

Senate Daily Reader

Wednesday, February 13, 2002

Bills Included				
HB 1001	HB 1002	HB 1003	HB 1024	HB 1054
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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

555H0018

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1001** - 02/08/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and Senators McCracken, Dennert, and Reedy at the request of the Interim Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act
2 and to implement the uniform and simplified features proposed by the Streamlined Sales Tax
3 Project.

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

5 Section 1. As used in this Act:

6 (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;

7 (b) "Certified automated system," means software certified jointly by the states that are
8 signatories to the agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and
10 maintain a record of the transaction;

11 (c) "Certified service provider," means an agent certified jointly by the states that are
12 signatories to the agreement to perform all of the seller's sales tax functions;

13 (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability
14 company, limited liability partnership, corporation, or any other legal entity;



1 (e) "Sales tax," means the tax levied under chapter 10-45;

2 (f) "Seller," means any person making sales, leases, or rentals of personal property or
3 services;

4 (g) "State," means any state of the United States and the District of Columbia;

5 (h) "Use tax," means the tax levied under chapter 10-46.

6 Section 2. The Legislature finds that this state should enter into an agreement with one or
7 more states to simplify and modernize sales and use tax administration in order to substantially
8 reduce the burden of tax compliance for all sellers and for all types of commerce.

9 Section 3. The Department of Revenue is authorized and directed to enter into the
10 Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize
11 sales and use tax administration in order to substantially reduce the burden of tax compliance for
12 all sellers and for all types of commerce. In furtherance of the agreement, the Department of
13 Revenue is authorized to act jointly with other states that are members of the agreement to
14 establish standards for certification of a certified service provider and certified automated system
15 and establish performance standards for multistate sellers.

16 The Department of Revenue is further authorized to take other actions reasonably required
17 to implement the provisions set forth in this Act. Other actions authorized by this Act include,
18 but are not limited to, the adoption of rules and regulations and the joint procurement, with other
19 member states, of goods and services in furtherance of the cooperative agreement.

20 The secretary of revenue or the secretary's designee and two legislators are authorized to
21 represent this state before the other states that are signatories to the agreement. The Executive
22 Board of the Legislative Research Council shall appoint one senator and one representative to
23 represent this state.

24 Section 4. No provision of the agreement authorized by this Act in whole or part invalidates

1 or amends any provision of the law of this state. Adoption of the agreement by this state does
2 not amend or modify any law of this state. Implementation of any condition of the agreement in
3 this state, whether adopted before, at, or after membership of this state in the agreement, must
4 be by the action of this state.

5 Section 5. The Department of Revenue shall not enter into the Streamlined Sales and Use
6 Tax Agreement unless the agreement requires each state to abide by the following requirements:

7 (a) The agreement must set restrictions to achieve over time more uniform state rates
8 through the following:

9 (1) Limiting the number of state rates.

10 (2) Limiting the application of maximums on the amount of state tax that is due on
11 a transaction.

12 (3) Limiting the application of thresholds on the application of state tax.

13 (b) The agreement must establish uniform standards for the following:

14 (1) The sourcing of transactions to taxing jurisdictions.

15 (2) The administration of exempt sales.

16 (3) The allowances a seller may take for bad debts.

17 (4) Sales and use tax returns and remittances.

18 (c) The agreement must require states to develop and adopt uniform definitions of sales
19 and use tax terms. The definitions must enable a state to preserve its ability to make
20 policy choices not inconsistent with the uniform definitions.

21 (d) The agreement must provide a central, electronic registration system that allows a
22 seller to register to collect and remit sales and use taxes for all signatory states.

23 (e) The agreement must provide that registration with the central registration system and
24 the collection of sales and use taxes in the signatory states will not be used as a factor

1 in determining whether the seller has nexus with a state for any tax.

2 (f) The agreement must provide for reduction of the burdens of complying with local
3 sales and use taxes through the following:

4 (1) Restricting variances between the state and local tax bases.

5 (2) Requiring states to administer any sales and use taxes levied by local
6 jurisdictions within the state so that sellers collecting and remitting these taxes
7 will not have to register or file returns with, remit funds to, or be subject to
8 independent audits from local taxing jurisdictions.

9 (3) Restricting the frequency of changes in the local sales and use tax rates and
10 setting effective dates for the application of local jurisdictional boundary
11 changes to local sales and use taxes.

12 (4) Providing notice of changes in local sales and use tax rates and of changes in
13 the boundaries of local taxing jurisdictions.

14 (i) The agreement must outline any monetary allowances that are to be provided by the
15 states to sellers or certified service providers.

16 (j) The agreement must require each state to certify compliance with the terms of the
17 agreement prior to joining and to maintain compliance, under the laws of the member
18 state, with all provision of the agreement while a member.

19 (k) The agreement must require each state to adopt a uniform policy for certified service
20 providers that protects the privacy of consumers and maintains the confidentiality of
21 tax information.

22 (l) The agreement must provide for the appointment of an advisory council of private
23 sector representatives and an advisory council of nonmember state representatives to
24 consult with in the administration of the agreement.

1 Section 6. The agreement authorized by this Act is an accord among individual cooperating
2 sovereigns in furtherance of their governmental functions. The agreement provides a mechanism
3 among the member states to establish and maintain a cooperative, simplified system for the
4 application and administration of sales and use taxes under the duly adopted law of each member
5 state.

6 Section 7. A certified service provider is the agent of a seller, with whom the certified service
7 provider has contracted, for the collection and remittance of sales and use taxes. As the seller's
8 agent, the certified service provider is liable for sales and use tax due each member state on all
9 sales transactions it processes for the seller except as set out in this section.

10 A seller that contracts with a certified service provider is not liable to the state for sales or
11 use tax due on transactions processed by the certified service provider unless the seller
12 misrepresented the type of items it sells or committed fraud. In the absence of probable cause to
13 believe that the seller has committed fraud or made a material misrepresentation, the seller is not
14 subject to audit on the transactions processed by the certified service provider. A seller is subject
15 to audit for transactions not processed by the certified service provider. The member states
16 acting jointly may perform a system check of the seller and review the seller's procedures to
17 determine if the certified service provider's system is functioning properly and the extent to which
18 the seller's transactions are being processed by the certified service provider.

19 A person that provides a certified automated system is responsible for the proper functioning
20 of that system and is liable to the state for underpayments of tax attributable to errors in the
21 functioning of the certified automated system. A seller that uses a certified automated system
22 remains responsible and is liable to the state for reporting and remitting tax.

23 A seller that has a proprietary system for determining the amount of tax due on transactions
24 and has signed an agreement establishing a performance standard for that system is liable for the

1 failure of the system to meet the performance standard.

2 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the
3 Uniform Sales and Use Tax Administration Act.

4 Section 9. That § 10-1-44.1 be repealed.

5 ~~10-1-44.1. The Governor may, for the purpose of entering into a compact, negotiate and~~
6 ~~enter into a compact with officials of other states for the development, implementation, and~~
7 ~~administration of a simplified sales and use tax collection system. The compact shall conform~~
8 ~~generally to the provisions of chapter 1-24 relating to the joint exercise of governmental powers~~
9 ~~with other public agencies. The compact shall provide for the collection, reporting, auditing, and~~
10 ~~distribution of taxes imposed under chapters 10-45 and 10-46. The compact shall provide for the~~
11 ~~joint selection of persons to act as agents of the compact states for the collection and remittance~~
12 ~~of taxes imposed under chapters 10-45 and 10-46.~~

13 Section 10. That § 10-1-44.2 be repealed.

14 ~~10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~
15 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~
16 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~
17 ~~10-46.~~

18 Section 11. That § 10-1-44.3 be amended to read as follows:

19 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~
20 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered
21 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons
22 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters
23 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

24 Section 12. That § 10-1-44.4 be repealed.

1 ~~10-1-44.4. Any compact entered into by the Governor pursuant to § 10-1-44.1 is effective~~
2 ~~upon the Governor's signature and ratification by the Legislature.~~

3 Section 13. That § 10-45-1 be amended to read as follows:

4 10-45-1. Terms used in this chapter mean:

5 (1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or
6 fiber upon agricultural land, including dairy products, livestock, and crops. The
7 services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders,
8 and cultivators are considered agricultural purposes;

9 (2) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
10 such person with the object of gain, benefit, or advantage, either direct or indirect;

11 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
12 designated by the purchaser of tangible personal property or services including
13 transportation, shipping, postage, handling, crating, and packing;

14 (4) "Gross receipts," the amount received in money, credits, property, or other money's
15 worth in consideration of sales at retail within this state. No deduction may be taken
16 for the cost of the property sold, the cost of materials used, the cost of labor or
17 services purchased, amounts paid for interest or discounts, or any other expenses
18 whatsoever, nor may any deduction be allowed for losses. Gross receipts do not
19 include any fees or other interest imposed by a retailer for late charges on overdue
20 accounts, no account, and nonsufficient funds checks. Discounts for any purpose
21 allowed and taken on sales may not be included as gross receipts, nor may the sale
22 price of property returned by customers when the full sale price thereof is refunded
23 either in cash or by credit. If any tangible personal property is taken in trade or in a
24 series of trades as a credit or part payment of a retail sale taxable under this chapter,

1 and the tangible personal property taken in trade will be subject to the sales tax
2 imposed by this chapter when sold, the credit or trade-in value allowed by the retailer
3 may not be included as gross receipts. On all sales made under conditional sales
4 contract, or under other forms of sale wherein the payment of the principal sum is
5 extended over a period longer than sixty days from the date of sale, only the portion
6 of the sale amount that has actually been received in cash by the retailer during each
7 reporting period is subject to the tax imposed by this chapter total amount or
8 consideration, including cash, credit, property, and services, for which tangible
9 personal property or services are sold, leased, or rented, valued in money, whether
10 received in money or otherwise, without any deduction for the following:

- 11 (a) The retailer's cost of the property or service sold;
- 12 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
13 transportation to the retailer, all taxes imposed on the retailer, and any other
14 expense of the retailer;
- 15 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for
16 any services necessary to complete the sale whether or not separately stated,
17 including delivery charges; and
- 18 (d) The value of exempt tangible personal property whether or not separately
19 stated on the invoice, billing, or similar document given to the purchaser where
20 taxable and exempt tangible personal property have been bundled together and
21 sold by the retailer as a single product or piece of merchandise;

22 Gross receipts do not include:

- 23 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
24 party that are allowed by a retailer and taken by a purchaser on a sale;

1 (b) Interest, financing, and carrying charges from credit extended on the sale of
 2 tangible personal property or services, if the amount is separately stated on the
 3 invoice, bill of sale or similar document given to the purchaser; and

4 (c) Any taxes legally imposed directly on the consumer that are separately stated
 5 on the invoice, bill of sale, or similar document given to the purchaser;

6 (4)(5) "Person," any individual, firm, copartnership, joint adventure, association, limited
 7 liability company, corporation, municipal corporation, estate, trust, business trust,
 8 receiver, the State of South Dakota and its political subdivisions, or any group or
 9 combination acting as a unit;

10 (5)(6) "Relief agency," the state, and county, municipality or district thereof, or any agency
 11 engaged in actual relief work;

12 (6)(7) "Retail sale" or "sale at retail," ~~the sale of either tangible personal property or~~
 13 ~~services, or both, to the consumer or user thereof, or to any person for any purpose~~
 14 ~~other than for resale; the sale of natural or artificial gas, electric energy, water, and~~
 15 ~~communication service to consumers or users; and the sale of tickets or admissions~~
 16 ~~to places of amusement or athletic contests~~ any sale, lease, or rental for any purpose
 17 other than for resale, sublease, or subrent;

18 (7)(8) "Retailer," ~~every~~ any person engaged in the business of selling tangible goods, wares,
 19 or merchandise at retail, or the furnishing of gas, electricity, water, and
 20 communication service, and tickets or admissions to places of amusement and athletic
 21 events as provided in this chapter. ~~"Retailer"~~ The term also includes ~~every~~ any person
 22 subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale
 23 of tangible personal property at retail by a person who does not hold himself or herself
 24 out as engaging in the business of selling such tangible personal property at retail does

1 not constitute such person a retailer;

2 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or
3 by any means whatsoever, for a consideration.

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

6 For purposes of the tax imposed by this chapter, gross receipts do not include any fees or
7 other interest imposed by a retailer for late charges on overdue accounts, no account, or
8 nonsufficient funds checks.

9 Section 15. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For purposes of the tax imposed by this chapter, the sale price of property returned by
12 customers are not gross receipts if the full sale price thereof is refunded either in cash or by
13 credit.

14 Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 For purposes of the tax imposed by this chapter, if any tangible personal property is taken
17 in trade or in a series of trades as a credit or part payment of a retail sale taxable under this
18 chapter, and the tangible personal property taken in trade is subject to the sales tax imposed by
19 this chapter when sold, the credit or trade-in value allowed by the retailer may not be included
20 as gross receipts.

21 Section 17. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales
24 contract, or under other forms of sale wherein the payment of the principal sum is extended over

1 a period longer than sixty days from the date of sale, only the portion of the sale amount that has
2 actually been received in cash by the retailer during each reporting period is subject to the tax
3 imposed by this chapter.

4 Section 18. That § 10-45-3 be amended to read as follows:

5 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the
6 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation
7 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;
8 ~~provided, however, that whenever.~~ However, any trade-in or exchange of used farm machinery
9 is involved in the transaction, the tax ~~shall~~ is only be due and shall be collected only on the cash
10 difference.

11 Section 19. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 There are exempted from the provisions of this chapter and the tax imposed by it, gross
14 receipts from the sale of parts or repairs on machinery or equipment which are clearly identifiable
15 as used primarily for agricultural purposes, including irrigation equipment, if the part replaces
16 a farm machinery or irrigation equipment part assigned a specific or generic part number by the
17 manufacturer of the farm machinery or irrigation equipment.

18 Section 20. That § 10-45-5 be amended to read as follows:

19 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of
20 any person from engaging in the business of leasing farm machinery or irrigation equipment used
21 for agricultural purposes and four percent upon the gross receipts of any person from engaging
22 or continuing in any of the following businesses or services in this state: abstracters; accountants;
23 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry
24 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and

1 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;
2 membership or entrance fees for the use of a facility or for the right to purchase tangible personal
3 property or services; photography; photo developing and enlarging; tire recapping; welding and
4 all repair services; cable television; and rentals of tangible personal property except leases of
5 tangible personal property between one telephone company and another telephone company,
6 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight
7 days and mobile homes ~~provided, however, that.~~ However, the specific enumeration of
8 businesses and professions made in this section does not, in any way, limit the scope and effect
9 of § 10-45-4.

10 Section 21. That § 10-45-5.3 be amended to read as follows:

11 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross
12 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in
13 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division
14 of the Office of Management and Budget, Office of the President.

15 Section 22. That § 10-45-8 be amended to read as follows:

16 10-45-8. There is imposed a tax of four percent upon the gross receipts from all sales of
17 tickets or admissions to places of amusement and athletic contests or events, except as otherwise
18 provided in this chapter.

19 Section 23. That § 10-45-24 be amended to read as follows:

20 10-45-24. Each retailer or person engaging in a business in this state whose receipts are
21 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each
22 application shall be made on a form prescribed by the secretary of revenue and shall require the
23 name under which the applicant transacts or intends to transact business, the location of each
24 business, and other information as the secretary of revenue may require. The application shall be

1 signed by the owner, if a natural person; by a member or partner, if an association or partnership;
2 or by an executive officer or a person specifically authorized by the corporation to sign the
3 application, if a corporation, to which shall be attached the written evidence of the person's
4 authority. The applicant shall have a permit for each place of business, unless the secretary of
5 revenue grants a request for a statewide permit. A statewide permit may be granted if the
6 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping
7 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified
8 in the application.

9 Any seller registering under the agreement as defined in section 1 of this Act shall be
10 registered in this state, provided this state has entered into the agreement as provided in section
11 3 of this Act. Any seller who is registered under such agreement is not required to sign the
12 registration application and may register through an agent. Any seller who is registered under
13 such agreement may cancel its registration at any time, but is liable for remitting any sales tax
14 previously collected.

15 Section 24. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 In computing the tax to be remitted under this chapter as the result of any transaction, the
18 tax amount shall be carried to the third decimal place. Amounts of tax less than one-half of one
19 cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an
20 additional cent.

21 Section 25. That § 10-45-30 be amended to read as follows:

22 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~
23 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~
24 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~

1 ~~upon the amount so collected.~~ For purposes of this chapter, a bad debt is any portion of the
2 purchase price of a transaction that a seller has reported as taxable and for which the seller
3 legally claims as a bad debt deduction for federal income tax purposes. In computing the amount
4 of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated
5 for any return. Any deduction taken or refund paid which is attributed to bad debts may not
6 include interest. Bad debts include worthless checks, worthless credit card payments, and
7 uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use
8 taxes charged on the purchase price, uncollectible amounts on property that remain in the
9 possession of the seller until the full purchase price is paid, expenses incurred in attempting to
10 collect any debt, debts sold, or assigned to third parties for collection, and repossessed property.
11 No bad debt deduction may be claimed by any person that has purchased accounts receivable for
12 collection unless the person is a successor that has acquired the entire business of the seller that
13 incurred the bad debt.

14 Bad debts shall be deducted within twelve months following the month in which the bad debt
15 has been charged off for federal income tax purposes. If a deduction is taken for a bad debt and
16 the seller subsequently collects the debt in whole or in part, the tax on the amount so collected
17 shall be paid and reported on the next return due after the collection.

18 Notwithstanding the provisions of § 10-59-22, a seller may obtain a refund of tax on any
19 amount of bad debt that exceeds the amount of taxable sales within the twelve-month period
20 defined by that bad debt. A refund under this section may not include interest.

21 If a seller's filing responsibilities have been assumed by a certified service provider as defined
22 in section 1 of this Act, the service provider may claim, on behalf of the seller, any bad debt
23 allowance provided by this section. The service provider shall credit or refund the full amount
24 of any bad debt allowance or refund received to the seller.

1 Section 26. That § 10-45-61 be amended to read as follows:

2 10-45-61. Notwithstanding § 10-54-1, a seller, who possesses a ~~resale~~ an exemption
3 certificate from a purchaser of tangible personal property or services which indicates the items
4 or services being purchased are ~~for resale in the regular course of business~~ exempt, may rely on
5 the ~~resale~~ exemption certificate and not charge sales tax to the provider of the ~~resale~~ exemption
6 certificate until the provider of the ~~resale~~ exemption certificate gives notice that the items or
7 services being purchased are no longer ~~for resale~~ exempt by filing a new ~~resale~~ exemption
8 certificate with the seller.

9 The ~~resale~~ exemption certificate shall be signed by the purchaser, provide the purchaser's
10 name, address, and valid state ~~sales~~ tax license number, if applicable, and shall describe the types
11 of tangible personal property and services being purchased ~~for resale~~ exempt by the purchaser
12 ~~in the regular course of business~~. However, any person filing an electronic exemption certificate
13 is not required to sign the exemption certificate.

14 The purchaser claiming the protection of a ~~resale~~ an exemption certificate is responsible for
15 assuring that the goods and services delivered thereafter are of a type covered by the ~~resale~~
16 exemption certificate. If there are items covered under the ~~resale~~ exemption certificate which are
17 not being purchased ~~for resale~~ exempt, it is the responsibility of the purchaser when ordering
18 goods from a seller to indicate if any of the items purchased are not ~~for resale~~ exempt, and the
19 appropriate sales tax shall be charged on the portion of the sale that is not ~~for resale~~ exempt. A
20 seller of property or services which are generally described under the ~~resale~~ exemption certificate
21 is not responsible for the collection of the tax unless otherwise directed by the purchaser ~~or~~
22 ~~unless the state establishes that the seller did not accept the resale certificate in good faith.~~
23 ~~Absent knowledge of circumstances by the seller which would put the holder of the resale~~
24 ~~certificate upon inquiry as to its validity, good faith does not require the seller to investigate the~~

1 nature of the purchaser's business.

2 If the purchaser later determines there is any tax due and owing, the purchaser shall remit the
3 tax owed by the purchaser to the state. If the purchaser ~~purchases for resale but later elects not~~
4 ~~to resell the goods and consumes or uses them~~ makes an exempt purchase and later determines
5 that the goods or services purchased are not exempt, the purchaser shall report the transaction
6 and pay the use tax on the next filing of ~~his~~ the purchaser's return.

7 Any purchaser who knowingly and intentionally lists on a ~~resale~~ an exemption certificate
8 personal property or services which the purchaser knows, at the time the ~~resale~~ exemption
9 certificate is filed with the seller, ~~will not be resold~~ are not exempt, or provides an invalid ~~resale~~
10 exemption certificate with the intent to evade payment of the tax, and fails to timely report the
11 same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may
12 assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest
13 may be charged on the penalty.

14 The seller shall retain the exemption certificate for a period of three years from the date it is
15 filed by the purchaser and provide the exemption certificate to the department upon request.

16 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for ~~resale~~
17 exemption certificates.

18 Section 27. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible
21 personal property and services to the location where the tangible personal property or service
22 is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the
23 location of receipt. The rules promulgated pursuant to this section may provide an alternative
24 method of sourcing telecommunication services.

1 Section 28. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Registration under the agreement and collection of tax imposed under this chapter or chapter
4 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

5 Section 29. That § 10-46-1 be amended to read as follows:

6 10-46-1. Terms, as used in this chapter mean:

7 (1) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
8 such person with the object of gain, benefit or advantage either direct or indirect;

9 (2) "Delivery charges," charges by the retailer for preparation and delivery to a location
10 designated by the purchaser of tangible personal property or services including
11 transportation, shipping, postage, handling, crating, and packing;

12 (3) "Fair market value," the price at which a willing seller and willing buyer will trade.
13 Fair market value shall be determined at the time of purchase. If a public corporation
14 is supplying tangible personal property that will be used in the performance of a
15 contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition
16 also applies to chapter 10-45;

17 ~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was
18 purchased from a retailer licensed under chapter 10-45 and that retailer has included
19 the tax in the amount received from the sale;

20 ~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota
21 and includes all territory within such limits owned by or ceded to the United States
22 of America;

23 ~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner
24 or by any means whatsoever, for a consideration. A transaction, whereby the

1 possession of property is transferred but the seller retains the title as security for the
2 payment of the price, is a purchase;

3 ~~(6)(7)~~ "Purchase price" or "sales price," the total amount for which tangible personal
4 property is sold, including any services that are part of the sale, valued in money,
5 whether paid in money or otherwise, and includes any amount for which credit is
6 given to the purchaser by the seller without any deduction therefrom on account of
7 the cost of the property sold, the cost of materials used, labor or service cost, interest
8 charged, losses or any other expense whatsoever. However, cash discounts allowed
9 and taken on sales may not be included shall have the same meaning as gross receipts
10 defined in subdivision 10-45-1(4);

11 ~~(7)(8)~~ "Retailer," any person performing services in this state or engaged in the business of
12 selling tangible personal property for use, storage or other consumption within the
13 meaning of this chapter. However, if in the opinion of the secretary of revenue, it is
14 necessary for the efficient administration of this chapter to regard any salesmen,
15 representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors,
16 supervisors, employers, or persons under whom they operate or from whom they
17 obtain the tangible personal property sold by them irrespective of whether they are
18 making sales on their own behalf or on behalf of such dealers, distributors,
19 supervisors, employers, or persons, the secretary of revenue may so regard them and
20 may regard the dealers, distributors, supervisors, employers, or persons as retailers
21 for purposes of this chapter;

22 ~~(8)(9)~~ "Retailer maintaining a place of business in the state," any retailer having or
23 maintaining within this state, directly or by a subsidiary, an office, distribution house,
24 sales house, warehouse, or other place of business, or any agents operating within the

1 state under the authority of the retailer or its subsidiary, irrespective of whether such
 2 place of business or agent is located here permanently or temporarily or whether such
 3 retailer or subsidiary is admitted to do business within this state pursuant to the laws
 4 of the State of South Dakota granting the rights of foreign corporations to do
 5 business in this state;

6 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly
 7 authorized and appointed assistant, deputies, or agents of the secretary charged
 8 with the administration or enforcement of this chapter;

9 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption
 10 in the State of South Dakota for any purpose except sale in the regular course
 11 of business;

12 ~~(11)~~(12) "Tangible personal property," tangible goods, wares, merchandise, gas, and
 13 electricity if furnished or delivered to consumers or users within this state;

14 ~~(12)~~(13) "Use," the exercise of right or power over tangible personal property incidental
 15 to the ownership of that property, except that it does not include the sale of
 16 that property in the regular course of business. Use also includes the use of the
 17 types of services, the gross receipts from the sale of which are to be included
 18 in the measure of the tax imposed by chapter 10-45, and any amendments
 19 thereto and the delivery or causing delivery into this state of tangible personal
 20 property intended to advertise products or services or promote or facilitate
 21 sales to South Dakota residents.

22 Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
 23 follows:

24 There are exempted from the provisions of this chapter and the tax imposed by it, the use of

1 parts or repairs on machinery or equipment which are clearly identifiable as used primarily for
2 agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or
3 irrigation equipment part assigned a specific or generic part number by the manufacturer of the
4 farm machinery or irrigation equipment.

5 Section 31. That § 10-59-27 be amended to read as follows:

6 10-59-27. Any taxpayer who has received written advice from the Department of Revenue
7 concerning the taxability of transactions shall be allowed to rely on such advice when filing tax
8 returns. However, the taxpayer shall maintain a copy of the advice in ~~their~~ the taxpayer's business
9 records. The department may not maintain a position against a taxpayer which is inconsistent
10 with a prior written opinion issued to the same taxpayer unless rescinded by the department, by
11 a change in statutory law or reported case law, by a change in federal interpretation in cases if
12 the department's written advice was predicated upon a federal interpretation or by a change in
13 material facts or circumstances relating to the taxpayer. For the purposes of this section, written
14 advice includes municipal boundary information, and zip codes and addresses located within
15 municipalities provided by the department.

16 Section 32. That § 10-52-2 be amended to read as follows:

17 10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax
18 in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by
19 ordinance enacted by its local governing board. However, no tax may be levied on the sale, use,
20 storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax
21 conforms in all respects to the state tax on such items with the exception of the rate, and the rate
22 levied does not exceed two percent.

23 ~~— If a municipality increases its tax rate above one percent, the revenue generated from the tax~~
24 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~

1 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~
2 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~
3 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~
4 ~~transfer to the special 911 fund authorized by § 34-45-12, the purchasing of fire fighting vehicles~~
5 ~~and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or~~
6 ~~reconstruction of streets as defined in the June, 1994, South Dakota Department of~~
7 ~~Transportation Pavement Condition Survey Guide for City Streets.~~

8 Section 33. That § 10-52-2.1 be repealed.

9 ~~—10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~
10 ~~ratified and may continue in force, provided, that no rate, which as of July 1, 1977, is in excess~~
11 ~~of the rate specified in § 10-52-2, shall be increased.~~

12 Section 34. That § 10-52-2.5 be repealed.

13 ~~—10-52-2.5. The gross receipts from selling food, as defined by the Food Stamp Act of 1977~~
14 ~~(P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules~~
15 ~~promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax~~
16 ~~imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in~~
17 ~~excess of one percent. The provisions of this section do not apply to municipalities qualifying~~
18 ~~under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the~~
19 ~~new rate is in excess of one percent. A municipality may, by local option, exempt food, as~~
20 ~~defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as~~
21 ~~amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one~~
22 ~~percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983,~~
23 ~~pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act~~
24 ~~of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983,~~

1 from the tax.

2 Section 35. That § 10-52-2.6 be repealed.

3 ~~10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~
4 ~~primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific~~
5 ~~or generic part number by the manufacturer of the farm machinery, farm machinery and~~
6 ~~equipment, and agricultural animal health products and medicines are exempt from the tax~~
7 ~~imposed by this chapter.~~

8 Section 36. That § 10-52-2.9 be repealed.

9 ~~10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~
10 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

11 Section 37. That § 10-52-3 be amended to read as follows:

12 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the
13 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval
14 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
15 ordinance which was in effect on December 31, 2005, is continued under the provisions of this
16 chapter if:

17 (1) The governing board of the municipality has reviewed the existing tax ordinance to
18 determine compliance with the provisions of this chapter; and

19 (2) The governing board of the municipality documents the review, any amendment, and
20 the intent to continue the tax in the official minutes of the governing board.

21 Any amendment made by the municipality to comply with the provisions of this Act or the
22 determination to continue the tax under the provisions of this chapter is deemed to be an
23 administrative decision pursuant to § 9-20-19 and is not subject to referendum.

24 Section 38. That § 10-52-2.10 be amended to read as follows:

1 10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance
2 with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may
3 issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in
4 anticipation of the collection of the taxes. The bonds shall be payable solely from the collections
5 of the taxes imposed by the municipality under § 10-52-2 ~~or 10-52-8, or both,~~ as determined by
6 the governing body. The governing body shall, in the resolution or ordinance authorizing the
7 bonds, agree that it will continue to impose and collect the taxes so long as the bonds are
8 outstanding. The governing body shall also pledge so much of the collections of the taxes as may
9 be necessary to pay the principal premium and interest on the bonds and to maintain any debt
10 service reserve established for the bonds. The For bonds issued prior to January 1, 2006, the
11 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and
12 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer
13 licensed beds and other public health care facilities or nonprofit health care facilities with fifty
14 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt
15 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the
16 bonds. If the proceeds of the tax imposed by § 10-52-8 are pledged to payment of the bonds, the
17 land acquisition and capital improvements financed with the proceeds of the bonds shall relate
18 to the purposes enumerated in § 10-52-8.

19 No election is required to authorize the issuance of municipal non-ad valorem tax revenue
20 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

21 Section 39. That § 10-52-8 be repealed.

22 ~~— 10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~
23 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
24 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~

1 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
2 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
3 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~
4 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
5 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
6 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
7 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
8 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
9 ~~use tax on such items with the exception of the rate.~~

10 Section 40. That § 10-52-9 be amended to read as follows:

11 10-52-9. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance
12 enacted under the authority of this chapter, and any tax rate affected thereby, can be effective
13 only on January first or July first of a calendar year. The ordinance or amendment shall be
14 effective on the earlier of January first or July first following at least sixty ninety days notification
15 by the municipality to the secretary of revenue that the ordinance or amendment has been
16 enacted unless the ordinance or amendment is suspended by operation of a referendum. If an
17 ordinance or amendment enacted under this chapter is referred and the referred ordinance or
18 amendment is approved the effective date is the earlier of January first or July first following at
19 least sixty ninety days notification by the municipality to the secretary of revenue that the
20 ordinance or amendment has been approved notwithstanding § 9-20-15. Notification of the
21 enactment or approval of the ordinance shall be in writing and mailed, along with a copy of the
22 ordinance or amendment, by registered or certified mail to the secretary of revenue.

23 Section 41. That § 10-52-11 be repealed.

24 ~~10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~

1 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~
2 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~
3 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~
4 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~
5 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

6 Section 42. That § 10-52-12 be repealed.

7 ~~10-52-12. The following services enumerated in the Standard Industrial Classification~~
8 ~~Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and~~
9 ~~Budget, Office of the President are exempt from the provisions of this chapter: establishments~~
10 ~~primarily engaged in air transportation, noncertified carriers (group no. 452).~~

11 Section 43. That § 10-52-13 be amended to read as follows:

12 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a
13 municipality which changes the boundaries of the municipality is effective on the first day of the
14 first month following at least ~~sixty~~ ninety days notification by the municipality to the secretary
15 of revenue that the resolution or amendment has been enacted unless the ordinance or
16 amendment is suspended by operation of a referendum. If a resolution or amendment enacted
17 pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the
18 effective date is the first day of the first month following at least ~~sixty~~ ninety days notification
19 by a municipality to the secretary of revenue that the resolution or amendment has been
20 approved. The municipality shall provide written notification of the enactment or approval of the
21 resolution or amendment, along with a copy of the resolution or amendment by registered or
22 certified mail or by any electronic means to the secretary of revenue. The municipality shall also
23 provide any changes or additions to streets and addresses.

24 Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 For the purposes of the tax imposed by this chapter, the transportation of tangible personal
3 property and passengers shall be taxed only if the origins and destination of the property or
4 passenger are within the same municipality.

5 Section 45. The Legislature hereby finds that the amendments to chapter 10-52 contained
6 in this Act shall result in a broader and more uniform tax base for the sales tax levied by
7 municipalities under this chapter, and that, absent a reduction in the current tax levy of a
8 municipality, it is anticipated that total sales tax revenues of a municipality may increase as a
9 result of these amendments. However, so long as a municipality has any bonds or other
10 obligations outstanding which are secured directly or indirectly by the pledge or collection and
11 application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to
12 January 1, 2006, no municipality may reduce its tax levy under chapter 10-52 to a rate which,
13 in the exercise of the sound discretion of the governing body, would be expected to produce less
14 total revenue than was collected in the immediately preceding year.

15 Section 46. Sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, and 44 are effective on
16 January 1, 2006.

17 Section 47. Except as may be required by section 45 of this Act, it is the intent of the
18 Legislature that the provisions of this Act be revenue neutral to all levels of government. Any
19 municipality that has reviewed its sales tax ordinance as required by section 37 of this Act shall
20 determine and enact a rate of taxation that, in the exercise of the sound discretion of the
21 governing body, would be expected to produce no more total revenue than was collected in the
22 immediately preceding year. However, nothing herein shall prohibit any increase in revenues that
23 are projected to occur because of economic growth.

24 Section 48. Section 47 of this Act is repealed on January 1, 2007.

1 Section 49. Whereas, this Act is necessary for the support of the state government and its
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
3 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

654H0032

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1002 - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to impose a gross receipts tax on certain visitor-related
2 businesses.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Lodging establishment," any building, structure, property, or premise kept, used,
6 maintained, advertised, or held out to the public to be a place where sleeping
7 accommodations are furnished to transient guests. The following constitute lodging
8 establishments: bed and breakfast inns, boarding houses, bungalows cabins,
9 condominiums, cottages, dude ranches, guest houses, guest ranches, hostels, hotels,
10 inns, lodges, motels, resorts, tourist homes, timeshare rentals, vacation home rentals,
11 and villas;

12 (2) "Campground," any property or premise kept, used, maintained, advertised, or held
13 out to the public to be a place where sites are available for placing of tents, campers,
14 trailers, mobile homes, or other mobile accommodations to transient guests.



1 Campgrounds include city, county, and state-owned campgrounds, as well as
2 concessionaires or contractors who manage or operate publicly owned campgrounds.

3 The following constitute campgrounds: campgrounds, camping cabins, camping
4 resorts, commercial picnic grounds, organizational camps, park units, recreational
5 vehicle parks, trailer parks, and youth camps;

6 (3) "Visitor attraction," any business establishment that offers recreation, entertainment,
7 or interpretation of natural or cultural history. The following constitute visitor
8 attractions: aerial tramways, amusement parks, animal exhibits, animal shows, antique
9 car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical gardens,
10 bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,
11 commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic
12 sites, human mazes, hunting preserves, miniature golf courses, museums, music
13 shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses,
14 racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads,
15 shooting preserves, show caves, ski areas, spectator events, water slides, wave pools,
16 wax figure exhibits, and zoological gardens. A visitor attraction includes any business
17 which is being conducted on the site of another visitor attraction;

18 (4) "Recreational service," any business establishment that provides leisure or recreational
19 experiences. The following constitute recreational services: aerial sightseeing tours,
20 amusement rides, bath houses, carriage rides, climbing guides, day camps, fishing
21 guides, fishing ponds, golf driving ranges, hunting guides, outfitters, pack trains,
22 private beaches, river rafting, saddle horse rides, sightseeing guides, sightseeing tours,
23 shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets, ski
24 trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps;

- 1 (5) "Recreational equipment rental," include all items rented for twenty-eight days or less
2 whose primary purpose is recreational use. Rental, under such circumstances, of the
3 following constitute recreational equipment rentals: all-terrain vehicles, beach chairs,
4 bicycles, bumper boats, bumper cars, campers, camping trailers, firearms, fishing
5 equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,
6 mopeds, motor coaches, motorcycles, pack animals, recreational courts and
7 equipment, recreational gold mining equipment, recreational vehicles, recreational
8 water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards,
9 snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers;
- 10 (6) "Spectator event," any organized activity meant for entertainment or education and
11 open to the public. The following constitute spectator events: air shows, auto races,
12 auto shows, balloon shows, boat races, car rallies, carnivals, circuses, concerts, dance
13 festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs,
14 greyhound races, horse races, horse shows, monster truck shows, motorcycle
15 expositions, motorcycle races, music festivals, rodeos, sporting events, stage
16 performances, threshing bees, tractor pull contests, and water-skiing shows. A
17 spectator event includes any business which is conducted on the site of another
18 spectator event;
- 19 (7) "Visitor intensive business," any antique shop, book store, candy store, flea market,
20 gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop,
21 marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if
22 fifty percent or more of annual total receipts are derived from the sale of tangible
23 personal property, during the months of June, July, August, and September. No
24 postsecondary, college, and university book store is, however, included.

1 Section 2. There is hereby imposed a tax of one percent on the gross receipts from any
2 lodging establishment, campground, motor vehicle rental, visitor attraction, recreational
3 equipment rental, recreational service, spectator event, and visitor-intensive business. The tax
4 imposed by this section on the gross receipts of any visitor-intensive business shall apply to the
5 gross receipts received by such business during the months of June, July, August, and September.
6 The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and
7 10-46. Tangible personal property, services, and admissions are subject to the tax imposed by
8 this section only if subject to tax by chapters 10-45 and 10-46.

9 Section 3. The revenue from the tax imposed by section 2 of this Act shall be deposited in
10 the tourism promotion fund created in § 1-42-31.

11 Section 4. The tax imposed by section 2 of this Act on any lodging establishment applies only
12 to the gross receipts from the rental of rooms by a lodging establishment.

13 Section 5. The tax imposed by section 2 of this Act on any campground applies to the gross
14 receipts from the rental of campground space.

15 Section 6. The tax imposed by section 2 of this Act applies to the gross receipts from
16 admission to a visitor attraction and from the sale of tangible personal property, services,
17 parking, or transportation at a visitor attraction.

18 Section 7. The tax imposed by section 2 of this Act applies to the gross receipts from
19 admission to a spectator event and from the sale of tangible personal property, services, parking,
20 or transportation at a spectator event.

21 Section 8. Gross receipts from the rental of rooms or sites at a lodging establishment or
22 campground owned by nonprofit religious, educational, or youth organization are exempt from
23 the tax imposed by section 2 of this Act if rented to a member of such organization.

24 Section 9. The tax imposed by section 2 of this Act shall be collected and administered by

1 the Department of Revenue.

2 Section 10. Any person who is subject to the tax imposed by this Act shall make a return and
3 remittance to the Department of Revenue on forms prescribed and furnished by the department
4 in the following manner:

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

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

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

16 The secretary of revenue may grant an extension of not more than five days for filing a return
17 and remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid
18 if a return or remittance is not made on time.

19 Section 11. The secretary of revenue may require or allow some returns and remittances to
20 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due
21 the last day of the month following the reporting period. For persons issued a temporary or
22 seasonal sales tax permit pursuant to chapter 10-45, the returns and remittances may be required
23 at a time determined by the secretary. Section 10-59-6 applies to returns and payments under this
24 section.

1 Section 12. The definitions, administrative, collection, and enforcement provisions of
2 chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

3 Section 13. The secretary of revenue may promulgate rules pursuant to chapter 1-26
4 concerning:

- 5 (1) Licensing, including bonding and filing license applications;
- 6 (2) The filing of returns and payment of the tax;
- 7 (3) Determining the application of the tax and exemptions;
- 8 (4) Taxpayer record-keeping requirements; and
- 9 (5) Determining auditing methods.

10 Section 14. Any person who:

- 11 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
12 by this Act is guilty of a Class 6 felony;
- 13 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
14 due is guilty of a Class 1 misdemeanor;
- 15 (3) Fails to keep the records and books required by section 13 of this Act or refuses to
16 exhibit these records to the secretary of revenue or the secretary's agents for the
17 purpose of examination is guilty of a Class 1 misdemeanor;
- 18 (4) Fails to file a return required by this Act within thirty days from the date the return is
19 due is guilty of a Class 1 misdemeanor;
- 20 (5) Willfully violates any rule of the secretary of revenue for the administration and
21 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 22 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
23 month period is guilty of a Class 6 felony.

24 Section 15. That § 10-59-1 be amended to read as follows:

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

5 Section 16. That § 10-45-69.1 be repealed.

6 ~~10-45-69.1. There is hereby imposed a tax of one percent on the gross receipts from hotels
7 and lodging places; campgrounds; motor vehicle rentals; visitor attractions; recreational
8 equipment rentals; recreational services; spectator events; and visitor-intensive businesses. The
9 tax imposed by this section to the gross receipts of visitor-intensive businesses shall apply to the
10 gross receipts received by such businesses during the months of June, July, August, and
11 September. The tax imposed by this section is in addition to any other tax imposed by chapters
12 10-45 and 10-46. Tangible personal property, services, and admissions are subject to the tax
13 imposed by this section only if subject to tax by chapters 10-45 and 10-46.~~

14 Section 17. That § 10-45-69.2 be repealed.

15 ~~10-45-69.2. The revenue from the tax imposed by § 10-45-69.1 shall be deposited in the
16 tourism promotion fund created in § 1-42-31.~~

17 Section 18. That § 10-45-69.3 be repealed.

18 ~~10-45-69.3. The tax imposed by § 10-45-69.1 on hotels and lodging establishments shall only
19 apply to the gross receipts from the rental of rooms by hotels and lodging establishments. A
20 lodging establishment is any building, structure, property, or premise kept, used, maintained,
21 advertised, or held out to the public to be a place where sleeping accommodations are furnished
22 in two or more rental units to transient guest. The following constitute hotels and lodging
23 establishments: bed and breakfast inns, boarding houses, bungalows cabins, condominiums,
24 cottages, dude ranches, guest houses, guest ranches, hostels, hotels, inns, lodges, motels, resorts,~~

1 ~~tourist homes, timeshare rentals, vacation home rentals, and villas.~~

2 Section 19. That § 10-45-69.4 be repealed.

3 ~~—10-45-69.4. The tax imposed by § 10-45-69.1 on campgrounds shall apply to the gross~~
4 ~~receipts from the rental of campground space. A campground is any property or premise kept,~~
5 ~~used, maintained, advertised, or held out to the public to be a place where sites are available for~~
6 ~~placing of tents, campers, trailers, mobile homes, or other mobile accommodations in two or~~
7 ~~more rental units to transient guests. Campgrounds include city, county, and state-owned~~
8 ~~campgrounds, as well as concessionaires or contractors who manage or operate publicly-owned~~
9 ~~campgrounds. The following constitute campgrounds: campgrounds, camping cabins, camping~~
10 ~~resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks,~~
11 ~~trailer parks, and youth camps.~~

12 Section 20. That § 10-45-69.5 be repealed.

13 ~~—10-45-69.5. For the purposes of § 10-45-69.1, a visitor attraction is any business~~
14 ~~establishment that offers recreation, entertainment, or interpretation of natural or cultural history.~~
15 ~~The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits,~~
16 ~~animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical~~
17 ~~gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,~~
18 ~~commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human~~
19 ~~mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers,~~
20 ~~outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining,~~
21 ~~reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas,~~
22 ~~spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens.~~

23 ~~—The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a visitor~~
24 ~~attraction and from the sale of tangible personal property, services, parking, or transportation.~~

1 ~~A visitor attraction includes any business which is being conducted on the site of another visitor~~
2 ~~attraction.~~

3 Section 21. That § 10-45-69.6 be repealed.

4 ~~— 10-45-69.6. For the purposes of § 10-45-69.1, a recreational service is any business~~
5 ~~establishment that provides leisure or recreational experiences. The following constitute~~
6 ~~recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides,~~
7 ~~climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides,~~
8 ~~outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides,~~
9 ~~sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets,~~
10 ~~ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps.~~

11 Section 22. That § 10-45-69.7 be repealed.

12 ~~— 10-45-69.7. For the purposes of § 10-45-69.1, recreational equipment rentals include all~~
13 ~~items rented for twenty-eight days or less whose primary purpose is recreational use. Rental,~~
14 ~~under such circumstances, of the following constitute recreational equipment rentals: all-terrain~~
15 ~~vehicles, beach chairs, bicycles, bumper boats, bumper cars, campers, camping trailers, firearms,~~
16 ~~fishing equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,~~
17 ~~mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment,~~
18 ~~recreational gold mining equipment, recreational vehicles, recreational water equipment, rock~~
19 ~~climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers,~~
20 ~~snowshoes, watercraft, and watercraft trailers.~~

21 Section 23. That § 10-45-69.8 be repealed.

22 ~~— 10-45-69.8. For the purposes of § 10-45-69.1, a spectator event is any organized activity~~
23 ~~meant for entertainment or education and open to the public. The following constitute spectator~~
24 ~~events: air shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals,~~

1 ~~circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions,~~
2 ~~fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions,~~
3 ~~motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees,~~
4 ~~tractor pull contests, and water-skiing shows.~~

5 ~~— The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a spectator~~
6 ~~event and from the sale of tangible personal property, services, parking, or transportation at a~~
7 ~~spectator event. A spectator event includes any business which is conducted on the site of~~
8 ~~another spectator event.~~

9 Section 24. That § 10-45-69.9 be repealed.

10 ~~— 10-45-69.9. For the purposes of § 10-45-69.1, a visitor-intensive business is any: antique~~
11 ~~shop, book store, candy store, flea market, gift shop, indigenous arts and craft shop, jewelry,~~
12 ~~lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop,~~
13 ~~and tee shirt shop if fifty percent or more of annual total receipts are derived from the sale of~~
14 ~~tangible personal property, during the months of June, July, August, and September. No~~
15 ~~postsecondary, college, and university book store is, however, included.~~

16 Section 25. That § 10-45-69.10 be repealed.

17 ~~— 10-45-69.10. There is exempted from the tax imposed by § 10-45-69.1, gross receipts from~~
18 ~~the rental of rooms or sites at a lodging establishment or campground owned by nonprofit~~
19 ~~religious, educational, or youth organization if rented to members of such organizations.~~

20 Section 26. That § 10-45-91 be amended to read as follows:

21 10-45-91. Notwithstanding the provisions of § 10-45-13, admissions to rodeos and rodeo
22 related activities and events are subject to the tax imposed by §§ 10-45-8 and ~~10-45-69.1~~ section
23 2 of this Act.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

438H0043

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1003** - 02/08/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to authorize a municipal gross receipts tax on certain
2 lodging, alcoholic beverages, prepared food, and admissions.

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

4 Section 1. Terms used in this Act mean:

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

6 (2) "Gross receipts," the total amount or consideration, including cash, credit, property,
7 and services, for which tangible personal property or services are sold, leased, or
8 rented, valued in money, whether received in money or otherwise, without any
9 deduction for the following:

10 (a) The retailer's cost of the property or service sold;

11 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
12 transportation to the retailer, all taxes imposed on the retailer, and any other
13 expense of the retailer;

14 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for



1 any services necessary to complete the sale whether or not separately stated,
2 including delivery charges; and

3 (d) The value of exempt tangible personal property whether or not separately
4 stated on the invoice, billing, or similar document given to the purchaser where
5 taxable and exempt tangible personal property have been bundled together and
6 sold by the retailer as a single product or piece of merchandise;

7 Gross receipts do not include:

8 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
9 party that are allowed by a retailer and taken by a purchaser on a sale;

10 (b) Interest, financing, and carrying charges from credit extended on the sale of
11 tangible personal property or services, if the amount is separately stated on the
12 invoice, bill of sale or similar document given to the purchaser; and

13 (c) Any taxes legally imposed directly on the consumer that are separately stated
14 on the invoice, bill of sale, or similar document given to the purchaser.

15 Section 2. Any municipality may impose an additional municipal non-ad valorem tax at the
16 rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites, or
17 other lodging accommodations within the municipality for periods of less than twenty-eight
18 consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where
19 the public is invited to eat, dine, or purchase and carry out prepared food for immediate
20 consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events,
21 or any combination thereof. The tax shall be levied for the purpose of land acquisition,
22 architectural fees, construction costs, payments for civic center, auditorium, or athletic facility
23 buildings, including the maintenance, staffing, and operations of such facilities and the promotion
24 and advertising of the city, its facilities, attractions, and activities.

1 Section 3. That § 10-52-8 be repealed.

2 ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~
3 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
4 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~
5 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
6 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
7 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~
8 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
9 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
10 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
11 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
12 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
13 ~~use tax on such items with the exception of the rate.~~

14 Section 4. The tax imposed by section 2 of this Act shall be collected and administered by
15 the department.

16 Section 5. Any person who is subject to the tax imposed by this Act shall make a return and
17 remittance to the department on forms prescribed and furnished by the department in the
18 following manner:

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

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

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

6 The secretary of revenue may grant an extension of not more than five days for filing a return
7 and remittance. Unless an extension is granted, penalty or interest pursuant to § 10-59-6 shall
8 be paid if a return or remittance is not made on time.

9 Section 6. The secretary of revenue may require or allow some returns and remittances to
10 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due
11 the last day of the month following the reporting period. For any person issued a temporary or
12 seasonal tax permit pursuant to chapter 10-45, the returns and remittances may be required at
13 a time determined by the secretary. Section 10-59-6 applies to any return and payment made
14 pursuant to this section.

15 Section 7. The definitions, administrative, collection, and enforcement provisions of chapters
16 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

17 Section 8. The secretary of revenue may promulgate rules pursuant to chapter 1-26
18 concerning:

- 19 (1) Licensing, including bonding and filing license applications;
- 20 (2) The filing of returns and payment of the tax;
- 21 (3) Determining the application of the tax and exemptions;
- 22 (4) Taxpayer record-keeping requirements; and
- 23 (5) Determining auditing methods.

24 Section 9. Any person who:

- 1 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
2 by this Act is guilty of a Class 6 felony;
- 3 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
4 due is guilty of a Class 1 misdemeanor;
- 5 (3) Fails to keep the records and books required by section 10 of this Act or refuses to
6 exhibit these records to the secretary of revenue or the secretary's agents for the
7 purpose of examination is guilty of a Class 1 misdemeanor;
- 8 (4) Fails to file a return required by this Act within thirty days from the date the return is
9 due is guilty of a Class 1 misdemeanor;
- 10 (5) Willfully violates any rule of the secretary of revenue for the administration and
11 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 12 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
13 month period is guilty of a Class 6 felony.

14 Section 10. Each person subject to tax under this Act shall keep records and books of all
15 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
16 pertinent papers and documents. The books and records and other papers and documents are,
17 at all times during business hours of the day, subject to inspection by the secretary of revenue
18 or the secretary's agents and employees to determine the amount of tax due. The books and
19 records shall be preserved for a period of three years unless the secretary of revenue, in writing,
20 authorized their destruction or disposal at an earlier date.

21 Section 11. Any tax imposed by the governing board of any municipality pursuant to the
22 provisions of this Act, may be referred to a vote of the people for its approval or disapproval in
23 the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
24 ordinance which was in effect on July 1, 2002, is continued under the provisions of this Act if:

1 (1) The governing board of the municipality has reviewed the existing tax ordinance to
2 determine compliance with the provisions of this Act; and

3 (2) The governing board of the municipality documents the review, any amendment, and
4 the intent to continue the tax in the official minutes of the governing board.

5 Any amendment made by the municipality to comply with the provisions of this Act or the
6 determination to continue the tax under the provisions of this Act is deemed to be an
7 administrative decision pursuant to § 9-20-19 and not subject to referendum.

8 Section 12. The administration of the taxes adopted under this Act shall be by the
9 department. The department may prescribe forms and promulgate rules pursuant to chapter 1-26
10 for the making of returns and for the ascertainment, assessment, and collection of the tax
11 imposed pursuant to this Act. The department shall keep full and accurate records of all moneys
12 received and distributed under this Act.

13 Section 13. All moneys received and collected on behalf of a municipality by the department,
14 pursuant to this Act, shall be credited to a special municipal tax fund and after deducting the
15 amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the
16 administrative expenses incident thereto, shall be paid within thirty days after collection to the
17 municipality entitled thereto.

18 Section 14. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance
19 enacted under the authority of this Act, and any tax rate affected thereby, can be effective only
20 on January first or July first of a calendar year. The ordinance or amendment shall be effective
21 on the earlier of January first or July first following at least ninety days notification by the
22 municipality to the secretary of revenue that the ordinance or amendment has been enacted
23 unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance
24 or amendment enacted under this chapter is referred and the referred ordinance or amendment

1 is approved the effective date shall be the earlier of January first or July first following at least
2 ninety days notification by the municipality to the secretary of revenue that the ordinance or
3 amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or
4 approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or
5 amendment, by registered or certified mail to the secretary of revenue.

6 Section 15. That § 10-59-1 be amended to read as follows:

7 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
8 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,
9 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
10 49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

11 Section 16. Any municipality imposing a tax pursuant to this Act may issue municipal non-ad
12 valorem tax revenue bonds pursuant to this section and chapter 6-8B in anticipation of the
13 collection of the taxes. The bonds shall be payable solely from the collections of the taxes
14 imposed by the municipality under this Act, as determined by the governing body. The governing
15 body shall, in the resolution or ordinance authorizing the bonds, agree that it will continue to
16 impose and collect the taxes so long as the bonds are outstanding. The governing body shall also
17 pledge so much of the collections of the taxes as may be necessary to pay the principal premium
18 and interest on the bonds and to maintain any debt service reserve established for the bonds. The
19 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and
20 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer
21 licensed beds and other public health care facilities or nonprofit health care facilities with fifty
22 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt
23 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the
24 bonds. If the proceeds of the tax imposed by this Act are pledged to payment of the bonds, the

1 land acquisition and capital improvements financed with the proceeds of the bonds shall relate
2 to the purposes enumerated in section 2 of this Act.

3 No election is required to authorize the issuance of municipal non-ad valorem tax revenue
4 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

5 Section 17. The Legislature hereby finds that the amendments to chapter 10-52 contained
6 in this Act shall result in a broader and more uniform tax base for the tax levied by municipalities
7 under this chapter, and that, absent a reduction in the current tax levy of a municipality, it is
8 anticipated that total tax revenues of a municipality may increase as a result of these
9 amendments. However, so long as a municipality has any bonds or other obligations outstanding
10 which are secured directly or indirectly by the pledge or collection and application of taxes levied
11 pursuant to § 10-52-8 as in effect immediately prior to the effective date of this Act, no
12 municipality may reduce its tax levy under this Act to a rate which, in the exercise of the sound
13 discretion of the governing body, would be expected to produce less total revenue than was
14 collected in the immediately preceding year pursuant to the tax imposed under § 10-52-8.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0205

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1024** - 02/08/2002

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

1 FOR AN ACT ENTITLED, An Act to revise the penalties for overweight vehicle violations.

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

3 Section 1. That § 32-22-55 be amended to read as follows:

4 32-22-55. Any person who is convicted of the offense of operating a motor vehicle upon the
5 public highways of this state with weight upon any wheel, axle, or groups of axles or upon more
6 than one thereof greater than the maximum permitted by §§ 32-22-2 to 32-22-33, inclusive,
7 32-22-47 and 32-22-48 shall be fined in addition to, and not in substitution for, any other
8 penalties now provided by law for such offense in the following amounts:

9 In an amount equal to five cents per pound for each pound of such excess or combined
10 excess weight over one thousand pounds if such excess is three thousand pounds or less.

11 In an amount equal to fifteen cents per pound for each pound of such excess or combined
12 excess weight if such excess exceeds three thousand pounds and is four thousand pounds or less.

13 In an amount equal to twenty-two and one-half cents per pound for each pound of such
14 excess or combined excess weight if such excess exceeds four thousand pounds and is five



1 thousand pounds or less.

2 In an amount equal to thirty-seven and one-half cents per pound for each pound of such
3 excess or combined excess weight if such excess ~~is more than~~ exceeds five thousand pounds and
4 is ten thousand pounds or less.

5 In an amount equal to seventy-five cents per pound for each pound of such excess or
6 combined excess weight if such excess is more than ten thousand pounds.

7 The fine schedule in this section is assessed at a single rate according to the cents per pound
8 penalty for the highest weight violation.

9 Section 2. That § 32-22-56 be repealed.

10 ~~—32-22-56. In any case where the motor vehicle is absolutely overweight beyond ten thousand~~
11 ~~pounds, the pounds by which the vehicle is so overweight shall be assessed at double the~~
12 ~~penalties prescribed in § 32-22-55.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

774H0308

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1054** - 01/16/2002

Introduced by: Representatives Smidt, Lange, and Michels and Senators Bogue, Dennert, and McCracken

1 FOR AN ACT ENTITLED, An Act to require the service of certain documents on the Interim

2 Rules Review Committee a certain time before the committee meets to review the rules.

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

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

5 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,
6 or repeal of any rule, except an emergency rule:

7 (1) An agency shall serve a copy of a proposed rule and any publication described in
8 § 1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional
9 officer of the department to which it is attached;

10 (2) Fifteen days after the service required by subdivision (1) or upon receiving the written
11 approval of that officer to proceed, whichever comes first, and twenty days before the
12 hearing, the agency shall serve the director with a copy of the proposed rules, a copy
13 of any publication described in § 1-26-6.6, a copy of the fiscal note described in
14 § 1-26-4.2, and a copy of the notice of hearing required by § 1-26-4.1. Any



1 publication described in § 1-26-6.6 shall be returned to the agency upon completion
2 of the director's review and retained by the agency. Also, twenty days before the
3 hearing, the agency shall serve the Bureau of Finance and Management with a copy
4 of the proposed rules, a copy of the fiscal note described in § 1-26-4.2, and a copy of
5 the notice of hearing required by § 1-26-4.1;

6 (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-4.1,
7 at least twenty days before the hearing;

8 (4) The agency shall afford all interested persons reasonable opportunity to submit data,
9 opinions, or arguments, either orally or in writing, or both, at a hearing held for that
10 purpose. The hearing may be continued from time to time until its business has been
11 completed. The agency shall keep minutes of the hearing. A majority of the members
12 of any board or commission authorized to pass rules must be present during the
13 course of the hearing required by this subdivision;

14 (5) For a period of ten days after the hearing, the agency shall accept written comments
15 regarding the proposed rule, unless the entity promulgating the rule is a part-time
16 citizen board, commission, committee, task force, or other multiperson decision
17 maker, in which case the record of written comments shall be closed at the conclusion
18 of the public hearing. However, the hearing may be specifically continued for the
19 purpose of taking additional comments;

20 (6) After the written comment period, the agency shall fully consider all written and oral
21 submissions regarding the proposed rule. A proposed rule may be modified or
22 amended at this time to include or exclude matters which were described in the notice
23 of hearing;

24 (7) After reviewing the proposed rule, the director shall advise the agency of any

1 recommended corrections to the proposed rule;

2 (8) If the agency does not concur with any recommendation of the director, the agency
3 shall appeal the recommended correction to the Interim Rules Review Committee for
4 appropriate action; and

5 (9) The agency shall, at least five days prior to the time set for the agency to appear
6 before the committee to present the rules, serve the minutes of the hearing, a complete
7 record of written comments, and a corrected copy of the rules on the members of the
8 Interim Rules Review Committee.

9 The time periods specified in this section may be extended by the agency. The requirement
10 to serve the committee in subdivision (9) may be waived by the committee chair if the agency
11 presents sufficient reasons to the committee chair that the agency is unable to comply with the
12 time limit. The waiver may not be granted solely for the convenience of the agency.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

527H0263

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1133** - 02/04/2002

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

Introduced by: Representatives Flowers, Abdallah, Broderick, Brown (Richard), and Pummel
and Senators Duxbury, Albers, Diedrich (Larry), Diedtrich (Elmer), Hagen,
Olson (Ed), Staggers, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for displaying motor vehicles
2 at events.

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

4 Section 1. That subdivision (6) of § 32-6B-5 be amended to read as follows:

5 (6) Any person engaged in the business of manufacturing or customizing ~~motorcycles~~
6 motor vehicles may display but may not sell any ~~motorcycles~~ motor vehicle at an
7 event, if the event lasts three or more days and if the person registers with and
8 purchases a permit from the Department of Revenue at least five days before the
9 event. The person shall pay a fee of one hundred fifty dollars for a ten-day temporary
10 permit. However, if the permit is purchased at least five days before the event, the
11 person shall pay a fee of one hundred dollars for the ten-day temporary permit;

12



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

535H0563

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1134 - 01/22/2002

Introduced by: Representatives Flowers, Pederson (Gordon), Sebert, and Van Etten and
Senators Diedtrich (Elmer), Moore, Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the time at which bond is required of a surplus line
2 broker.

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

4 Section 1. That § 58-32-10 be amended to read as follows:

5 58-32-10. ~~Prior to~~ Within thirty days of issuance of a license as a surplus line broker and
6 before procuring any insurance coverage for an insured, the applicant shall file with the director
7 and thereafter for as long as the license remains in effect ~~he~~ the licensee shall keep in force a
8 bond in favor of the State of South Dakota in the penal sum of two thousand dollars with an
9 authorized corporate surety approved by the director, conditioned that ~~he~~ the licensee will
10 conduct business under the license in accordance with the provisions of this chapter and ~~that he~~
11 will promptly remit the taxes provided by §§ 58-32-44 and 58-32-45. No such bond ~~shall~~ may
12 be terminated unless at least thirty days' prior written notice thereof is given to the licensee and
13 filed with the director.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

543H0472

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1136** - 02/04/2002

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, and Valandra and Senators Hutmacher, Dennert, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), Symens, and Volesky

1 FOR AN ACT ENTITLED, An Act to clarify the approval authority for local accounts of the
2 state treasurer and state auditor.

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

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

5 4-4-3. All state public funds shall be received and maintained in the state treasury, and shall
6 be disbursed only upon proper authorization by the state auditor and the state treasurer, unless
7 the state treasurer and state auditor ~~shall~~ jointly determine a justification exists for maintaining
8 such public funds in a local bank account. A local bank account authorized by the state auditor
9 and state treasurer is an official account of the state subject to the custody of the state treasurer
10 under § 1-10-1. Neither the state treasurer nor the state auditor may be a signatory on any local
11 account. Any agency holding state funds in any local bank account shall provide a quarterly
12 statement of activity in that account to the state treasurer and the state auditor.

13 Section 2. That § 4-3-5 be amended to read as follows:



1 4-3-5. ~~Every such~~ Each officer or employee shall designate in writing, to be filed in ~~his~~ the
2 officer's or employee's office, the bank or banks in which ~~he shall have~~ are deposited the current
3 receipts of ~~his~~ the office or department ~~and any~~. Any account showing any such deposit ~~shall be~~
4 is an official account and shall be accessible to the inspection of the auditor-general at any time
5 during banking hours.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

528H0301

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1151 - 01/24/2002

Introduced by: Representatives Broderick, Bartling, and Pederson (Gordon) and Senators
Munson, Bogue, Diedrich (Larry), and McCracken

1 FOR AN ACT ENTITLED, An Act to require the secretary of state to conduct a pilot program
2 granting certain secured parties the ability to file and provide a procedure to record a
3 financing statement for security interest on agricultural lien and to provide rule-making
4 authority to implement the pilot program.

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

6 Section 1. The secretary of state shall conduct a pilot program granting a secured party the
7 access to allow the secured party to file and provide a procedure to record the secured party's
8 liens pursuant to § 57A-9-501 through the state's computer system. The secretary shall determine
9 the procedure and the parameters on how the pilot program shall be implemented and select the
10 lenders to participate in the pilot program. The secretary may promulgate rules, pursuant to
11 chapter 1-26, concerning the procedure for providing a secured party access to, adequate
12 security for, and confidentiality of any public records related to the secured party's liens listed
13 on the state's computer system.

14 Section 2. The provisions of this Act are repealed on July 1, 2004.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

940H0600

HOUSE ENGROSSED NO. **HB 1153** - 01/30/2002

Introduced by: Representatives Broderick, Begalka, Hansen (Tom), Madsen, Nesselhuf, and Olson (Mel) and Senators Bogue, Diedrich (Larry), Munson, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide procedural requirements for ineligibility orders
2 issued by the division of insurance and to repeal a surplus line insurer's responsibility to remit
3 surplus lines tax not remitted by an unlicensed surplus lines broker.

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

5 Section 1. That § 58-32-24 be amended to read as follows:

6 58-32-24. The insurer with which surplus line insurance is placed shall be in compliance with
7 either subdivision 58-32-22(1), (2), or (3) and not be ineligible as a surplus line insurer by order
8 of the director received by or known to the broker. The director may issue such an order of
9 ineligibility if the director finds ~~or has reason to believe,~~ after a hearing conducted pursuant to
10 chapter 1-26, that the insurer:

- 11 (1) Does not meet the requirements of §§ 58-32-21 to 58-32-25, inclusive;
- 12 (2) Has without just cause refused to pay claims arising under its contracts in the United
13 States or has otherwise conducted its affairs in such manner as to result in injury or
14 loss to the insuring public of the United States;



- 1 (3) Has failed to file the annual statement required in § 58-32-16.1;
- 2 (4) Has failed to provide information within twenty days of a request from the division;
- 3 (5) Has utilized surplus lines brokers who were not properly licensed in this state; or
- 4 (6) Has failed, within thirty days after notice, to ~~remit or cause to be remitted any surplus~~
- 5 ~~lines tax due from an unlicensed surplus lines broker~~ provide the name of the broker
- 6 that placed the insurance and the name of the insured.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1220 - 02/11/2002

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

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and
2 to declare an emergency.

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

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

6 Upon motion or by petition, a court may allow a person other than a parent to intervene in
7 an action under this chapter involving child custody. In any matter under this chapter involving
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to
9 represent the child. The court may award full or partial custody, care, education, and visitation
10 rights of the child to a person other than a parent.

11 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by
4 showing serious detriment to the child as evidenced by one or more of the following
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the
14 parent sufficient to cause significant emotional harm to the child in the event of a
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of
24 the child.

1 Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A judgment under section 1 of this Act awarding any person other than a biological parent
4 custodial rights may award the biological parent with visitation rights with the child.

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

7 If a court awards a third party custodial rights to a child, the court may set child support in
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for
10 their child.

11 Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

13 Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
15 effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

381H0657

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1254** -

02/05/2002

Introduced by: Representatives Fryslie, Duenwald, Hanson (Gary), and Jensen and Senators
Diedrich (Larry), Ham, and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to livestock auction
2 agencies and livestock dealers and to establish a penalty.

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

4 Section 1. That chapter 40-15 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For purposes of this chapter, the term, livestock, means cattle, sheep, horses, mules, swine,
7 goats, and buffalo.

8 Section 2. That § 40-15-10 be amended to read as follows:

9 40-15-10. No person may operate a livestock auction agency without first filing with the
10 Animal Industry Board a corporate surety bond as required under the provisions of the Federal
11 Packers and Stockyard Act, 1921, as amended to January 1, 2002, for livestock agencies selling
12 on commission. The bond shall be filed with the Animal Industry Board and a certified copy
13 thereof shall be filed with the chief of the Packers and Stockyards Division of the United States
14 Department of Agriculture. The obligee of the bond ~~shall be~~ is the Animal Industry Board with



1 the executive secretary thereof as trustee, with full power and authority to consider claims and
2 pay valid claims from bond proceeds, subject to applicable federal law. The bond shall be for the
3 benefit of all persons sustaining loss which may be covered by the obligation of the bond. The
4 bond shall be approved by the Animal Industry Board as to its sufficiency and by the attorney
5 general as to form prior to filing. The amount of the bond may not be less than twenty thousand
6 dollars. Any person who operates a livestock auction agency in violation of this section is guilty
7 of a Class 1 misdemeanor.

8 Section 3. That chapter 40-15 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If a livestock auction agency's license is relinquished, revoked, or suspended by the Animal
11 Industry Board, subject to applicable federal law, the Animal Industry Board may assume control
12 of any account and funds described in § 40-15-31, including collection of any deposit items,
13 identification and processing of claims to the funds, and payment of valid claims from the
14 available funds.

15 Section 4. That § 40-15-36 be amended to read as follows:

16 40-15-36. The Animal Industry Board shall enforce the provisions of this chapter and may
17 promulgate rules pursuant to chapter 1-26 concerning:

- 18 (1) The licensure of livestock auction agencies;
- 19 (2) The requirements for facilities;
- 20 (3) The handling of any animal found to be affected with any infectious, contagious, or
21 transmissible disease;
- 22 (4) The requirements for inspecting, examining, and testing of livestock passing through
23 a livestock auction agency; ~~and~~
- 24 (5) The reporting and record keeping requirements for livestock auction agencies; and

1 (6) Procedures for the consideration, processing, and payment of claims from bond
2 proceeds and, if a livestock auction agency's license is relinquished, revoked or
3 suspended, procedures for the collection of deposit items, processing of claims to the
4 funds, and payment of valid claims in accordance with sections 2 and 3 of this Act.

5 Such rules shall be sent to each licensed auction agency, there to be posted by such agency
6 plainly, visibly, and conspicuously, and with the license on the premises so as to be available to
7 any person using the service of such agency.

8 Section 5. That subdivision (3) of § 40-15A-1 be amended to read as follows:

9 (3) "Livestock," cattle, sheep, horses, mules, swine, buffalo, and goats;

10 Section 6. That § 40-15A-5 be amended to read as follows:

11 40-15A-5. Every livestock dealer, packer or packer buyer applying for a license under this
12 chapter shall file with the animal industry board and maintain a fully executed duplicate of a valid
13 and effective bond in the form and amount to be determined by the board, ~~or if he~~. If the
14 livestock dealer, packer, or packer buyer is registered and bonded under the provisions of an act
15 of Congress cited as the "Packers and Stockyards Act, 1921," adopted August 15, 1921, as
16 amended to January 1, 2002, and codified at 7 U.S.C. Chapter 9, the livestock dealer, packer,
17 or packer buyer shall file a statement in the form prescribed by the board evidencing that ~~he~~ the
18 livestock dealer, packer, or packer buyer is maintaining a valid and effective bond or its
19 equivalent under said act. If a packer buyer is in full-time employ of a packer bonded under this
20 section, ~~such~~ the packer buyer need not be bonded. The bond shall be for the benefit of all
21 persons sustaining a loss which may be covered by the obligation of the bond. The obligee of the
22 bond shall be the Animal Industry Board with the executive secretary of the board as trustee,
23 with full power and authority to consider claims and pay valid claims from bond proceeds subject
24 to applicable federal law. The Animal Industry Board may promulgate rules, pursuant to chapter

1 1-26, to establish procedures for the consideration, processing, and payment of claims from bond
2 proceeds in accordance with this section. Any livestock dealer, packer, or packer buyer in
3 violation of this section is guilty of a Class 1 misdemeanor.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

358H0670

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1283 - 02/11/2002

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

Introduced by: Representatives Eccarius and Michels and Senators Daugaard, Diedrich (Larry), and Everist

1 FOR AN ACT ENTITLED, An Act to establish the crime of physical abuse of an infant, to
2 designate the offense as a crime of violence, and to provide certain penalties therefor.

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

4 Section 1. That § 22-18-1.1 be amended to read as follows:

5 22-18-1.1. Any person who:

- 6 (1) Attempts to cause serious bodily injury to another, or causes such injury, under
7 circumstances manifesting extreme indifference to the value of human life;
- 8 (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous
9 weapon;
- 10 (3) Attempts to cause or knowingly causes any bodily injury to a law enforcement officer
11 or other public officer engaged in the performance of the officer's duties;
- 12 (4) Assaults another with intent to commit bodily injury which results in serious bodily
13 injury;
- 14 (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent



1 serious bodily harm; ~~or~~

2 (6) Is a convicted person under the jurisdiction of the Department of Corrections and
3 attempts to cause, or knowingly causes bodily injury to a Department of Corrections
4 employee, or authorized visitor, volunteer, or person under contract assigned to the
5 Department of Corrections; or

6 (7) Attempts to cause or causes serious bodily injury to an infant, less than three years
7 old, by causing any intracranial or intraocular bleeding, swelling, or contusion to the
8 brain, whether caused by blows, shaking, or causing the infant's head to impact with
9 an object or surface;

10 is guilty of aggravated assault. Aggravated assault is a Class 3 felony. However, a violation of
11 subdivision (7) is a Class 2 felony.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0726

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1299 - 02/08/2002

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

1 FOR AN ACT ENTITLED, An Act to change the definition and venue of perjury prosecutions
2 and to provide for the verification of certain information on certain state applications or other
3 documents.

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

5 Section 1. That § 22-29-1 be amended to read as follows:

6 22-29-1. Any person who, having taken an oath that he or she will testify, declare, depose,
7 or certify truly before any competent tribunal, officer, or person, in any ~~of the cases~~ state or
8 federal proceeding or action in which such an oath may by law be administered, intentionally and
9 contrary to ~~such~~ the oath, states any material matter which ~~he~~ the person knows to be false, is
10 guilty of perjury.

11 Section 2. That chapter 23A-16 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Perjury may be prosecuted in the circuit court for either the county where the proceeding or
14 action is venued or where the act of perjury was committed.

15 Section 3. Any person who submits any petition, application, information, or other document



1 for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall
2 verify, under oath, that such petition, application, or information is true and correct. However,
3 it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or
4 written thereon in the form following: "I declare and affirm under the penalties of perjury that
5 this claim (petition, application, information) has been examined by me, and to the best of my
6 knowledge and belief, is in all things true and correct." Any person who signs such statement as
7 provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be
8 guilty of perjury.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0723

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1300 - 02/04/2002

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

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

1 FOR AN ACT ENTITLED, An Act to clarify the state's sovereign immunity in the courts of
2 other jurisdictions.

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

4 Section 1. That § 3-21-10 be amended to read as follows:

5 3-21-10. No waiver of state immunity by statute or, where permitted, by any officer or agent
6 of the state may constitute or be interpreted as a waiver of the state's immunity from lawsuits in
7 federal court or the courts of any jurisdiction other than the South Dakota Unified Judicial
8 System.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0246

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 42** - 01/28/2002

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the registration of sex
2 offenders.

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

4 Section 1. That § 22-22-30 be amended to read as follows:

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

8 (1) Rape as set forth in § 22-22-1;

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

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

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

14 (5) Photographing a child in an obscene act as set forth in § 22-22-23;

15 (6) Possession of child pornography as set forth in § 22-22-23.1;



- 1 (7) Sale of obscene pictures of a child as set forth in § 22-22-24;
- 2 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 3 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 4 (10) Criminal pedophilia as set forth in § 22-22-30.1;
- 5 (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set
- 6 forth in § 22-24-1.2;
- 7 (12) An attempt to commit any of the crimes listed in this section; ~~or~~
- 8 (13) Any crime committed in a place other than this state which would constitute a sex
- 9 crime under this section if committed in this state;
- 10 (14) Any federal crime or court martial that would constitute a sex crime under federal
- 11 law; or
- 12 (15) Any crime committed in another state if that state also requires that anyone convicted
- 13 of that crime register as a sex offender in that state.

14 Section 2. That § 22-22-31 be amended to read as follows:

15 22-22-31. Any person ~~residing in this state~~ who has been convicted whether upon a verdict

16 or plea of guilty or a plea of nolo contendere, or who has received a suspended imposition of

17 sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995, for

18 commission of a sex crime, as defined in § 22-22-30, or any person who is a juvenile fifteen years

19 of age or older adjudicated of a sex crime, as defined in subdivision 22-22-30(1) or (9), or of

20 felony sexual contact, as defined in § 22-22-7.2, shall, within ten days of coming into any county

21 to reside ~~or, temporarily domicile for more than thirty days,~~ attend school, attend postsecondary

22 education classes, or work, register with the chief of police of the municipality in which the

23 person resides, domiciles, attends school, attends classes, or works, or, if no chief of police

24 exists, then with the sheriff of the county ~~in which the person resides~~. A violation of this section

1 is a Class 1 misdemeanor. However, any subsequent violation is a Class 6 felony. Any person
2 whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified
3 copy of such formal discharge by certified mail to the Division of Criminal Investigation and to
4 local law enforcement where the person is then registered under this section. Upon receipt of
5 such notice, the person shall be removed from the sex offender registry open to public inspection
6 and shall be relieved of further registration requirements under this section.

7 Section 3. That § 22-22-31.1 be amended to read as follows:

8 22-22-31.1. The Division of Criminal Investigation shall mail a nonforwardable verification
9 form at least once annually to the last reported address of each person registered under
10 § 22-22-31. The person shall return the verification form to the Division of Criminal
11 Investigation within ten days after receipt of any such form. The verification form shall be signed
12 by the person required to register and shall state that the person still resides at the address last
13 reported to the Division of Criminal Investigation. If the person fails to return the verification
14 form to the Division of Criminal Investigation within ten days after receipt of the form, the
15 person is in violation of the registration provisions of § 22-22-31 and is subject to the penalties
16 ~~prescribed in § 22-22-31~~ this section. Nonreceipt of a registration verification does not constitute
17 a defense to failure to comply with § ~~22-22-37~~ this section. A violation of this section is a Class
18 1 misdemeanor. Any subsequent violation is a Class 6 felony.

19 Section 4. That § 22-22-36 be amended to read as follows:

20 22-22-36. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
21 who moves to a different residence address shall inform the law enforcement agency with whom
22 the person last registered of the new address, in writing, within ten days. The law enforcement
23 agency shall, within three days of receipt, forward the information to the Division of Criminal
24 Investigation and to the law enforcement agency having jurisdiction of the new residence. A

1 failure to register pursuant to this section is a Class 1 misdemeanor. Any second or subsequent
2 failure to register pursuant to this section is a Class 6 felony.

3 Section 5. That § 22-22-37 be amended to read as follows:

4 22-22-37. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
5 shall annually register with the local law enforcement agency having jurisdiction of the person's
6 residence verifying the information given pursuant to § 22-22-32. A violation of this section is
7 a Class 1 misdemeanor. Any ~~third~~ second or subsequent violation of this section is a Class 6
8 felony.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

772H0496

HOUSE ENGROSSED NO. **SB 114** - 02/11/2002

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

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 fewer resident voters by the
14 entire board of supervisors or by two members of the board of supervisors and four resident
15 voters of the township.



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

2 8-3-4. Every township clerk with whom such statement is filed as required in § 8-3-3 shall
3 record the same and immediately cause notice to be published in the same manner as provided
4 for the publication of notice of the annual township meeting. However, in a township with a
5 population of twenty or fewer resident voters, the notice of the time and place of any special
6 meeting need not be published more than once in any publication, shall be provided not less than
7 three days before the special meeting, and may be provided by first class mail in lieu of
8 publication.

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

10 8-3-19. ~~In case~~ If any township refuses or neglects to organize and elect officers at the time
11 fixed by law for holding the annual meeting, twelve ~~freeholders~~ resident voters of the township
12 may call a meeting for such purpose by notice published in the same manner as provided for the
13 publication of notice of the annual township meeting, ~~which.~~ The notice shall set forth the time,
14 place, and object of ~~such the~~ the meeting; and the voters, when assembled by virtue of such notice,
15 shall possess all the powers conferred upon them at the annual township meeting.

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

17 8-3-20. ~~In case~~ If no such notice is given as provided in § 8-3-19 within thirty days after the
18 time for holding the annual meeting, the board of county commissioners shall, on the affidavit
19 of any ~~freeholder~~ resident voter of ~~such the~~ the township, filed in the office of the county auditor
20 setting forth the facts, proceed at any regular or special meeting of the board to appoint the
21 necessary township officers, ~~and the.~~ The persons so appointed shall hold their respective offices
22 until others are elected and qualified in their places, and shall have the powers and be subject to
23 the same duties as if they had been duly elected.