of foreclosure sale must be made as follows:

- 1 (1) An affidavit of the publication of the notice of sale and of any notice of postponement  
2 must be made by the printer or publisher of the newspaper in which such notice was  
3 published, or some person in his employ knowing the facts;
- 4 (2) An affidavit by the person foreclosing the mortgage, or his attorney, or someone  
5 knowing the facts, setting forth the facts relating to the military service status of the  
6 owner of the mortgaged premises at the time of sale which affidavit, where such may  
7 be required, may also set forth the fact of service of notice of sale upon the secretary  
8 of the treasury of the United States of America or his delegate in accordance with the  
9 provisions of subsection (c)(1) of section 7425 of the Internal Revenue Code of 1954  
10 as amended by Public Law 89-719, known as the Federal Tax Lien Act of 1966, and  
11 as amended through January 1, 1987;
- 12 (3) An affidavit executed by the person foreclosing the mortgage, that person's attorney  
13 or someone knowing the facts, stating that the mortgagor and any person who is  
14 required to receive notice under section 3 of this Act have been given notice of the  
15 foreclosure and that no request for foreclosure by action has been made;
- 16 (4) Such affidavits and the certificate of sale hereinabove provided for, must be recorded  
17 at length by the register of deeds of the county in which the real property is situated  
18 in a book kept for that purpose, and such original instruments, or the records thereof,  
19 or certified copies of such records, shall be prima facie evidence of the facts therein  
20 contained;
- 21 ~~(4)~~(5) A note shall be made by the register of deeds in the margin of the record of any  
22 mortgage which has been foreclosed, showing the book and page where the evidence  
23 of such foreclosure sale is recorded.

# 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

372H0606

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 130** - 01/31/2002

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

Introduced by: Senators Bogue, Craddock, Duxbury, Everist, Kleven, Koskan, Madden, McCracken, Putnam, and Vitter and Representatives Rhoden, Juhnke, Klaudt, Lintz, Madsen, McCaulley, Pederson (Gordon), Pummel, and Teupel

1 FOR AN ACT ENTITLED, An Act to prohibit the implementation of certain prairie dog  
2 management plans or activities without legislative approval.

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

4 Section 1. The Department of Game, Fish and Parks and the Department of Agriculture are  
5 directed to develop a state prairie dog management plan. The plan shall formulate state  
6 management actions that will serve to prevent the prairie dog from being listed as a federal  
7 threatened species. If such plan or any agreement adopted pursuant to such plan contains  
8 provisions for incentive payments to private landowners for managing prairie dog habitat or  
9 restricts private landowner rights to use rodenticides or to use any other means of controlling  
10 prairie dogs on their property, the plan or any agreement adopted pursuant to such plan shall be  
11 submitted to the South Dakota Legislature, in bill form, for approval or rejection, prior to it  
12 becoming effective.

13 Section 2. Nothing contained in this Act precludes the Department of Game, Fish and Parks





1 or Department of Agriculture from performing their respective management responsibilities.  
2 However, to the extent that the provisions of §§ 40-36-1, 40-36-9, and 34A-8-7 pertain to  
3 prairie dogs, the provisions of section 1 of this Act supersede any contradictory provision of such  
4 statutes.

# 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;~~ 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.